

2011

ILLINOIS

REGISTER

RULES
OF GOVERNMENTAL
AGENCIES



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INTRODUCTION

The Illinois Register is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register.

The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2011

| <u>Issue #</u> | <u>Rules Due Date</u> | <u>Date of Issue</u> |
|----------------|-----------------------|----------------------|
| 1 | December 20, 2010 | January 3, 2011 |
| 2 | December 27, 2010 | January 7, 2011 |
| 3 | January 3, 2011 | January 14, 2011 |
| 4 | January 10, 2011 | January 21, 2011 |
| 5 | January 18, 2011 | January 28, 2011 |
| 6 | January 24, 2011 | February 4, 2011 |
| 7 | January 31, 2011 | February 14, 2011 |
| 8 | February 7, 2011 | February 18, 2011 |
| 9 | February 15, 2011 | February 25, 2011 |
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| 20 | May 2, 2011 | May 13, 2011 |
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| 22 | May 16, 2011 | May 27, 2011 |
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| 27 | June 20, 2011 | July 1, 2011 |
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| 29 | July 5, 2011 | July 15, 2011 |
| 30 | July 11, 2011 | July 22, 2011 |
| 31 | July 18, 2011 | July 29, 2011 |
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| 33 | August 1, 2011 | August 12, 2011 |
| 34 | August 8, 2011 | August 19, 2011 |
| 35 | August 15, 2011 | August 26, 2011 |
| 36 | August 22, 2011 | September 2, 2011 |
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| 38 | September 6, 2011 | September 16, 2011 |
| 39 | September 12, 2011 | September 23, 2011 |
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| 45 | October 24, 2011 | November 4, 2011 |
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| 50 | November 28, 2011 | December 9, 2011 |
| 51 | December 5, 2011 | December 16, 2011 |
| 52 | December 12, 2011 | December 27, 2011 |
| 53 | December 19, 2011 | December 30, 2011 |

Editor's Note: The Secretary of State Index Department is providing this opportunity to remind you that the next filing period for your Regulatory Agenda will occur from October 17, 2011 to January 3, 2012.

ATTORNEY GENERAL

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Attorney General's Procurement
- 2) Code Citation: 44 Ill. Adm. Code 1300
- 3)

| <u>Section Numbers:</u> | <u>Proposed Action:</u> |
|-------------------------|-------------------------|
| 1300.08 | Amendment |
| 1300.10 | Amendment |
| 1300.15 | Amendment |
| 1300.30 | Amendment |
| 1300.525 | Amendment |
| 1300.1002 | Amendment |
| 1300.1010 | Amendment |
| 1300.2005 | Amendment |
| 1300.2010 | Amendment |
| 1300.2012 | Amendment |
| 1300.2015 | Amendment |
| 1300.2025 | Amendment |
| 1300.2030 | Amendment |
| 1300.2035 | Amendment |
| 1300.2036 | Amendment |
| 1300.2037 | Amendment |
| 1300.2038 | Amendment |
| 1300.2040 | Amendment |
| 1300.2044 | Amendment |
| 1300.2045 | Amendment |
| 1300.2046 | Amendment |
| 1300.2047 | Amendment |
| 1300.2050 | Amendment |
| 1300.2055 | Amendment |
| 1300.2060 | Amendment |
| 1300.2580 | New |
| 1300.4510 | Amendment |
| 1300.4530 | Amendment |
| 1300.4535 | Amendment |
| 1300.4545 | Amendment |
| 1300.5030 | Amendment |
| 1300.5037 | New |
| 1300.5039 | New |
| 1300.5510 | Amendment |

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NOTICE OF PROPOSED AMENDMENTS

| | |
|-----------|-----------|
| 1300.5520 | Amendment |
| 1300.5530 | Amendment |
| 1300.5550 | Amendment |
| 1300.5555 | New |
| 1300.7015 | Amendment |
| 1300.7020 | Amendment |

- 4) Statutory Authority: Implementing and authorized by Section 1-30(a) of the Illinois Procurement Code [30 ILCS 500/1-30(a)]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments further define terms, provide the structure for the oversight of procurement, specify required documentation of procurement actions, specify publication in the Illinois Procurement Bulletin of explanation of awards to other than the low bidder and the content of the explanation, restrict amendments to sole economically feasible source procurements of professional and artistic services, limit scope of emergency conditions for emergency purchases, specify the requirements for an extension of an emergency purchase, provide requirements for publication of professional and artistic procurements, expand reasons for the cancellation of a solicitation, provide requirements for presolicitation assistance prepared by a person outside of State personnel, change permissible duration of contracts, provide the requirement for disclosure of subcontractors, change definition of small business, provide requirement for vendor registration with the State Board of Elections, provide contract file requirements for vendors required to register with State Board of Elections, add that subcontractors' performance may be reviewed and the procedures for review, provide for debarment or suspension of subcontractors, and provide procedures for hearings and decisions of hearings.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No

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NOTICE OF PROPOSED AMENDMENTS

11) Statement of Statewide Policy Objectives: This rulemaking does not affect or create or expand a State mandate under the State Mandates Act.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Melissa Mahoney
Deputy Chief of Staff, Administration
Office of the Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601

312/814-3950

All written comments filed within 45 days after the date of publication of this Notice will be considered.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Small businesses doing business with or seeking to do business with the Attorney General's Office would be affected.

B) Reporting, bookkeeping or other procedures required for compliance: Small businesses having contracts with the Attorney General's Office are required to provide certain conflict of interest disclosures, financial interest disclosures and certifications.

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: January 2011

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER XX: ATTORNEY GENERAL

PART 1300
ATTORNEY GENERAL'S PROCUREMENT

SUBPART A: GENERAL

| Section | Title |
|---------|---|
| 1300.01 | Title |
| 1300.05 | Policy |
| 1300.08 | Illinois Procurement Code |
| 1300.10 | Application |
| 1300.15 | Definitions of Terms Used in This Part |
| 1300.25 | Property Rights |
| 1300.30 | Contracts Necessary to Prepare for Anticipated Litigation |

SUBPART B: PROCUREMENT RULES

| Section | Title |
|----------|---------------------------|
| 1300.525 | Procurement by DCMS Rules |

SUBPART C: PROCUREMENT AUTHORITY

| Section | Title |
|-----------|--|
| 1300.1002 | Conduct <u>and Oversight</u> of Procurements |
| 1300.1010 | Construction |

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

| Section | Title |
|-----------|---------------------------------|
| 1300.1510 | Publicizing Procurement Actions |
| 1300.1560 | Supplemental Notice |
| 1300.1570 | Error in Notice |
| 1300.1580 | Direct Solicitation |

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION – GENERAL

ATTORNEY GENERAL

NOTICE OF PROPOSED AMENDMENTS

Section

- 1300.2005 General Provisions
- 1300.2010 Competitive Sealed Bidding
- 1300.2012 Multi-Step Sealed Bidding
- 1300.2015 Competitive Sealed Proposals
- 1300.2020 Small Purchases
- 1300.2025 Sole Source Procurement
- 1300.2030 Emergency Procurements
- 1300.2035 Competitive Selection Procedures [for Professional and Artistic Services](#)
- 1300.2036 Other Methods of Source Selection
- 1300.2037 Tie Bids and Proposals
- 1300.2038 Mistakes
- 1300.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section

- 1300.2043 Suppliers
- 1300.2044 Vendor List/Required Use
- 1300.2045 Prequalification
- 1300.2046 Responsibility

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section

- 1300.2047 Security Requirements

SUBPART H: SPECIFICATIONS AND SAMPLES

Section

- 1300.2050 Specifications and Samples

SUBPART I: CONTRACT TYPE

Section

- 1300.2055 Types of Contracts

SUBPART J: DURATION OF CONTRACTS

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1300.2060 Duration of Contracts – General

SUBPART K: CONTRACT MATTERS

Section
1300.2560 Prevailing Wage
| 1300.2580 Subcontractors

SUBPART L: CONTRACT PRICING

Section
1300.2800 All Costs Included

SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section
1300.4005 Real Property Leases and Capital Improvement Leases
1300.4010 Renewal

SUBPART O: PREFERENCES

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1300.4505 Procurement Preferences
1300.4510 Resident Bidder Preference
1300.4530 Correctional Industries
1300.4535 Sheltered Workshops for the Disabled
1300.4540 Gas Mileage
1300.4545 Small Business

SUBPART P: ETHICS

Section
1300.5013 Conflicts of Interest
1300.5015 Negotiations for Future Employment
1300.5020 Exemptions
1300.5030 Revolving Door
1300.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

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| | <u>1300.5037</u> <u>Vendor Registration, Certification and Prohibition on Political Contributions</u> <u>1300.5039</u> <u>Communications Related to Procurement</u> |
|--|--|

SUBPART Q: CONCESSIONS

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| Section | |
| 1300.5310 | Concessions |

SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

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| 1300.5510 | Complaints Against Vendors <u>or Subcontractors</u> |
| 1300.5520 | Suspension |
| 1300.5530 | Settlement and Resolution of Contract and Breach of Contract Controversies |
| 1300.5540 | Violation of Law or Rule |
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| | |
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| 1300.6010 | Supply Management and Dispositions |

SUBPART T: GOVERNMENTAL JOINT PURCHASING

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| Section | |
| 1300.6500 | General |
| 1300.6510 | OAG Use of Other Contracts |
| 1300.6520 | No Agency Relationship |

SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

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| Section | |
| 1300.7000 | Severability |
| 1300.7010 | Government Furnished Property |
| 1300.7015 | Inspections |
| 1300.7020 | Records and Audits |
| 1300.7025 | Written Determinations |
| 1300.7030 | No Waiver of Sovereign Immunity |

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NOTICE OF PROPOSED AMENDMENTS

AUTHORITY: Implementing and authorized by Section 1-30(a) of the Illinois Procurement Code [30 ILCS 500/1-30(a)].

SOURCE: Adopted by emergency rule at 22 Ill. Reg. 12013, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 15192, effective August 15, 1998; amended at 23 Ill. Reg. 8971, effective July 28, 1999; amended at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 1300.08 Illinois Procurement Code

Articles 1, 15, 20, 25, 30, 33, 35, 40, 45, 50 and 53 of the Illinois Procurement Code [30 ILCS ~~500525~~/Arts. 1, 15, 20, 25, 30, 33, 35, 40, 45, 50 and 53] (the Code) will be referenced herein as though applicable to the OAG, and needs shall be procured in a manner substantially in accordance with those provisions of the Code, except to the extent otherwise provided in this Part. For purposes of this Part, any reference in the Code or this Part to the Chief Procurement Officer (CPO) means the employee designated by the Attorney General to serve in that capacity~~Attorney General or his designee~~. The Attorney General may appoint one or more State Purchasing Officers (SPO).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.10 Application

- a) The Code and this Part apply to those procurements for which the contractors were first solicited on or after July 1, 1998.
- b) Procurements for which contractors were first solicited on or before June 30, 1998, shall be conducted pursuant to legal requirements in effect at the time of the solicitation. The terms and conditions and the rights and obligations under contracts resulting from such procurements shall not be impaired.
- ~~e) A solicitation occurs on or before June 30, 1998, for purposes of this Part, in the following circumstances:~~
 - ~~1) When advertising is required in the Official State Newspaper, the first advertisement must run no later than June 30, 1998.~~

ATTORNEY GENERAL

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- 2) ~~When advertising is not required:~~
- A) ~~but if the procurement was advertised, the first advertisement must have run no later than June 30, 1998;~~
 - B) ~~if the procurement was by direct solicitation by mail, the solicitation must have been postmarked no later than June 30, 1998;~~
 - C) ~~if the procurement was by direct solicitation by fax, the fax must show a transmission date no later than June 30, 1998;~~
 - D) ~~if the procurement was solicited in person or by telephone, the solicitation must have occurred no later than June 30, 1998, and the individual who made the solicitation must state in writing when the procurement was discussed, and must name the party with whom the discussion took place.~~
- 3) ~~In all circumstances, the solicitations must be for the procurement of particular needs. A general discussion to determine if there is any interest is not considered a solicitation.~~

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.15 Definitions of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined in this Section below, and each term listed in this Section shall have the meaning set forth in this Section below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Amendment" – A written unilateral or bilateral modification to a contract term, as permitted by the original contract. These modifications shall alter the performance and completion of the contract, including but not limited to such matters as extra work and increases or decreases in quantities of goods not included within the scope of the original contract.

"Award" – The selection of a vendor for a contract.

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"Bid" – The response to an Invitation for Bids.

"Bidder" – Any person, other than an individual acting as a sole proprietor, who submits a bid.

"Bidder or Offeror Authorized to do Business in Illinois" or "Qualified Bidder" – A person, other than an individual acting as a sole proprietor, that is a legal entity authorized to do business in Illinois as evidenced by its registration with the Secretary of State Department of Business Services.

"Brand Name or Equal Specification" – A specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and which allows the submission of equivalent products.

"Brand Name Specification" – A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Bulletin" – The Illinois Procurement Bulletin.

"Change Order" – A change order shall have the same meaning as an "amendment".

"Code" – The Illinois Procurement Code [30 ILCS 500].

"Concession" – The right or a lease to engage in a certain activity for profit on the lessor's premises (e.g., a refreshment or parking concession).

"Consulting Services" – Services provided by a business or person as an independent contractor to advise and assist the OAG in solving specific management or programmatic problems involving the organization, planning, direction, control or operations of the OAG. The services may or may not rise to the level of professional and artistic as defined in the Code and this Part.

"Contract" – A contract may be in written or oral form. The term contract as used in the Code and this Part does not include: goods or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission, bonds issued by or on behalf of any State agency, or contracts, other than for "concessions", where the State agency signs,

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but has no financial obligation to the other parties.

"Contractor" or "Vendor" – The terms contractor and vendor are used interchangeably for purposes of the Code and this Part.

"Day" – Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State holiday, in which event the period shall run to the end of the next business day.

"DCMS" or "CMS" – The Department of Central Management Services.

"Items" – Anything that may be procured under the Code or this Part.

"Invitation for Bids" or "IFB" – the process by which a purchasing agent requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids [30 ILCS 500/1-15.45].

"Multi-Year Contract" – A multi-year contract is a contract with a performance term of more than 12 months.

"OAG" – The Office of the Attorney General.

"Offeror" – A person who responds to an Invitation for Bids, Request for Proposals or other form of solicitation.

"Procurement Officer" – The Chief Procurement Officer (CPO) or appropriate State Purchasing Officer (SPO) who conducts a particular procurement, or a designee of either.

"Proposal" – ~~The~~the response to a Request for Proposals.

"Protest Review Office" – The office address of the person designated in the solicitation documents to which protests must be directed. The person designated in the solicitation documents will respond to or coordinate the response to the protest.

"Purchase of Care" – *Purchase of care means a contract with a person for the*

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furnishing of medical, educational, psychiatric, vocational, rehabilitative, social, or human services directly to a recipient of a State aid program. [30 ILCS ~~500525~~/1-15.68] Services provided to a recipient include those that are a necessary adjunct to the provision of the State aid program services (e.g., obtaining intake information prior to commencement of medical treatment). Services provided to an applicant for a State aid program necessary to determine eligibility for the program are included within this definition.

"Qualified Products List" – An approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

"Renewal" – An extension of an original contract with materially identical terms to the original contract.

"Request for Information" or "RFI" – The process by which the OAG requests information from offerors for OAG contracts for leases of real property or capital improvements.

"Request for Proposals" or "RFP" – The process by which the OAG requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals.

"Responsible Bidder or Offeror" – A person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance. A responsible bidder or offeror shall not include a business or other entity that does not exist as a legal entity at the time the bid or proposal was submitted for OAG contract.

"Services" – The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance [30 ILCS 500/1-15.90], and the financing thereof.

"Solicitation" – An Invitation for Bids, a Request for Proposals or other request to one or more vendors to respond to a procurement need expressed by the OAG.

"Specification" – Any description of the physical, functional, or performance

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characteristics, or of the nature of supply, service, or construction items. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part.

"Specification for a Common or General Use Item" – A specification that has been developed and approved for repeated use in procurements ~~in accordance with the provisions of Section 1300.2050.~~

"Subcontract" – A contract between one person and another person who has or is seeking a contract subject to the Code, pursuant to which the subcontractor provides to the contractor some or all of the goods, services, property, remuneration or other forms of consideration that are the subject of the primary contract and includes, among other things, subleases from a lessee of a State agency.

"Subcontractor" – A person or entity that enters into a contractual agreement, for an amount greater than the small purchases limits set by Section 20-20 of the Code (or an amount set by rule pursuant to Section 20-20(c) of the Code) or Section 35-35 of the Code or Section 45 of the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535/45], with a contractor who has or is seeking a contract subject to the Code and this Part, to provide the contractor with some or all of the goods, services, property, remuneration or other forms of consideration that are the contractor's contractual obligations.

"Unsolicited Offer" – Any offer other than one submitted in response to a solicitation.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.30 Contracts Necessary to Prepare for Anticipated Litigation

Contracts necessary to prepare for anticipated litigation, enforcement actions or investigations, including but not limited to the appointment of special assistant attorneys general, contracts for court reporter services, and contracts with expert witnesses, are excepted from the application of the Code and this Part, provided that they are approved by Counsel to the Attorney General, or his designee, as provided in Section 1-10(b)(7) of the Code.

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART B: PROCUREMENT RULES

Section 1300.525 Procurement by DCMS Rules

To the extent practicable and available, the OAG may avail itself of master, schedule or open-ended contracts established by DCMS; items available from the Paper and Printing Warehouse; and DCMS contracts for telecommunications equipment, software and services, paper and envelopes, and vehicles and vehicle services. The Procurement Officer may submit purchase requests to DCMS in accordance with rules promulgated by DCMS.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART C: PROCUREMENT AUTHORITY

Section 1300.1002 Conduct and Oversight of Procurements

- a) Chief Procurement Officer. The Attorney General shall designate a Chief Procurement Officer (CPO) for purposes of the Code and this Part. The CPO may conduct any or all procurements on behalf of the OAG. The CPO shall have at least 5 years of experience in State budgeting or procurement activities, or shall be a certified professional public buyer or certified public purchasing officer. The CPO shall be a resident of the State of Illinois and shall owe a fiduciary duty to the State. The CPO is responsible for signing all written award determination letters stating the reasoning for any contract award decision. The CPO shall perform other duties as required by law.
- b) State Purchasing Officer. The Attorney General may appoint one or more State Purchasing Officers (SPO) to conduct procurement in accordance with the terms of the appointment and this Part. The employee performing the duties of the SPO must be certified as a professional public buyer or a public purchasing officer by the Universal Public Purchasing Certification Council within 18 months after appointment. In the absence of an SPO, the CPO may designate a temporary acting SPO. The SPO shall exercise procurement authority at the direction of the CPO, and the decisions of an SPO are subject to review by the CPO. The SPO may enter into contracts for the OAG. The SPO shall perform other duties as required by law and may only be removed by the Attorney General for cause.

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- c) Procurement Policy and Compliance Monitoring Board. The Attorney General shall appoint an OAG Procurement Policy and Compliance Monitoring Board (OAG PPCMB). The OAG PPCMB shall consist of 5 members. In making appointments to the OAG PPCMB, the Attorney General shall consider an individual's knowledge and experience in State government procurements and operations, including but not limited to certification as a professional public buyer or public purchasing officer by the Universal Public Purchasing Council. The members shall receive no additional compensation for serving on the OAG PPCMB. Except as provided in subsection (d), the OAG PPCMB shall:
- 1) be authorized to review, oversee, comment upon and recommend rules and practices governing the procurement, management, control and disposal of supplies, services, professional or artistic services, construction and capital improvements procured by the OAG;
 - 2) attend any procurement meetings and access relevant files and reports;
 - 3) be notified by the CPO if a conflict of interest is identified, discovered or reasonably suspected to exist. In such an event, the OAG PPCMB is to recommend action and give its recommendations to the CPO and Attorney General;
 - 4) report to the Inspector General and Attorney General whenever the OAG PPCMB has cause to believe there has been a violation of the Code or this Part;
 - 5) communicate directly with the Attorney General on all matters related to procurement;
 - 6) report to the CPO regarding outstanding procurement problems;
 - 7) ensure transparency and compliance with procurement laws;
 - 8) report findings of waste to OAG divisions. If a division does not correct circumstances causing the waste, the OAG PPCMB shall report to the CPO and the Inspector General; and
 - 9) perform other duties as required by law.

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- d) Chief Internal Auditor. The Attorney General shall appoint a Chief Internal Auditor. The auditor must have a Bachelor's degree, and must be a certified internal auditor, certified public accountant with at least 4 years of auditing experience, or an auditor with 5 years of experience. Any Chief Internal Auditor appointed on or after July 1, 2010 shall be appointed for a period of 5 years and may only be removed for cause. The Chief Internal Auditor shall report directly to the Attorney General. Subject to the approval of the Attorney General, and consistent with the Fiscal Control and Internal Auditing Act [20 ILCS 10], the Chief Internal Auditor shall:
- 1) direct the internal audit functions and activities of the OAG;
 - 2) prepare audit reports and assess program goals;
 - 3) be responsible for the preparation of an annual audit plan for submission to, and subject to the approval of, the Attorney General; and
 - 4) perform other duties as required by law.

~~The Attorney General or his designee shall serve as CPO for purposes of the Code, and may conduct any or all procurements for the OAG. The CPO may appoint one or more SPOs to conduct procurements on behalf of the CPO in accordance with conditions specified in the terms of the appointment.~~

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.1010 Construction

Any construction or construction related professional and artistic services in excess of the small purchase threshold for construction established by the OAG PPCMB ~~\$30,000 necessary for the OAG~~ will be procured by the CPO of the Capital Development Board or by any other appropriate State agency CPO of DCMS. ~~The small purchase threshold established by the OAG PPCMB shall not exceed the small purchase threshold established by the Procurement Policy Board (see the Procurement Policy Board's website at ppb.illinois.gov).~~ Any request for such services will be submitted to the appropriate CPO-CDB or CPO-DCMS in accordance with applicable CDB or DCMS rules. In the event of an emergency, the CPO may arrange for such construction as is necessary to protect the property and records of the OAG pending the making of arrangements with the appropriate State agency CPO CDB or DCMS.

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION – GENERAL

Section 1300.2005 General Provisions

- a) Late Bids or Proposals, Late Withdrawals and Late Modifications
- 1) Definition. Any bid or proposal received after the time, date and place set for receipt is late. A bid that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered, but the OAG will not be responsible for ensuring the subsequent delivery. Any withdrawal or modification of a bid or proposal received after the time and date set for opening of bids or proposals at the place designated for opening is late.
 - 2) Treatment. No late bid or proposal, late modification, or late withdrawal will be considered unless the Procurement Officer, and not a designee, determines it would have been timely but for the action or inaction of OAG personnel directly serving the procurement activity (e.g., providing the wrong address)it is received before contract award, and the bid, proposal, modification, or withdrawal would have been timely but for the action or inaction of OAG personnel directly serving the procurement activity.
 - 3) Records. Records shall be made and in accordance with the State Records Act [5 ILCS 160], kept for each late bid or proposal, late modification, or late withdrawal.
 - 4) Other Submissions. Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.
- b) Extension of Time
- 1) The Procurement Officer~~The date or time for submitting a bid or proposal or modifying or withdrawing a bid or proposal~~ may, ~~be extended by the CPO or SPO~~ prior to the date or time for submitting or modifying a bid or proposal, extend that ~~such~~ date or time for the convenience of the OAG.

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Reasons for extension include but are not limited to allowing additional time for submissions to account for inclement weather, labor strikes, accidents and ~~similar~~~~other such~~ reasons.

- 2) After opening bids or proposals, the ~~Procurement Officer~~~~CPO or SPO~~ may request bidders or offerors who submitted timely bids or proposals to extend the time during which the OAG may accept bids or proposals, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented. An extension does not provide an opportunity for others to submit bids or proposals.
- c) Electronic and Facsimile Submissions
 - 1) The Invitation for Bids or Request for Proposals may state that electronic and facsimile machine submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required attachments will be submitted as stated in the ~~IFB~~~~Invitation for Bids~~ or ~~RFP~~~~Request for Proposals~~.
 - 2) Electronic submissions authorized by specific language in the IFB or RFP will be opened in accordance with electronic security measures in effect at the OAG at the time of opening. Unless the electronic submission procedures provide for a secure receipt, vendor assumes risk of premature disclosure due to submission in unsealed form.
 - 3) Fax submissions authorized by specific language in the IFB or RFP will be placed in a sealed container upon receipt and opened as other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.
- d) Intent to Submit

The ~~IFB~~~~Invitation for Bids~~ or ~~RFP~~~~the Request for Proposals~~ may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid or proposal in response to the ~~IFB~~~~Invitation for Bids~~ or ~~RFP~~~~Request for Proposals~~. Bids and proposals submitted without complying with the notice of intent requirement shall be rejected.
- e) Only One Bid or Proposal Received

If only one responsive bid is received, or if only one proposal is received, an

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award may be made to the single bidder or offeror if the ~~Procurement Officer~~CPO ~~or SPO~~ finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise:

- 1) new bids or offers may be solicited, including under sole source (Section 1300.2025) or emergency (Section 1300.2030) procedures; or
- 2) the procurement may be cancelled;~~;~~ ~~or~~
- 3) ~~if the CPO or SPO determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted with any vendor under Section 1300.2025 (Sole Source Procurement) or Section 1300.2030 (Emergency Procurements), as appropriate. The CPO or SPO shall also attempt to negotiate the price offered by the single bidder to an acceptable level.~~

f) Alternate or Multiple Bids or Proposals

- 1) Alternate bids or proposals may be accepted if:
 - A) permitted by the solicitation and in accordance with instructions in the solicitation;
 - B) only one vendor responded, in which case the alternate submission(s) may be evaluated and treated in accordance with Section 1300.2025 (Sole Source Procurement) of this Part; or
 - C) the low bidder, who has met all requirements of the solicitation, has provided a lower cost alternative that meets all of the material requirements of the specifications;~~;~~ ~~or~~
 - D) ~~a vendor clearly indicates a base submission, then that base submission shall be considered for award as though it were the only bid or proposal submitted by the vendor.~~
- 2) Multiple bids or proposals may be accepted if:

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- A) permitted by the solicitation and in accordance with instructions in the solicitation; or
- B) only one vendor responded, then one or more of the submissions may be evaluated, provided that in the case of bids, only the lowest cost bid meeting specifications may be considered.

3) If a vendor clearly indicates a primary submission among alternate or multiple bids or proposals, then that primary submission shall be considered for award as though it were the only bid or proposal submitted by the vendor.

g) Multiple Items

An ~~IFB Invitation for Bids~~ or ~~RFP Request for Proposals~~ may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, or grand total of all items.

h) "All or None" Bids or Proposals

"All or none" bids or proposals may be accepted if the evaluation shows an "all or none" award to be the lowest cost or best value of those submitted. Factors to be used to determine the State's best interest include but are not limited to whether the bid is the lowest of those submitted, reasonableness of the price and the cost and time necessary to solicit other bids.

i) Conditioning Bids or Proposals Upon Other Awards

Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall:

- 1) be rejected unless the vendor removes the condition; or
- 2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other ~~IFB Invitation for Bids~~ or ~~RFP Request for Proposals~~ provided the agency need not delay procurement actions to accommodate the vendor's "all or none" condition.

j) Unsolicited Offers

~~1) Defined. An unsolicited offer is any offer other than one submitted in~~

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~~response to a solicitation.~~

- ~~12)~~ Processing of Unsolicited Offers. The ~~Procurement Officer~~~~CPO or SPO~~ may consider unsolicited offers and shall have final authority with respect to evaluation, acceptance and rejection of such unsolicited offers.
- ~~23)~~ Conditions for Consideration. An unsolicited offer must be in writing and must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the OAG.
- ~~34)~~ ~~Award. An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part unless the unsolicited offer meets the requirements for small (Section 1300.2020), sole source (Section 1300.2025), or emergency (Section 1300.2030) procurement.~~~~Evaluation.~~ ~~The unsolicited offer may be evaluated to determine its utility to the State and whether it would be to the State's advantage to enter into a contract based on such offer. An unsolicited offer which meets the requirements set forth above may be considered for award if the procurement also meets the requirements of Section 1300.2025 (Sole Source Procurement) or Section 1300.2020 (Small Purchases), in which case those procedures shall be followed as applicable.~~
- ~~45)~~ Confidentiality. Any request for confidentiality of data contained in an unsolicited offer must be made in writing, ~~and vendors must clearly identify any information that is exempt from the disclosure requirements of the Illinois Freedom of Information Act [5 ILCS 140].~~ If an award is made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. If agreement cannot be reached on confidentiality, the OAG shall reject the unsolicited offer.
- k) Clarification of Bids and Proposals
The ~~Procurement Officer~~~~CPO or SPO~~ may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to change its bid or proposal in response to a request for clarification.
- l) Extension of Time on Indefinite Quantity Contracts
The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the

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Procurement Officer~~CPO or the SPO~~ determines in writing that it is not practical to award another contract at the time of such extension.

m) Increase in Quantity on Definite Quantity Contracts

1) The quantity that may be ordered from a definite quantity contract may be increased by up to 20% provided the Procurement Officer~~CPO or SPO~~ determines that separate bidding for the additional quantity is not likely to achieve lower pricing.~~The quantity may be increased by any percentage provided the dollar value of the increase does not exceed the small purchase threshold applicable to the type of goods or service.~~

2) The quantity may be increased by any percentage provided the dollar value of the increase does not exceed the applicable small purchase (Section 1300.2020) threshold.

n) Assignment, Novation or Change of Name

1) Assignment. No OAG contract is transferable, or otherwise assignable, without the written consent of the Procurement Officer~~CPO or the SPO~~, provided, however, that a vendor may assign monies receivable under a contract after due notice to the OAG. Assignment may require the execution of a contract with the assignee and in such cases the assignee must meet all requirements for contracting with the OAG.

2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- A) the transferee assumes all of the transferor's obligations;
- B) the transferee meets all requirements for contracting with the OAG;
- C) the transferor waives all rights under the contract as against the OAG; and
- D) unless the transferor guarantees performance of the contract by the

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transferee, the transferee shall, if required by the OAG, furnish a satisfactory performance bond.

- 3) Change of Name. A vendor may submit to the Procurement Officer a written request to change the name in which it holds a contract with the OAG. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor. When a vendor requests to change the name in which it holds a contract with the OAG, the CPO or SPO responsible for the contract shall, upon receipt of a document indicating such change of name, enter into an agreement with the requesting vendor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.
- 4) Reports. All change of name or novation agreements effected under this subsection (n) other than by the CPO shall be reported to the CPO within 30 days after the date that the agreement becomes effective.
 - o) Contracting for Installment Purchase Payments, Including Interest
Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].
 - p) Use of Source Selection Method Not Required
If OAG uses a method of source selection that is not, by law, required to be used (e.g., use of a competitive sealed bid for a small purchase), the OAG is not bound to strict compliance with the Code and rules governing the method of source selection used.
 - q) Vendor Signature
A bid or proposal submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the Procurement Officer within the time specified by that officer.
 - r) Stringing
Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited.
 - s) Documentation of Procurement Actions

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Each SPO shall maintain in the procurement or associated contract file all substantive documents and records of communications that pertain to the procurement and any resulting contract. This shall include, as applicable, but is not limited to:

- 1) Procurement Business Case, signed by the Procurement Officer, that establishes the reason for the contract decision or other form of decision memo showing the Procurement Officer approvals to proceed with the contract award;
- 2) Procurement Bulletin postings;
- 3) Solicitation document (e.g., IFB) and all amendments, clarifications and Best & Final requests;
- 4) Vendors' responses, including clarifications and responses to Best & Final requests;
- 5) Evaluation material (e.g., scoring guidelines and forms; completed score sheets for individual evaluators, including notes; evaluation committee's combined score sheets; evaluation committee's recommendation; and management's decision);
- 6) Protest and resolution;
- 7) Contract and any order, change, amendment, renewal or extension;
- 8) Contractor Performance Reviews;
- 9) All information from subsections (s)(1) through (8), less information exempt from disclosure under the Freedom of Information Act [5 ILCS 140], shall be prepared and available for inspection and copying, with information from subsections (s)(1) through (5) available on the date any award is posted to the Procurement Bulletin.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2010 Competitive Sealed Bidding

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- a) **Application**
Competitive sealed bidding is the required method of source selection except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.
- b) **The Invitation for Bids**
- 1) **Use.** The ~~IFB Invitation for Bids~~ is used to initiate a competitive sealed bid procurement.
 - 2) **Content.** The ~~IFB Invitation for Bids~~ shall include, at a minimum, the following:
 - A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information such as the time and place of any pre-bid conference;
 - B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and
 - C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
 - 3) **Incorporation by Reference.** The ~~IFB Invitation for Bids~~ may incorporate documents by reference provided that the ~~IFB Invitation for Bids~~ specifies where such documents can be obtained.
- c) **Bidding Time**
Bidding time is the period of time between the date of notice or distribution of the ~~IFB Invitation for Bids~~ and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is allowed in this Part.
- d) **Bidder Submissions**

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- 1) Bid Form. The ~~IFB Invitation for Bids~~ shall provide a form that shall include space in which the bid price shall be inserted and that the bidder shall sign and submit along with all other necessary submissions.
- 2) Bid Samples and Descriptive Literature
 - A) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.
 - B) Unsolicited bid samples or descriptive literature are submitted at the bidder's risk, may not be examined or tested, will not be deemed to vary any of the provisions of the ~~IFB Invitation for Bids~~, and may not be utilized by the vendor to contest a decision or understanding with the State.
- e) Public Notice
 - 1) Publication. Every procurement for goods and services in excess of \$25,000 that must be procured using an ~~IFB Invitation for Bids~~ shall be publicized in the ~~Illinois Procurement~~ Bulletin (see Section 1300.1510).
 - 2) ~~Publication in the Bulletin may be supplemented by publication elsewhere at the discretion of the SPO. Examples include publication in:~~
 - A) ~~the Official State Newspaper;~~
 - B) ~~a newspaper of general circulation;~~
 - C) ~~a newspaper of local circulation in the area pertinent to the procurement; or~~
 - D) ~~industry media.~~
 - 23) Public Availability. A copy of the ~~IFB Invitation for Bids~~ shall be made available for public inspection.
 - 34) Distribution. ~~IFB Invitations for Bids~~ or Notices of the Availability of ~~IFB Invitations for Bids~~ may be mailed or otherwise furnished to a

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sufficient number of bidders for the purpose of securing competition. Notices of Availability shall indicate where [IFB Invitations for Bids](#) may be obtained; generally describe the supply or service desired; and indicate the due date for bids; and may contain other appropriate information such as pre-bid conference data. Where appropriate, the [Procurement Officer](#) ~~CPO or SPO~~ may require payment of a fee or a deposit for the supplying of the [IFB Invitation for Bids](#).

f) Pre-Bid Conferences

Pre-bid conferences may be conducted to enhance understanding of the procurement requirements. They shall be announced to all prospective bidders known to have received an [IFB Invitation for Bids](#). The conference may be designated as attendance mandatory or attendance optional. The conference should be held long enough after the [IFB Invitation for Bids](#) has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparation of bids. Nothing stated in the pre-bid conference shall change the [IFB Invitation for Bids](#) unless a change is made by written amendment to the [IFB Invitation for Bids](#). Minutes of the conference shall be supplied to all those prospective bidders known to have received an [IFB Invitation for Bids](#). If the conference is mandatory, the minutes shall be supplied to attendees only.

g) Amendments to Invitations for Bids

- 1) Form. Amendments to [IFB Invitations for Bids](#) shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the [IFB Invitation for Bids](#) it amends.
- 2) Distribution. Amendments shall be sent to all prospective bidders known to have received an [IFB Invitation for Bids](#).
- 3) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by fax or telephone and confirmed in the amendment.

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- h) Pre-Opening Modification or Withdrawal of Bids
- 1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the ~~IFB Invitation for Bids~~ prior to the time and date set for bid opening. A fax modification or withdrawal, or withdrawal received by telephone prior to the time and date set for bid opening, will be effective if followed in writing.
 - 2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.
 - 3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.
- i) Receipt, Opening and Recording of Bids
- 1) Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.
 - 2) Opening and Recording
 - A) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the ~~IFB Invitation for Bids~~. Opening shall be witnessed by a State employee or any other person present, but the person opening bids shall not serve as witness. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer~~CPO or SPO~~, shall be recorded and the name of each bidder read aloud or otherwise made available. The names of required witnesses shall also be recorded at the opening.
 - B) The winning bid shall be available for public inspection after award, along with the record of the other bids.
 - 3) Confidential Data. The Procurement Officer~~CPO or SPO~~ shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties

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do not agree as to the disclosure of data or other information, the bid shall be rejected as nonresponsive.

j) Bid Evaluation and Award

- 1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the ~~IFB Invitation for Bids~~, except as permitted in this Section. The ~~IFB Invitation for Bids~~ shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the ~~IFB Invitation for Bids~~.
- 2) Responsibility. Responsibility of prospective contractors is covered by Section 1300.2046 ~~(Responsibility) of this Part~~.
- 3) Responsiveness. Section 15-85 of the ~~Illinois Procurement~~ Code defines *responsive bidder* as a person who has submitted a bid that conforms in all material respects to the Invitation for Bids.
 - A) Product or Service Acceptability. The ~~IFB Invitation for Bids~~ shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:
 - i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;
 - ii) examination of such elements as appearance, finish, taste, or feel; or
 - iii) other examinations to determine whether it conforms with any other purchase description requirements.
 - B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is

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acceptable as set forth in the IFB Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

- 4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (j), bids will be evaluated to determine which bidder offers the lowest cost to the OAG in accordance with the evaluation criteria set forth in the IFB Invitation for Bids. Only objectively measurable criteria that are set forth in the IFB Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas. While evaluation factors need not be precise predictors of actual future costs, they should be, to the extent possible, reasonable estimates based upon information the OAG has available concerning future use and shall provide for equitable treatment of all bids. Pricing for optional goods or services or for renewal terms may be considered particularly when the pricing for such items or terms is unbalanced when compared to other pricing in the bid.
- 5) Price Negotiation. This Section permits negotiations with the low bidder to obtain a lower price for the item bid.
- k) Documentation of Award
Following award, a record showing the successful bidder shall be made a part of the procurement file.
- l) Award to Other Than Low Bidder
 - 1) The Procurement Officer CPO or SPO may award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest. ~~Factors used to determine the State's best interest include but are not limited to the quality of goods or services, responsibility of the bidder pursuant to Section 1300.2046 of this Part, any proposed conditions or options and preferences set forth at Subpart O of this Part. The written explanation~~ The name of the bidder selected, pricing, and the reasons for selecting this bidder instead of the low bidder must be published in the appropriate volume of the Bulletin.
 - 2) This action may be appropriate when the difference in quality of goods or

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services or speed of delivery is so great as compared to the difference in price, and considering the needs of the OAG, that a best value award is justified. However, if the difference in price is significant, the Procurement Officer may not utilize this provision.

- 3) The explanation must include:
- A) a description of the OAG's needs;
 - B) a determination that the anticipated cost will be fair and reasonable;
 - C) a listing of all reasonable and responsive bidders; and
 - D) the name of the bidder selected, pricing and the reasons for selecting that bidder.
- 4) The explanation shall be filed with the Legislative Audit Commission and the OAG PPCMB.

- m) Publicizing Award
The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. In procurements over the small purchase limit set in Section 1300.2020 of this Part, notice of award shall be published in the Bulletin.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2012 Multi-Step Sealed Bidding

- a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the OAG, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase, have their price bids considered.
- b) Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price. Multi-step sealed bidding may be

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used when it is considered desirable:

- 1) to invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and
 - 2) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.
- c) **Pre-Bid Conferences in Multi-Step Sealed Bidding**
Prior to the submission or evaluation of unpriced technical offers, a pre-bid conference as contemplated by Section 1300.2010 (Competitive Sealed Bidding) and Section 1300.2012 (Multi-Step Sealed Bidding) may be conducted by the Procurement Officer ~~CPO or SPO~~.
- d) **Procedure for Phase One of Multi-Step Sealed Bidding**
- 1) **Form.** Multi-step sealed bidding shall be initiated by the issuance of an IFB Invitation for Bids in the form required by Section 1300.2010 (Competitive Sealed Bidding), except as hereinafter provided. In addition to the requirements set forth in Section 1300.2010, the multi-step IFB Invitation for Bids shall state:
 - A) that unpriced technical offers are requested;
 - B) whether priced bids are to be submitted at the same time as unpriced technical offers and, if they are, that such priced bids shall be submitted in a separate sealed envelope;
 - C) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
 - D) the criteria to be used in the evaluation of the unpriced technical offers;
 - E) that the OAG, to the extent the Procurement Officer ~~CPO or SPO~~

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finds necessary, may conduct oral or written discussions of the unpriced technical offers; and

- F) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the ~~IFB Invitation for Bids~~.
- 2) Amendments to the ~~IFB Invitation for Bids~~. After receipt of unpriced technical offers, amendments to the ~~IFB Invitation for Bids~~ shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the ~~Procurement Officer~~ ~~CPO~~ ~~or SPO~~, a contemplated amendment will significantly change the nature of the procurement, the ~~IFB Invitation for Bids~~ shall be cancelled in accordance with Section 1300.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) of this Part and a new ~~IFB Invitation for Bids~~ issued.
- 3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be opened in the presence of at least one witness. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.
- 4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the ~~IFB Invitation for Bids~~. The unpriced technical offers shall be categorized as:
- A) acceptable;
- B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- C) unacceptable, in which case the ~~Procurement Officer~~ ~~CPO~~ ~~or SPO~~ shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

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- 5) The Procurement Officer~~CPO or SPO~~ may initiate Phase Two of the procedure if, in the Procurement Officer's~~CPO's or SPO's~~ opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer~~CPO or SPO~~ finds that such is not the case, the Procurement Officer~~CPO or SPO~~ may commence discussions of the unpriced technical proposals.
 - 6) Discussion of Unpriced Technical Offers. The Procurement Officer~~CPO or SPO~~ may conduct discussions with any vendor who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer~~CPO or SPO~~ shall not disclose any information derived from one unpriced technical offer to any other bidder. Any such bidder may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer~~CPO or SPO~~. Such submission may be made at the request of the Procurement Officer~~CPO or SPO~~ or upon the bidder's own initiative.
 - 7) Unacceptable Unpriced Technical Offer. When the Procurement Officer~~CPO or SPO~~ determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.
- e) Procedure for Phase Two
- 1) Initiation. Upon the completion of Phase One, the Procurement Officer~~CPO or SPO~~ shall either:
 - A) open priced bids submitted in Phase One (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
 - B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.
 - 2) Conduct. Phase Two shall be conducted as any other competitive sealed bid procurement except:

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- A) no public notice need be given of this invitation to submit priced bids because such notice was previously given;
- B) after award, the unpriced technical offer of the successful bidder shall be disclosed as follows: The Procurement Officer~~CPO or SPO~~ shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer~~CPO or SPO~~ shall reject the offer. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and
- C) unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2015 Competitive Sealed Proposals

- a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.
- b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories:
 - 1) electronic data processing equipment, software, and services;
 - 2) telecommunications equipment, software, and services;
 - 3) consulting services; and
 - 4) employee benefits and insurance.
- c) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the Procurement Officer~~CPO or SPO~~ that competitive sealed bidding is either not practicable or advantageous.
 - 1) "Practicable" Distinguished from "Advantageous." As used in Section 20-

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15 (Competitive Sealed Proposals) of the Illinois Procurement Code and this Section, the term "practicable" denotes what may be accomplished or put into practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a contract may be entered into by competitive sealed proposals, the Procurement Officer~~CPO or SPO~~ shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the OAG.

- 2) General Discussion
 - A) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals should be used.
 - B) The key element in determining relative advantage is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:
 - i) it permits discussions with competing offerors and changes in their proposals, including price; and
 - ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.
 - C) Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration, use of competitive sealed proposals is the appropriate procurement method.
- 3) When Competitive Sealed Bidding Is Not Practicable. Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition

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or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the IFB Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- A) whether the contract needs to be other than a fixed-price type;
- B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- D) whether award may need to be based upon a comparative evaluation as stated in the RFP Request for Proposals of differing price, quality (which includes technical and performance capability and the content of the technical proposal), and contractual factors in order to determine the most advantageous offering to the OAG; and
- E) whether the primary consideration in determining award may not be price.

4) When Competitive Sealed Bidding Is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the OAG, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- A) whether prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the OAG; and
- B) whether the factors listed in subsection (c)(3) of this Section are desirable in conducting a procurement rather than necessary.

d) Content of the Request for Proposals

The RFP Request for Proposals shall be prepared in accordance with Section 1300.2010 (Competitive Sealed Bidding) provided that it shall also include:

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- 1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and
 - 2) a statement of when and how price should be submitted.
- e) **Receipt and Registrations of Proposals**
Proposals shall not be opened publicly but shall be opened in the presence of at least one witness. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The Register of Proposals shall be open to public inspection after award of the contract.
- f) **Evaluation of Proposals**
- 1) Evaluation Factors in the ~~RFP Request for Proposals~~. The ~~RFP Request for Proposals~~ shall state all of the evaluation factors, including price, and their relative importance.
 - 2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the ~~RFP Request for Proposals~~. Factors not specified in the ~~RFP Request for Proposals~~ shall not be considered. Numerical rating systems may be used but are not required.
 - 3) Classifying Proposals. For the purpose of conducting discussions, proposals shall be initially classified as:
 - A) acceptable;
 - B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - C) unacceptable.
 - 4) Offerors whose proposals are unacceptable shall be so notified promptly.

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- g) Proposal Discussions with Individual Offerors
- 1) "Offerors" Defined. For the purposes of Section 20-15(f) (Competitive Sealed Proposals, Discussion with Responsible Offerors and Revisions of Proposals) of the Illinois Procurement Code and this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses who submitted unacceptable proposals.
 - 2) Purposes of Discussions. Discussions are held to:
 - A) promote understanding of the OAG's requirements and the offerors' proposals; and
 - B) facilitate arriving at a contract that will be most advantageous to the OAG, taking into consideration price and the other evaluation factors set forth in the ~~RFP Request for Proposals~~.
 - 3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change in, the ~~RFP Request for Proposals~~, the Request shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.
 - 4) Best and Final Offers. The ~~Procurement Officer CPO or SPO~~ may request best and final offers with a common date and time for submission of best and final offers. The ~~Procurement Officer CPO or SPO~~ may conduct additional discussions or change the OAG's requirements and require another submission of best and final offers. If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediate previous offer will be construed as its best and final offer.
- h) Award
- An award shall be made by the ~~Procurement Officer CPO or SPO~~ pursuant to a written determination showing the basis on which the award was found to be most

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advantageous to the OAG, based on the factors set forth in the ~~RFP~~ Request for Proposals.

- i) **Publicizing Awards**
After a contract is entered into, notice of award shall be posted in the Procurement Officer's ~~CPO's or SPO's~~ office. When the award exceeds the small purchase limit set in Section 1300.2020 of this Part, notice of award shall be published in the Bulletin.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2025 Sole Source Procurement

- a) **Application**
The provisions of this Section apply to procurement from a sole source unless the estimated amount of the procurement is within the limit set in Section 1300.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 1300.2030 (Emergency Procurements) ~~of this Part~~.
- b) **Conditions for Use of Sole Source Procurement**
Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:
- 1) ~~where~~ the compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
 - 2) ~~where~~ a sole supplier's items are needed for trial use or testing;
 - 3) ~~where~~ a sole supplier's item is to be procured for commercial resale;
 - 4) ~~where~~ public utility regulated services are to be procured; ~~or~~
 - 5) ~~where~~ the item is copyrighted or patented and the item is not available except from the holder of the copyright or patent; ~~or~~

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- 6) the procurement of the media for advertising;
- 7) the procurement of art or entertainment services; and
- 8) changes to existing contracts (subsection (c)).

c) Changes

- 1) Changes to existing contracts germane to the original contract, which are necessary or desirable to complete the project, and which can be best accomplished by the contract holder, may be procured under this provision if the Procurement Officer determines that the cost of delay or disruption to the contract or program, and the cost of a new solicitation, clearly indicate that the existing vendor is the sole economically feasible source.
- 2) A change (whether in cost or rate) that does not exceed the applicable small purchase limit as defined in Section 1300.2020, or that is an emergency as defined in Section 1300.2030, may be made in accordance with procedures governing those Sections and need not comply with these sole source procedures. A change in the length of the contract that does not exceed 30 days and other minor, immaterial changes to the scope or administrative provisions of a contract shall not be considered changes subject to these sole source procedures.

d) Procurement Officer to Determine

- 1) The determination as to whether a procurement shall be made as a sole source shall be made by the CPO after notice and a public hearing pursuant to Section 1300.5555. The determination and the basis for the determination shall be in writing. The Procurement Officer may specify the application of the determination and the duration of its effectiveness.
- 2) Any purchase request submitted to the CPO suggesting that a procurement be restricted to one potential vendor shall be accompanied by a written explanation as to why no other vendor will be suitable or acceptable to meet the need.

d) ~~The determination as to whether a procurement shall be made as a sole source shall be made by the CPO or SPO. Such determination and the basis therefor~~

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~~shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. Any request to the CPO that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.~~

- e) ~~The OAG, having defined a sole source, shall publish notice of intent to contract with that vendor in the Bulletin at least 14 days prior to execution of the contract.~~
- ~~1) If no challenge to this determination is made by a vendor within the 14-day period, the CPO or SPO may execute a contract with that vendor.~~
 - ~~2) If a challenge is received, the CPO or SPO shall consider the information and shall commence a competitive procurement if the CPO or SPO is convinced the sole source designation is not appropriate, unless an emergency situation now exists.~~
- ef) Negotiation in Sole Source Procurement
The ~~Procurement Officer~~~~CPO or SPO~~ shall conduct negotiations, as appropriate, as to price, delivery, and terms, and shall maintain a record of sole source procurements showing:
- 1) the vendor's name;
 - 2) the amount and type of the contract;
 - 3) a listing of the supplies, services, or construction procured under each contract; and
 - 4) the identification number of the contract file.
- f) Prohibition Against Amending Contracts for Professional or Artistic Services Based on Sole Source
The provisions of this Part shall not apply to an amendment to a contract for professional or artistic services if:
- 1) there is an increase in the amount paid under the contract of more than 5% of the initial award; or
 - 2) the term of the contract would be extended by a period not to exceed the

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time reasonably needed for a competitive procurement or 2 months, whichever is less.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2030 Emergency Procurements

a) Applications

The provisions of this Section apply to every procurement over the small purchase limit set in Section 1300.2020 of this Part and that is not a sole source procurement under Section 1300.2025, made under emergency (including quick purchase) conditions.

b) Definition of Emergency Conditions

1) A procurement may be made under this Section in situations in which:

- A) public health or safety, including the health or safety of any particular person, is threatened;
- B) repairs are needed to OAG property to protect against further loss or damage to OAG property, or to prevent loss or damage to OAG property;
- C) action is needed to prevent or minimize serious disruption in OAG services;
- D) action is needed to ensure the integrity of State or OAG records;
- E) a supplier of needed goods or services announces bankruptcy, going out of business, or loss of franchise, or gives other similar reason such that making a purchase immediately is in the State's best interest;
- F) commodity items are available on the spot market at prices such that good business judgment mandates a purchase if the spot price must be taken immediately;
- G) legal services to assist in the formulation of policy, in drafting or

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evaluating documents, or in determining the extent of statutory authority are needed sooner than the competitive process would allow; ~~or~~

H) equipment or services are necessary in the furtherance of covert activities lawfully conducted by the OAG. Any required disclosures shall be made so as not to jeopardize those covert activities;

I) immediate action is necessary to avoid lapsing or loss of federal or donated funds;

J) the need for items to protect or further the State's interests is immediate and use of other competitive source selection procedures under the Code and this Part cannot be accomplished without significant risk of causing serious disadvantage to the State; or

K) immediate action is necessary to protect the collection of substantial State revenue.

2) After Unsuccessful Competitive Sealed Bidding or Proposals or Request for Proposals. When bids or proposals received pursuant to a competitive sealed bid or competitive sealed proposal method are unreasonable or noncompetitive, or the price exceeds available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, and if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

3) Extension to Allow Competition. Extending an existing contract for the period of time needed to conduct a competitive method of source selection if terminating or allowing the contract to terminate would not be advantageous to the State.

4) Quick Purchase

A) A supplier announces bankruptcy, cessation of business, or loss of franchise, or gives other similar reason so that making a purchase

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immediately is more advantageous to the State than instituting a competitive procurement under the provisions of the Code and this Part for the supplies or services;

- B) Items are available on the spot market or at discounted prices for a limited time, so that good business judgment mandates a purchase immediately to take advantage of the availability and price;
- C) Availability of rare items such as books of historical value;
- D) The procurement is for entertainment.

c) Scope of Emergency Conditions

- 1) Emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency need.
- 2) Emergency procurements shall be limited to the time reasonably needed for a competitive procurement, but in no event shall that time period exceed 90 days unless the CPO determines additional time is needed.
- 3) In the event an emergency procurement exceeds 90 days, the contract scope and duration may be extended after notice and a public hearing as set out in Section 1300.5555. The extension shall be limited in items, quantity and days.

d) Authority to Make Emergency Procurements

Emergency procurements may be made when an emergency condition arises and the need cannot be met through normal procurement methods, provided that, whenever practical, existing OAG contracts shall be utilized and, whenever practical, approval by the CPO shall be obtained prior to the procurement. The Procurement Officer~~CPO or SPO~~ shall be responsible for making the filings required in Section 20-30 of the Code.

e) Source Selection Methods

Any method of source selection, whether or not identified in the Code or this Part, may be used to conduct the procurement in emergency situations. The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Such competition as is

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practicable shall be obtained.

f) Determination and Record of Emergency Procurement

- 1) Determination. The Procurement Officer~~CPO or SPO~~ responsible for the procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. The determination~~Such determinations~~ shall be kept in the contract file with a copy sent promptly to the CPO and the OAG PPCMB.
- 2) Record. A record of each emergency procurement shall be filed by the CPO with the OAG PPCMB within 10 days after the procurement, made as soon as practicable and shall include the following information:
 - A) the vendor's name;
 - B) the amount and type of the contract, provided that, if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known;
 - C) a description of what the vendor will do or provide, such as a listing of the supplies and services to be procured; and
 - D) the reasons for using the emergency method of source selection.
- 3) Notice of the emergency procurement shall be published in the Bulletin in accordance with Subpart D of this Part.

g) Extension of Emergency

In the event an emergency procurement exceeds 90 days, the emergency procurement may be extended after notice and a public hearing pursuant to Section 1300.5555. Prior to the execution of the extension:

- 1) the CPO must determine additional time is necessary;
- 2) the contract scope and duration must be limited to the emergency;
- 3) a public hearing must be held;

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- 4) the CPO must provide written justification for the emergency contract;
- 5) notice of the intent to extend shall be provided to the OAG PPCMB and published in the Bulletin in accordance with Subpart D of this Part.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2035 Competitive Selection Procedures for Professional and Artistic Services

- a) Application
The provisions of this Section apply to every procurement of professional and artistic services except those professional and other services necessary to prepare for anticipated litigation, enforcement actions or investigations, which are exempt from the requirements of the Code and ~~this~~ This-Part. "*Professional and artistic services*" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability [30 ILCS 525/1-15.60].
- b) Professional and artistic services are further defined as follows:
 - 1) "Qualified by education" means the individual who would perform the services must have obtained the level of education specified in the RFPRequest for Proposals.
 - 2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the RFPRequest for Proposals.
 - 3) "Qualified by technical ability" means the individual who would perform the services must demonstrate a high degree of skill or ability in performing services that are the same, similar or closely related in nature to those specified in the RFPRequest for Proposals.
 - 4) An essential element distinguishing professional and artistic services from other services is confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service. These services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts. (See Illinois Attorney General Opinion S-256, January

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20, 1971.)

- 5) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.
- 6) When a State agency requires services that meet the requirements of this subsection (b), the competitive selection procedures described in this Section must be followed. Services that do not meet the requirements of this Section must be procured in accordance with other methods of source selection authorized by the Code and this Part.
- c) The categories of services enumerated below shall be considered and procured as professional and artistic services. With regard to other services, the SPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, require such services to be procured as professional and artistic under these competitive selection procedures, or as services that are subject to one of the other methods of source selection authorized by the Code and this Part. The following categories are examples of disciplines that would always be professional and artistic services:
 - 1) law;
 - 2) accounting;
 - 3) medicine;
 - 4) dentistry; and
 - 5) clinical psychology.
- d) **Conditions for Use of Competitive Selection Procedures**
Except as authorized under Section 20-25 (Sole Source Procurement) or Section 20-30 (Emergency Procurements) of the ~~Illinois Procurement~~ Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of \$20,000 or more. Any procurement of such services in an amount of less than \$20,000 and for a nonrenewable term of less than one year may be procured in accordance with Section 1300.2020 (Small

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Purchases) of this Part.

- e) **Determinations Required Prior to Use of Competitive Selection Procedures**
The CPO shall determine in writing, prior to announcing the need for any such services:
- 1) that the services to be acquired are professional or artistic;
 - 2) the nature of the relationship to be established between the OAG and the vendor by the proposed contract; and
 - 3) that the OAG has developed, and fully intends to implement, a written plan for utilizing such services which will be included in the contractual statement of work.
- f) **Prequalification**
The CPO shall maintain a list of prequalified professional and artistic vendors in accordance with Sections 1300.2044 and 1300.2045 of this Part. Persons may amend statements of qualifications at any time by filing a new statement.
- g) **Public Notice in Competitive Selection Procedures**
Notice of the need for professional and artistic services shall be made by the ~~Procurement Officer~~ CPO or SPO in the form of ~~an RFP~~ Request for Proposals. Adequate public notice shall be given as provided in Section 1300.2010 (Competitive Sealed Bidding, Public Notice), and additionally may consist of distributing Requests for Proposals to prequalified persons interested in performing the services required by the proposed contract.
- h) **Request for Proposals**
- 1) **Contents.** The ~~RFP~~ Request for Proposals shall be in the form specified by the CPO and contain at least the following information:
 - A) the type of services required;
 - B) a description of the work involved;
 - C) an estimate of when and for how long the services will be required;

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- D) the type of contract to be used;
 - E) a date by which proposals for the performance of the services shall be submitted;
 - F) a statement of the minimum information that the proposal shall contain, which shall include:
 - i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
 - ii) if deemed relevant by the Procurement Officer~~CPO or SPO~~, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP~~Request for Proposals~~;
 - iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
 - iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFP~~Request for Proposals~~;
 - v) a plan giving as much detail as is practical explaining how the services will be performed;
 - G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package); and
 - H) the factors to be used in the evaluation and selection process and their relative importance.
- 2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP~~Request for Proposals~~. Price will not be evaluated until after selection of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of

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services being procured. The minimum factors are:

- A) the plan for performing the required services;
- B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
- C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
- D) a record of past performance of similar work.

i) Pre-Proposal Conferences

Pre-proposal conferences, as appropriate, may be conducted in accordance with Section 1300.2010 (Competitive Sealed Bidding).

j) Receipt and Handling of Proposals

Registration. Proposals and modifications shall be sent to the Procurement Officer~~CPO or SPO~~ as directed in the solicitation and shall be time-stamped upon receipt and held in a secure place until the established due date and time, at which time they will be opened by the Procurement Officer~~CPO or SPO~~. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of at least one witness. A register of proposals shall be established which shall include, for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The register of proposals shall be open to public inspection only after award of the contract.

k) Request for Nondisclosure of Data

If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the head of the agency conducting the procurement or a designee of such officer shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the Procurement Officer~~CPO or SPO~~ shall reject the proposal.

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l) Discussions

1) Discussions Permissible. The Procurement Officer~~CPO or SPO~~ shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall be to:

A) determine in greater detail such offeror's qualifications; and

B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be open to public inspection.

m) Selection of the Best Qualified Offerors

After conclusion of validation of qualifications, evaluation, and discussion, the Procurement Officer~~CPO or SPO~~ shall rank the acceptable offerors in the order of their respective qualifications.

n) Evaluation of Pricing Data

Pricing submitted for all acceptable proposals shall be opened and ranked. If the low price is submitted by the most qualified vendor, negotiation of price shall commence. If the price of the most qualified is not low and if it is under \$25,000, the Procurement Officer, but not a designee~~CPO or SPO~~ may award to that vendor. If the price is over \$25,000, the Procurement Officer, but not a designee~~CPO or SPO~~ must state why the qualifications were deemed more important than price and such determination shall be published in the Bulletin.

o) Negotiation and Award of Contract

1) General. The Procurement Officer~~CPO or SPO~~ shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable.

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- 2) Elements of Negotiation. Contract negotiations shall be directed toward:
 - A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
 - B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
 - C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.
- 3) Successful Negotiation of Contract with Best Qualified Offeror. If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is cancelled.
- 4) Failure to Negotiate Contract with Best Qualified Offeror.
 - A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons ~~for the lack of agreement therefor~~ shall be placed in the file and the Procurement Officer ~~CPO or SPO~~ shall advise ~~the such~~ offeror of the termination of negotiations.
 - B) Upon failure to negotiate a contract with the best qualified offeror, the Procurement Officer ~~CPO or SPO~~ may enter into negotiations with the next most qualified offeror, and so on in that manner until an award is made or the procurement is cancelled.
- p) Notice of Award
Written notice of award shall be public information and made a part of the contract file. The CPO shall publish the names of the responsible decision makers of the OAG, the successful vendor, a contract reference number or other identifier, and the value of the contract. Publication shall be in the next available issue of the Bulletin.

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- q) A CPO may allow the SPO responsible for conducting a small, sole source or emergency procurement of professional and artistic services to publish notices of those procurements.
- r) Post Performance Review
The SPO shall require the using division to provide a synopsis of the contract and shall rate the vendor's performance using the form developed by the SPO. A copy of the completed form shall be provided to the SPO.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2036 Other Methods of Source Selection

- a) Split Award
- 1) An award of a definite quantity requirement may be split between or among two or more contractors. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required. A split award may be used only when award to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.
 - 2) The Procurement Officer~~CPO or SPO~~ shall make a written determination setting forth the reasons for the split award, which determination shall be made a part of the procurement file.
- b) Multiple Award
- 1) A multiple award is an award of an indefinite quantity contract to more than one bidder or offeror when the OAG is obligated to order all of its actual requirements from those vendors.
 - 2) A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 1300.2010 (Competitive Sealed Bidding), Section 1300.2015 (Competitive Sealed Proposals), Section 1300.2020 (Small Purchases), and Section 1300.2030 (Emergency Procurements), as applicable. Awards shall not be made for the purpose of simply dividing

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the business or to select products or suppliers in accordance with user preference unrelated to utility or economy. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of the OAG.

- 3) The OAG shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract.
 - 4) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.
- c) **Auction**
Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium.
 - d) **Non-governmental Joint Purchase**
The [Procurement Officer](#)~~CPO or SPO~~ may enter into an agreement with a person not eligible for the Governmental Joint Purchasing Act for the joint procurement of anything covered by the Code. Any method of source selection may be used and may be modified or adapted to meet the needs of the non-State entity.
 - e) **Federal Requirements**
Requirements of the Code and this Part may be modified or adapted to meet federal requirements.
 - f) **Donations**
With approval of the CPO, when the OAG receives a donation that provides the majority of the funding, the OAG may follow any procurement or contracting requirements established as a condition of the donation, but shall follow the Code and this Part to the extent practicable.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2037 Tie Bids and Proposals

- a) Tie bids or proposals are those from responsive and responsible vendors that are

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identical in price or valuation.

- b) Tie bids or proposals will be treated as follows:
- 1) If the tied vendors include only one Illinois resident vendor, the Illinois resident vendor shall be given the award. "Illinois resident vendor" has the meaning given in Section 1300.4510 of this Part. In all other situations, the decision shall be made in accordance with subsections (b)(2) through (5) of this Section. If two or more Illinois resident vendors are tied, award will be made pursuant to subsections (b)(2) through (5).
 - 2) If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the time required), the award will be made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the State or OAG shall be given additional consideration in determining responsibility if the Procurement Officer~~CPO or SPO~~ determines that dealing with a vendor that has knowledge of State requirements, contracts, job sites, payment practices and such other factors and with which there has been favorable past experience increases the likelihood of successful performance.
 - 3) If there is no significant difference in responsibility, but there is a difference in the quality of the goods or services offered, the vendor offering the best quality will be accepted.
 - 4) If there is no significant difference in responsibility and no difference in quality of the goods or services offered, the vendor offering the earliest delivery time will be accepted in any case in which the solicitation specified that the needs of the OAG require as early delivery as possible.
 - 5) If the bids or proposals are equal in every respect, the award shall be made by lot unless the Procurement Officer~~CPO or SPO~~ determines that splitting the award among two or more of the tied bidders is in the best interest of the State. Awards may be split if all affected bidders agree, if splitting is feasible given the type of goods or service requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.

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- c) **Record**
Records shall be made of all procurements on which tie bids or proposals are received, showing at least the following information:
- 1) the identification number of the solicitation;
 - 2) the supply, service, or construction item; and
 - 3) a listing of all the bidders and the prices submitted.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2038 Mistakes

- a) **General**
Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other bidders.
- b) **Mistakes Discovered Before Opening**
A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.
- c) **Confirmation of Mistake**
When the **Procurement Officer**~~CPO or SPO~~ knows or has reason to conclude that a mistake has been made, such officer shall request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.
- d) **Mistakes in Bids Discovered After Opening but Before Award**
This subsection (d) sets forth procedures to be applied in situations in which mistakes in bids are discovered after the time and date set for bid opening but before award.
- 1) **Minor informalities.** A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or

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variation of a bid from the exact requirement of the ~~IFB Invitation for Bids~~, the correction or waiver of which would not be prejudicial to the OAG (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The ~~Procurement Officer CPO or SPO~~ shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State. Examples of minor informalities as to form include the failure of a bidder to:

- A) return the number of signed bids required by the ~~IFB Invitation for Bids~~;
 - B) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound, including but not limited to signature on an auxiliary form, submission of a bid guarantee or submission of a signed transmittal letter; or
 - C) acknowledge receipt of an amendment to the ~~IFB Invitation for Bids~~, but only if:
 - i) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
 - ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.
- 2) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- 3) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:
- A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - B) the bidder submits proof of evidentiary value that clearly and

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convincingly demonstrates that a mistake was made.

- e) Mistakes Discovered After Receipt of Proposals but Before Award
This subsection (e) sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.
- 1) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake prior to the date set for conclusion of discussions or for receipt of best and final offers.
 - 2) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under competitive sealed bidding. (See subsection (d)-~~above~~.)
 - 3) Corrections of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:
 - A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or
 - B) the mistake is not clearly evident on the face of the proposal, but the offeror submits adequate proof that clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.
 - 4) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:
 - A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
 - B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or

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- C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.
- f) Mistakes Discovered After Award
Mistakes shall not be corrected after award of the contract except ~~when~~ ~~where~~ the Procurement Officer~~CPO or SPO~~ finds it would be unconscionable not to allow the mistake to be corrected, such as obvious typographical or calculation errors.
- g) Determinations Required
When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this Part. The Procurement Officer~~CPO or SPO~~ shall prepare the determination.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

- a) Scope of this Section
The provisions of this Section shall govern the cancellation of any solicitations whether issued by the OAG under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.
- b) Policy
Any solicitation may be cancelled when the Procurement Officer~~CPO or SPO~~ believes cancellation to be in the State's best interest. (See subsection (c)(2) below.) Nothing shall compel the award of a contract.
- c) Cancellation of Solicitation; Rejection of All Bids or Proposals Prior to Opening
- 1) As used in this Section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.
 - 2) Prior to opening, a solicitation may be cancelled in whole or in part when the Procurement Officer~~CPO or SPO~~ determines in writing that such

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action is in the State's best interest for reasons including, but not limited to:

- A) the OAG no longer requires the supplies, services, or construction;
 - B) the OAG no longer can reasonably expect to fund the procurement;
~~or~~
 - C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;-
 - D) ambiguous or otherwise inadequate specifications;
 - E) the solicitation did not provide for consideration of all factors of significance to the OAG;
 - F) prices exceed available funds and it would not be appropriate to adjust quantities to accommodate funding constraints;
 - G) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 - H) there is reason to question whether the bids or proposals may not have been arrived at independently in open competition, may have been the result of collusion or may have been submitted in bad faith.
- 3) When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited.
- 4) The notice of cancellation shall:
- A) identify the solicitation;
 - B) briefly explain the reason for cancellation; and
 - C) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, or construction.

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- d) Cancellation of Solicitation; Rejection of All Bids or Proposals After Opening
- 1) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Procurement Officer~~CPO or SPO~~ determines in writing that ~~the such~~ action is in the State's best interest, for reasons including, but not limited to:
 - A) the supplies, services, or construction being procured is no longer required;
 - B) ambiguous or otherwise inadequate specifications were part of the solicitation;
 - C) the solicitation did not provide for consideration of all factors of significance to the OAG;
 - D) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - E) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 - F) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
 - 2) When the solicitation is cancelled or when all bids or proposals are rejected, all vendors who submitted bids or proposals shall be sent a notice informing them of the cancellation or rejection.
- e) Documentation
The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.
- f) Rejection of Individual Bids or Proposals
- 1) General. This subsection (f) applies to rejections of individual bids or proposals in whole or in part.

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2) Notice in Solicitation. Each solicitation issued by the OAG shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the State as provided in this subsection (f).

3) Reasons for Rejection.

Reasons for rejecting a bid or proposal may include, but are not limited to:

A) the business that submitted the bid or proposal is nonresponsible as determined under Section 1300.2046 of this Part;

B) the bid or proposal is not responsive, that is, it does not conform in all material respects to the solicitation;

C) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the OAG in some material respect;

D) the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the IFB Invitation for Bids; or

E) the proposed price is clearly unreasonable.

4) Notice of Rejection. Upon request, unsuccessful bidders or offerors shall be advised of the reasons for rejection.

g) Disposition of Bids or Proposals

When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals that have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

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Section 1300.2044 Vendor List/Required Use

- a) The CPO may maintain a list of vendors interested in doing business with the OAG. Lists of names and addresses of bidders shall be available for public inspection.
- b) Inclusion or exclusion from the vendor list of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a State contract.
- c) Invitations for Bids and other solicitations will be sent to vendors on the vendor list for goods or services in question, except in the following cases:
 - 1) The vendor does not sell the particular commodity or equipment;
 - 2) When the number of vendors for a procurement classification is of such magnitude that optimum prices may reasonably be expected without soliciting the entire vendor list, the OAG may, if it determines that the best interest of the State would be served, rotate the selection from the list on any equitable basis; or
 - 3) The ~~IFB~~Invitations for Bids may be confined to bidders in a limited geographical service area, when the OAG determines that the best interests of the State will be served by so doing (example: purchases of ready-mix concrete, perishables, and equipment requiring periodic service).
- d) The Procurement Officer~~CPO or SPO~~ in the OAG may alternatively refer to vendor lists maintained by DCMS.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2045 Prequalification

- a) General
 - 1) The CPO may require that vendors be prequalified as a condition of being placed on the bid list. If so, vendors shall be given an opportunity to prequalify at least one time per year. The opportunity to prequalify, and

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whether prequalification will be a condition of bidding or being awarded a contract, shall be announced in the Bulletin.

- 2) The fact that a prospective vendor has been prequalified does not necessarily represent a finding of responsibility for a particular procurement.
 - 3) Except in the case of professional and artistic services, distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified.
- b) Professional and Artistic Services
When the services are needed on a recurring basis, the CPO shall actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed format that shall include the following information:
- 1) technical education and training;
 - 2) general or special experience, certifications, licenses, and memberships in professional associations, societies, or boards;
 - 3) an expression of interest in providing a particular professional or artistic service; and
 - 4) any other pertinent information requested by the Procurement Officer~~CPO~~
~~or SPO~~.
- c) Qualified Products Lists
Qualified products lists are treated in Section 1300.2050 (Specifications and Samples) of this Part.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.2046 Responsibility

- a) Application
Contracts are to be made only with responsible vendors unless no responsible vendor is available to meet the OAG's needs. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's

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interests, then that vendor may be awarded a contract upon receipt of the bond or other security.

b) Standards of Responsibility

- 1) Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective vendor:
 - A) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain same) necessary to indicate its capability to meet all contractual requirements;
 - B) is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
 - C) has a satisfactory record of performance. Vendors who are or have been deficient in current or recent contract performance in dealing with the State or other customers may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the vendor;
 - D) has a satisfactory record of integrity and business ethics. Vendors who are under investigation or indictment for criminal or civil actions that bear on the particular procurement or that would make contracting with that vendor undesirable may be declared not responsible for the particular procurement;
 - E) is qualified legally to contract with the State;
 - F) has supplied all necessary information in connection with the inquiry concerning responsibility;
 - G) has a current Public Contracts number from the Illinois Department of Human Rights pursuant to 44 Ill. Adm. Code 250.210, if required. Proof of application prior to opening of bids or proposals will be sufficient for an initial determination; and

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- H) pays prevailing wages, if required by law.
- 2) Information Pertaining to Responsibility. The prospective vendor shall supply information requested by the ~~Procurement Officer~~~~CPO or SPO~~ concerning the responsibility of such vendor. The State may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the ~~Procurement Officer~~~~CPO or SPO~~ shall base the determination of responsibility upon any available information, or may find the prospective vendor nonresponsible.
- c) Ability to Meet Standards
The prospective vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
- 1) evidence that such vendor possesses such necessary items;
 - 2) acceptable plans to subcontract for such necessary items; or
 - 3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- d) Duty Concerning Responsibility
Before awarding a contract, the ~~Procurement Officer~~~~CPO or SPO~~ must be satisfied that the prospective vendor is responsible. Responsibility can be proven until time of award or execution of contract, whichever is later.
- e) Written Determination of Nonresponsibility Required
If a vendor who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the ~~Procurement Officer~~~~CPO or the SPO~~. A copy of the determination shall be sent promptly to the nonresponsible vendor. The final determination shall be made part of the procurement file.
- f) Vendors not having a history of performance may be considered responsible if no other disqualifying factors exist. A bond or other security may be required for such bidders.
- g) Vendors who are newly formed business concerns having substantially the same

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owners, officers, directors, or beneficiaries as a previously existing nonresponsible vendor will be declared nonresponsible unless the new organization can prove it was not set up for the purpose of avoiding an earlier declaration of nonresponsibility.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section 1300.2047 Security Requirements

- a) The ~~Procurement Officer~~CPO or SPO may require that a vendor furnish bid, proposal, or performance security on OAG contracts. Whenever security is required, except as provided herein, the procurement document will clearly indicate the type and amount of security.
- b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond must be issued by a surety company authorized to do business in the State of Illinois.
- c) Unless the amount is set by law, the ~~Procurement Officer~~CPO or SPO will determine the amount, in dollars or percentage of contract price, that will adequately protect the State's interests.
- d) A vendor may be required to furnish up to 100% performance security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, responsibility is questioned and for similar reasons.
- e) Permissive/Mandatory Security
 - 1) Bid or proposal security is permissive on any contract but is not appropriate on emergency or sole source procurements.
 - 2) Performance security is permissive on any contract and is recommended on contracts calling for advance payment.
 - 3) Performance security is required on all public works contracts.
- f) A vendor may submit a single or continuous security each year that will be

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applicable on all contracts of the OAG. When such security has been obligated in an amount equal to the sum of accumulated security requirements, additional security must be submitted.

- g) Bid or proposal security will be returned to unsuccessful vendors as soon after award as possible. The bid or proposal security of the successful vendor will be returned after contracts have been signed and performance security, if any, submitted. Performance security will be returned upon full performance.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART H: SPECIFICATIONS AND SAMPLES

Section 1300.2050 Specifications and Samples

- a) ~~CPO's~~ Responsibilities Regarding Specifications
- 1) The Procurement Officer~~CPO or SPO~~ is authorized to write specifications for procurements for the OAG.
 - 2) When a written determination is made by the Procurement Officer~~CPO or SPO~~ authorized to prepare ~~the such~~ specifications that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, a contract to prepare specifications for OAG use in procurement of supplies or services may be entered into provided the Procurement Officer~~CPO or SPO~~ retains the authority to finally approve the specifications.
 - 3) If a specification for general or common use or a qualified products list exists for an item to be procured under Section 20-20 of the Code (Small Purchases), it shall be used except as otherwise authorized by the CPO. If no such specification exists, the Procurement Officer~~CPO or SPO~~ is hereby granted the authority to prepare specifications for use in such purchases. In an emergency under Section 20-30 of the Code (Emergency Procurements), any necessary specification may be utilized by the Procurement Officer~~CPO or SPO~~ without regard to the provisions of this Subpart.
- b) Procedures for the Development of Specifications

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- 1) If a specification for a common or general use item has been developed or a qualified products list has been developed in accordance with this Section for a particular supply or service, it shall be used unless the CPO authorizes use of another specification.
 - 2) All procurements shall be based on specifications that accurately reflect the OAG's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.
 - 3) Specifications shall not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate OAG needs. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.
 - 4) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.
 - 5) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the OAG's requirements.
- c) Brand Name or Equal Specification
- 1) Brand name or equal specifications may be used when the Procurement Officer~~CPO or SPO~~ determines in writing that:
 - A) no specification for a common or general use specification or qualified products list is available;
 - B) time does not permit the preparation of another form of specification, not including a brand name specification;
 - C) the nature of the product or the nature of the OAG's requirement makes use of a brand name or equal specification suitable for the procurement; or

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- D) use of a brand name or equal specification is in the State's best interest.
- 2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.
 - 3) Required Characteristics. Unless the ~~Procurement Officer~~~~CPO or SPO~~ ~~authorized to approve specifications~~ determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.
 - 4) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.
- d) Brand Name Only Specification
- 1) Use. A brand name only specification may be used only when the ~~Procurement Officer~~~~CPO or SPO~~ makes a written determination that only the identified brand name item or items will satisfy the OAG's needs. Brand name alone may be specified in order to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the ~~Procurement Officer~~~~CPO or SPO~~.
 - 2) Competition. The ~~Procurement Officer~~~~CPO or SPO~~ shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 1300.2025 (Sole Source

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Procurement).

e) Qualified Products List

- 1) Use. A qualified products list may be developed with the approval of the [Procurement Officer](#) ~~CPO or SPO~~ authorized to develop qualified products lists, when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy OAG requirements.
- 2) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.
- 3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.

f) Proven Products

The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.

g) OAG Required Samples

- 1) Any required samples must be submitted as instructed in the solicitation with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.
- 2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality.

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Submission of samples will not limit the OAG's right to require adherence to specifications.

- 3) No payment will be made for OAG Required Samples. Samples not destroyed or consumed by examination or testing will be returned upon request at vendor's expense. ~~The Such~~ request must be made at time of submission with return collect or prepayment provisions and instructions for return of the samples.
- h) **Product Demonstration**
Any vendor may request time and space to demonstrate a product or service. Agreement to allow such demonstration will be solely at the OAG's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration.
- i) **Specifications Prepared by Other Than OAG Personnel**
 - 1) Specifications may be prepared by other than OAG personnel, including, but not limited to, other State personnel, consultants, architects, engineers, designers, and other drafters of specifications for public contracts. Contracts for the preparation of specifications by other than OAG personnel shall require the specification writer to adhere to the Code and OAG requirements.
 - 2) The person who prepared the specifications shall not submit a bid or proposal to meet the procurement need unless the **Procurement Officer**~~CPO or SPO~~ determines in writing that it would be in the best interest to accept such a bid or proposal from that person and a notice to that effect is provided to the CPO and is published in the Bulletin. The CPO may disapprove that determination.
- j) **Pre-solicitation Assistance/Specifications Prepared by Other Than OAG Personnel**
 - 1) **Prior to issuing a solicitation, an SPO may issue an RFP to obtain services of any person or business to conduct research, analyze requirements or provide general design or other assistance to help the OAG develop its procurement strategy, specifications and documents and to identify and address other related needs. No services can be obtained to assist the**

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OAG in reviewing, drafting or preparing an RFP or to provide similar assistance.

- 2) Notice. An RFP shall be published in the Bulletin for at least 7 calendar days. All information received in response to an RFP shall be published in the Bulletin for at least 7 calendar days.
- 3) The RFP shall contain at least the following:
 - A) A statement that the OAG is issuing an RFP;
 - B) A brief description of the office's need; and
 - C) A statement that the RFP is not a solicitation.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART I: CONTRACT TYPE

Section 1300.2055 Types of Contracts

- a) **Scope of Rule**

This Section contains descriptions of types of contracts and limitations as to when they should be utilized by the OAG in its procurements.
- b) **Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting**

The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 (Types of Contracts) of the Illinois Procurement Code and by this Part. This type of contracting may not be used alone or in conjunction with an authorized type of contract.
- c) **Types of Fixed-Price Contracts**
 - 1) **Firm Fixed-Price Contract.** A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contract.
 - 2) **Fixed-Price Contract with Price Adjustment.**

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- A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contractor price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:
- i) changes in the contractor's labor agreement rates as applied to industry or areawide (such as are frequently found in State contracts for the purchase of coal);
 - ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy); and
 - iii) in requirement contracts (subsection (g)(3) of this Section) when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).
- B) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the OAG shall have the right to reject the price increase and terminate without cost the future performance of the contract.

d) Cost-Reimbursement Contracts

1) Determination Prior to Use-

- A) A cost-reimbursement type contract may be used only when the Procurement Officer ~~CPO or SPO~~ determines in writing that such a contract is likely to be less costly to the OAG than any other type or that it is impracticable to obtain otherwise the supplies, services,

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or construction.

B) Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.

2) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee.

3) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract that provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract. The cost-plus-fixed-fee contract can be either a Completion Form or Term Form.

4) Cost Incentive Contracts-

A) General. A cost-incentive type of contract provides for the reimbursement to the contractor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the contractor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the contractor controls cost in the performance of the contract).

B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the

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target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the contractor will suffer the loss.

- C) **Cost-Reimbursement Contract with Cost-Incentive Fee.** In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the OAG is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the contractor.
- e) **Performance Incentive Contracts**
In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus, while late completion may entitle the OAG to a price decrease.
- f) **Time and Materials Contracts; Labor Hour Contracts**
Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior OAG approval.
- g) **Definite Quantity and Indefinite Quantity Contracts**

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- 1) **Definite Quantity.** A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.
 - 2) **Indefinite Quantity.** An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the OAG is obligated to order and may also provide for a maximum quantity provision that limits the OAG's obligation to order.
 - 3) **Requirements Contracts.** A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the OAG to order all the actual requirements of the OAG during a specified period of time.
- h) **Leases**
A lease is a contract for the use of supplies or real property under which title will not pass to the State at any time.
- i) **Recovery Contracts**
Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the State. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.
- j) **Option Provisions**
- 1) **Contract Provision.** When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the OAG's option.
 - 2) **Lease with Purchase Option.** A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, the leased supply or facility is the only supply or facility that can meet the

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OAG's requirements, or if the purchase option price is less than the small purchase limit or if emergency conditions exist.

- k) State Produced Supplies and Services
Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, may be ordered without violating any contract.
- l) Extraordinary Quantities
Notwithstanding any provision in any contract, the OAG reserves the right to take bids separately if a particular quantity requirement arises that exceeds the OAG's normal needs or ordering requirements.
- m) Energy Conservation
The CPO may authorize an ~~IFB Invitation for Bids~~, ~~RFP Request for Proposals~~ or sole source negotiation for energy conservation measures whereby the OAG would make payment based on utility cost savings. ~~The Such~~ contract shall require a clearly defined baseline of energy usage and method of measuring cost savings taking into account at least differing weather conditions, changes in facility, usage and cost of energy.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART J: DURATION OF CONTRACTS

Section 1300.2060 Duration of Contracts – General

- a) General
 - 1) A multi-~~year~~term contract for a term up to 10 years is authorized when ~~determined by the CPO to be~~ is in the best interest of the OAG and the State, inclusive of proposed contract renewals.
 - 2) A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than 10 years.
 - 3) A lease for real property or capital improvements shall be in accordance with Sections 1300.4005 and 1300.4010.

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- b) The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds ~~therefor~~. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of ~~the such~~ contract shall be cancelled without penalty to, or further payment being required by, the OAG. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.
- c) Conditions for Use of Multi-~~YearTerm~~ Contracts
A multi-~~yearterm~~ contract may be used when:
- 1) special production of definite quantities or the furnishing of long-term services are required to meet OAG needs; or
 - 2) a multi-~~yearterm~~ contract will serve the best interests of the OAG and the State by encouraging effective competition or otherwise promoting economies in OAG procurement. The following factors are among those relevant to such a determination:
 - A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping ~~thosesuch~~ costs during the period of contract performance;
 - B) lower production costs because of larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
 - C) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or
 - D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.
- d) Multi-~~YearTerm~~ Contract Procedure
The solicitation shall state:

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- 1) the proposed term;
 - 2) the amount of supplies or services required for the proposed contract period;
 - 3) whether bidders or offerors may submit prices for:
 - A) the first fiscal period only;
 - B) the entire time of performance only; or
 - C) both the first fiscal period and the entire time of performance; and
 - 4) that a multi-~~year~~term contract may be awarded and how award will be determined.
- e) Renewals
- 1) ~~When Where~~ the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals may not exceed 10 years, the terms and conditions do not change except as provided in the contract (such as price escalations tied to an index) and the option is reserved solely to the OAG.
 - 2) ~~When Where~~ the original procurement was silent as to renewals, the renewal must be within the guidelines for small, sole source or emergency procurements as set forth in the Code and this Part.
 - 3) When proposals for renewal or extension involve costs in excess of \$249,999, the proposals must be reviewed by the OAG PPCMB. If the OAG PPCMB raises no objection, the CPO may enter into the renewal or extension. By August 1 each year, the OAG PPCMB shall file a report with the General Assembly identifying for the previous fiscal year:
 - A) the proposed extensions or renewals that were filed with the OAG PPCMB and whether the OAG PPCMB objected; and

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B) the contracts exempt from this subsection (e)(3).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART K: CONTRACT MATTERS

Section 1300.2580 Subcontractors

All competitive sealed proposals, including proposals for professional and artistic services, shall include a provision to require each offeror to identify, either in its proposal or prior to award, the identity of the subcontractors that will be used in the performance of the contract, as well as the amounts expected to be paid to each subcontractor.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART O: PREFERENCES

Section 1300.4510 Resident Bidder Preference

- a) "Illinois resident vendor" as used in this Section means a person, including a foreign corporation, duly authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced, ~~including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced.~~
- b) In breaking a tie, an Illinois resident vendor shall be given the award.
- c) An Illinois resident vendor who would perform the services or provide the supplies from another state shall be considered a resident of that other state as against an Illinois resident vendor who would perform the services or provide the supplies from Illinois, if that other state has an in-state preference.
- d) If an Illinois resident vendor produces or performs at least 51% of the goods or services in another state, that Illinois resident vendor shall be considered a resident of that other state for purposes of application of this reciprocal preference

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when evaluating the bid of an Illinois resident contractor that produces or performs at least 51% of the goods or services in Illinois.

- e) The ~~Procurement Officer~~~~CPO or SPO~~ may refer to the list of states with in-state preference maintained by DCMS, which shall be considered in all procurements involving out-of-state vendors.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.4530 Correctional Industries

- a) ~~To the extent economically practicable, the Procurement Officer~~~~The CPO or SPO~~ shall refer to, and make purchases from, the listing maintained by DCMS of ~~the~~ goods or services available from Illinois Correctional Industries (ICI)~~the Department of Corrections that identifies those that must be purchased from Corrections.~~
- b) When the Procurement Officer determines that it is not economically practicable to make a purchase of goods or services from ICI, the Procurement Officer shall provide a written explanation for the determination to the OAG PPCMB no less than 7 days prior to executing a contract to obtain goods or services from a source other than ICI.
- b) ~~Those items that must be purchased from Corrections may not be procured from any other source without the express written authorization of the CPO.~~
- c) The ~~Procurement Officer~~~~CPO or SPO~~ is authorized to procure from ICI~~Corrections~~ without seeking competition or giving public notice.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.4535 Sheltered Workshops for the Disabled

- a) The ~~Procurement Officer~~~~CPO or SPO~~ shall refer to information prepared by DCMS regarding qualified sheltered workshops and categories of goods and services set-aside to such sheltered workshops by DCMS. To the extent practicable, the OAG will follow such set-asides.
- b) Pricing Approval

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While notice and competition is not required prior to contracting with a sheltered workshop, prices must be reasonable. Whether a price is reasonable will be determined based upon current market prices, historical prices, prices received by other State agencies for similar goods or services, the policy of the Code to promote procurements from sheltered workshops, and other such relevant factors.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.4545 Small Business

- a) Set-Aside
The CPO for DCMS may determine categories of goods or service procurements that will be set-aside for small business. The Procurement Officer~~CPO or SPO~~ may contact DCMS to determine whether a particular procurement has been set-aside for small business, and if so, the OAG may honor the set-aside to the extent practicable.
- b) Small Business List
The OAG may avail itself of the list of responsible vendors that meet the criteria of small business maintained by DCMS. A business that fits the definition of small on the day of bid or proposal opening will be considered small for the duration of the contract.
- c) Required Use
If the Procurement Officer~~CPO or SPO~~ wishes to make a procurement covered by a set-aside designation, the solicitation must note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses will be rejected as nonresponsive.
- d) Withdrawal of Set-Aside
If the Procurement Officer~~CPO or SPO~~ determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Procurement Officer~~CPO or SPO~~ shall reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Illinois Procurement Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with the limitations of the Code and this Part.

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- e) Criteria for Small Business
Unless the CPO provides a definition for a particular procurement that reflects industrial characteristics, a small business is one:
- 1) Independently owned and operated.
 - 2) Not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.
 - 3) With annual sales for most recently ended fiscal year no greater than:
 - A) ~~\$10,000,000~~~~\$7,500,000~~ for wholesale business;
 - B) ~~\$10,000,000~~~~\$3,000,000~~ for construction business; or
 - C) ~~\$6,000,000~~~~\$1,500,000~~ for retail business.
 - 4) With no more than 250 employees if a manufacturing business.
 - A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis for its most recently ended fiscal year.
 - B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.
 - 5) If the business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the amounts shown in subsection (e)(3). For example, a business that is both a retailer and a wholesaler may not have total sales exceeding

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~~\$16,000,000, the retail component may not exceed \$6,000,000 and the wholesale component may not exceed \$10,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (e)(4). If both a wholesaler and a retailer, the combined wholesale and retail annual sales for its most recently completed fiscal year may not exceed \$9,000,000. The retail component may not exceed \$1,500,000 and the wholesale component may not exceed \$7,500,000.~~

- 6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties control or have the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship shall not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART P: ETHICS

Section 1300.5030 Revolving Door

- a) Procurement Officers, Procurement Officer designees and OAG PPCMB members are subject to the revolving door provisions of the Code [30 ILCS 500/50-30].
- ba) Each Procurement Officer~~The CPO or SPOs~~ shall identify designees in writing and shall maintain the designation for a period of at least two years following the end or revocation of the designation.
- cb) Procurement Officer~~Those~~ designees whose job or position descriptions are at least 51% directly related to State procurement are subject to this Section. The following activities are directly related to State procurement: drafting specifications, preparing IFBs and RFPs, evaluating responses to IFBs and RFPs,

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negotiating contracts and supervising any of the foregoing.

- d) OAG employees and former employees are also subject to Section 5-45 of the State Officials and Employees Ethics Act [5 ILCS 430/5-45].

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.5037 Vendor Registration, Certification and Prohibition on Political Contributions

- a) Introduction
Illinois law [10 ILCS 5/9-35 and 30 ILCS 500/20-160 and 50-37] (the statutes) restricts political contributions by vendors and affiliated entities; requires registration with the State Board of Elections (SBEL); requires a copy of the registration certificate stamped by SBEL (Registration Certificate) to be submitted with bids/proposals and contracts; and requires solicitation and contract certifications relative to the requirements of the law. This Section supplements requirements found in the statutes and does not excuse compliance with any of those requirements.
- b) General Registration Requirements
- 1) These requirements apply to contracts, bids and proposals that are subject to the Code and this Part;
- A) Bids/proposals referenced in this Section are those submitted in response to a competitive solicitation that is posted to the Bulletin on or after January 1, 2009, regardless of the value assigned to the procurement.
- B) Bids and proposals include pending bids and proposals.
- C) These requirements generally apply to a vendor whose existing State contracts have an aggregate value in excess of \$50,000, whose aggregate value of bids/proposals for State contracts exceeds \$50,000, or whose aggregate value of State contracts and bids/proposals exceeds \$50,000.
- D) This value is calculated on a calendar-year basis.

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- 2) On a calendar-year basis, each vendor or potential vendor must keep track of the value of contracts and bids/proposals. Vendors must register with SBEL when the vendor determines that the value of the contracts and bids/proposals meets the threshold for registration.
 - 3) An "executive employee" means:
 - A) the President, Chairman of the Board, or Chief Executive Officer of a business entity and any other individual that fulfills equivalent duties as the President, Chairman of the Board, or Chief Executive Officer of a business entity.
 - B) any employee of a business entity whose compensation is determined directly, in whole or in part, by the award or payment of contracts by a State agency to the entity employing the employee, irrespective of the employee's title or status in the business entity. For the purposes of this subsection (b)(3)(B), compensation determined directly by award or payment of contracts means a payment over and above regular salary that would not be made if it were not for the award of the contract.
- c) Bids and Proposals
- 1) A copy of the Registration Certificate must be submitted with bids/proposals.
 - 2) If the Registration Certificate is not timely submitted, the OAG will reject the bid/proposal unless the absence of the Certificate is the result of delay or error by the OAG. In all circumstances, the Certificate will be required before making an award.
- d) Contracts
- A copy of the Registration Certificate must be in the procurement file as set forth in this subsection (d), unless the vendor certifies it is not required to register.
- 1) For contract renewals and extensions, if the value of the renewal or extension by itself, or in combination with the contract being renewed/extended and other contracts and bids/proposals exceeds

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\$50,000, the vendor must provide the Registration Certificate and make the appropriate contract certification, if it has not already done so.

- 2) For indefinite quantity/estimated value contracts, a vendor who is otherwise not required to register shall register with SBEL when the value of orders placed pursuant to an indefinite/estimated value contract plus all other contracts and bids/proposals exceeds \$50,000.
- 3) For contract amendments, if the value of the amendment, by itself or in combination with the contract being renewed plus other contracts and bids/proposals, exceeds \$50,000, the vendor must provide the Registration Certificate and make the appropriate contract certification, if it has not already done so.
- 4) Any contracts mistakenly executed in violation of this Section must be amended to include the contract certifications, and the vendor must supply the Registration Certificate. If any violation by the vendor is not cured within 5 business days after receipt of notification of the violation, the contract is voidable by the State without penalty.
- 5) Contract certification required by the statutes shall be included in or added to each contract that must be filed with the State Comptroller pursuant to Section 20-80 of the Code and those written, two-party contracts that need not be filed with the Comptroller. The OAG may require written confirmation of the rule-imposed certification at any time.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1300.5039 Communications Related to Procurement

- a) Any OAG employee who receives a written or oral communication 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 [30 ILCS 500/50-39] report the communication to the OAG PPCMB. The OAG PPCMB shall make each report submitted pursuant to this Section available for review within 7 days after its receipt of the report.

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- b) A communication must be reported if it is material, regarding 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 response to a communication initiated by an OAG employee for the purpose of providing information to evaluate new products, trends, services or technologies.
- C) In determining whether a communication is material, the OAG employee must consider:
- i) whether the information conveyed is new or already known to the OAG (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 in which the OAG is the 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 the OAG has identified a need for

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procurement as determined and documented by the CPO or SPO, 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 OAG PPCMB 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 IFB, RFI, RFP, sole source procurement justifications, emergency procurement justifications or selection information;
 - C) evaluating bids, responses and offers, other communications among members of 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 contract or subcontract voidable under Section 50-60 of the Code; and
 - I) approving change orders or the renewal or extension of an existing contract.
- c) This Section does not apply to the following communications:
- 1) Communication made publicly in a public forum;

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- 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;
- 4) Communication between an OAG employee and:
 - A) the Attorney General;
 - B) other employees of the OAG;
 - C) the OAG PPCMB;
 - D) the Office of the Executive Inspector General for the Attorney General;
 - E) employees of the Executive Ethics Commission [30 ILCS 500/50-39(a)]; or
 - F) an employee of a 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 SPO; 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 Code, including, but not limited to, vendor responses to an

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RFI, RFP, Request for Qualifications or IFB or a small purchase, sole source or emergency solicitation, questions and answers posted to the Bulletin to supplement the procurement action. This exemption is not applicable unless 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 the 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), an OAG 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), an OAG 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 of a series of related communications described in subsection (b), the OAG employee shall report the communication to the OAG PPCMB.
- g) For purposes of this Section, "OAG employee" means:
 - 1) any person employed full-time, part-time, or pursuant to a personal services contract with the OAG and whose employment duties are subject

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to the direction and control of the OAG with regard to the material details of how the work is to be performed;

2) any appointed board member of a board of the OAG; or

3) any other person appointed to a position in or with the OAG, regardless of whether the position is compensated.

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 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. Examples include educational seminars and conferences.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

Section 1300.5510 Complaints Against Vendors or Subcontractors

- a) Whenever a vendor or subcontractor fails to deliver on time or meet specifications, or for other similar causes, the OAG shall initiate a complaint to the vendor or subcontractor.
- b) For relatively minor infractions, the OAG may initiate contact by telephone or in person. If not resolved by this action, a written complaint will be made.
- c) If the initial complaint is not satisfactorily answered, or for serious infractions, the OAG will send a written complaint to the vendor or subcontractor detailing the problem.
- d) A copy of all written complaints shall be filed with the CPO. Information regarding the resolution of the complaint shall also be filed.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.5520 Suspension

- a) Application

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This Section applies to all debarments or suspensions of vendors or subcontractors from consideration for award of contracts.

- b) The CPO may suspend a vendor or subcontractor from doing business with the OAG, or for specific types of supplies or services. A suspension may be issued upon a showing the vendor or subcontractor violated the Code or this Part, or failed to conform to specifications or terms of delivery.
- c) When the CPO finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended vendor or subcontractor. Bids or proposals will not be solicited from the suspended vendor or subcontractor, and, if they are received they will not be considered during the period of suspension.
- d) A vendor or subcontractor ~~contractor~~ may be suspended for a period of time commensurate with the seriousness of the offense, but for no more than five years. The suspension will be effective within seven calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension would not become effective until the evaluation of the objection is completed.
- e) The CPO may debar a vendor or subcontractor. Debarment is the permanent suspension of a vendor or subcontractor from doing business with the OAG. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals will not be solicited from the debarred vendor or subcontractor, and, if they are received they will not be considered.
- f) The ~~CPO~~OAG shall maintain a master list of all suspensions and debarments. The master list will retain information concerning suspensions and debarments as public records. ~~The~~Such records will be maintained for a period of at least three years following the end of the suspension or debarment. Such public information may be considered in determining responsibility.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.5530 Settlement and Resolution of Contract and Breach of Contract Controversies

- a) Authority to Settle or Resolve Controversies

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The Procurement Officer~~CPO or SPO~~ who established the contract shall have authority to settle and resolve controversies but the Attorney General may set limits on such authority given to the SPO.

- b) **Authority of Using Agency**
The OAG has the authority to accept delivery of goods or services in accordance with contract requirements as satisfactory adjustment of a complaint.
- c) **Substitution of Terms/Price Reduction**
If the vendor proposes to make an adjustment by:
- 1) substituting an alternative specification, or
 - 2) reducing the contract price by a certain amount to compensate for some failure to provide full performance under the contract, such proposal must be referred to and approved by the Procurement Officer~~CPO or SPO~~.
- d) **Cancellation for Breach of Contract**
In any of the following cases the Procurement Officer~~CPO or SPO~~ shall have the right to terminate or rescind any contract entered into under this Part:
- 1) The successful bidder fails to furnish a satisfactory performance bond within the time specified;
 - 2) The vendor fails to make delivery at the place or within the time specified in the contract or as ordered by the OAG;
 - 3) Any goods or services provided under the contract are rejected (for example not meeting specifications, not conforming to sample, or not being in good condition when delivered) and are not promptly replaced by the vendor. If there are repeated rejections of the vendor's goods or services, this shall be grounds for termination or rescission, even though the vendor offers to replace the goods or services promptly;
 - 4) The vendor is guilty of misrepresentation (for example, misbranding of food or drugs) in connection with another contract for the sale of goods or services to the OAG such that he cannot reasonably be depended upon to fulfill his obligations as a responsible vendor under any of his contracts

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with the OAG;

- 5) The vendor:
 - A) is adjudged bankrupt or enters into a general assignment for the benefit of his creditors or receivership due to insolvency; or
 - B) disregards laws and ordinances, rules or instructions of a contracting officer; or
 - C) acts in violation of any provision of the contract or this Part;
 - 6) The contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States; or
 - 7) Any other breach of contract or other unlawful act by the vendor.
- e) Cancellation for Fraud, Collusion, Illegality, Etc.
The OAG may cancel any contract it established if there is sufficient evidence to show that:
- 1) the contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
 - 2) the contract conflicts with any statutory provision of the State of Illinois or of the United States.
- f) Withholding Money to Compensate State for Damages
If a contract is terminated or rescinded under this Section, the OAG may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the State of Illinois for any damages suffered by it because of the vendor's breach of contract or other unlawful act on his part on which the cancellation is based.
- g) Damages
The damages for which the OAG may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy shall include, but are not limited to, the following:

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- 1) the additional cost of goods or services bought elsewhere;
- 2) cost of repeating the procurement procedure;
- 3) any expenses incurred because of delay in receipt of goods or services;
and
- 4) any other damages caused by the vendor's breach of contract or unlawful act.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.5550 Protests

- a) Protest Resolution by Procurement Officer~~CPO or SPO~~
An actual or prospective bidder, offeror, or contractor that may be aggrieved in connection with a procurement may file a protest on any phase of solicitation or award, including but not limited to specifications preparation, bid solicitation, or award.
- b) Complaints
Complainants should seek resolution of their complaints initially with the OAG. Complaints~~Such complaints~~ may be made verbally or in writing.
- c) Filing of Protest
 - 1) Protests shall be made in writing to the Procurement Officer~~CPO or SPO~~, if applicable, and shall be filed within 7+4 days after the protester knows or should have known of the facts giving rise to the protest. A protest is considered filed when physically received by the Procurement Officer~~CPO or SPO~~. Protests filed after the 7+4 day period shall not be considered. In regard to a protest regarding specifications, the protest must be received within 7+4 days after the date the solicitation was issued, and in any event must be received by the OAG at the designated address before the date for opening of bids or proposals.
 - 2) To expedite handling of protests, the envelope should be labeled "Protest." The written protest shall include as a minimum the following:

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- A) the name and address of the protester;
 - B) appropriate identification of the procurement, and, if a contract has been awarded, its number;
 - C) a statement of reasons for the protest; and
 - D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.
- d) Requested Information; Time for Filing
Any additional information requested by the OAG shall be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of the protesting party to comply expeditiously with a request for information by the CPO or the SPO may result in resolution of the protest without consideration of that information.
- e) Stay of Procurements During Protest
When a protest has been timely filed and before an award has been made, the ~~Procurement Officer~~~~CPO or SPO~~ shall make no award of the contract until the protest has been resolved, unless the CPO makes a written determination, after consulting with the SPO, that the award of the contract without delay is necessary to protect the interests of the State.
- f) Decision by the ~~Procurement Officer~~~~CPO or SPO~~
Time for Decisions. A decision on a protest shall be made by the ~~Procurement Officer~~~~CPO or SPO~~ as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, reversal of award and cancellation or revision of the solicitation.
- g) Effect of Judicial or Administrative Proceedings
If an action concerning the protest has commenced in court, the ~~Procurement Officer~~~~CPO or SPO~~ shall not act on the protest but shall refer the protest to the Chief of the General Law Bureau in the Office of the Attorney General.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 1300.5555 Hearings and Decisions

- a) The CPO shall conduct public hearings prior to awarding contracts for sole source procurements pursuant to Section 1300.2025 and before extending emergency procurements pursuant to Section 1300.2030.
- b) Notices of hearings shall be published in the Bulletin at least 14 days prior to the date of the public hearing.
 - 1) All notices shall include the date, time and location of the public hearing.
 - 2) Notices for sole source procurements shall include the sole source procurement justification form, a description of the item to be procured, and the intended sole source contractor.
 - 3) Notices for extending emergency procurements shall include the CPO's written justification for the emergency contract and the name of the contractor.
- c) A copy of the notice and all documents provided at the hearing shall be included in the subsequent Bulletin.
- d) The OAG PPCMB and members of the public may present testimony at the hearings.
- e) The hearings shall be held in the offices of the Attorney General or at some other convenient location readily accessible to members of the public.
- f) The CPO or his or her designee shall preside over the hearings and shall issue a written determination within 14 calendar days after the conclusion of the hearing.
- g) Copies of all statements and exhibits introduced at the hearings, the written determination of the CPO or designee, and a summary of the proceedings at the hearings shall be included in the appropriate procurement files.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

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Section 1300.7015 Inspections

- a) **Inspection of Plant or Site**
The OAG may enter a contractor's or subcontractor's plant or place of business to:
- 1) inspect supplies or services for acceptance by the State pursuant to the terms of a contract;
 - 2) audit the books and records of any contractor or subcontractor pursuant to record and audit provisions of this Part;
 - 3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Illinois Procurement Code;
 - 4) determine whether the standards of responsibility have been met or are capable of being met; and
 - 5) determine if the contract is being performed in accordance with its terms.
- b) **Inspection and Testing of Supplies and Services**
- 1) **Solicitation and Contractual Provisions.** A contract may provide that the OAG or its agent may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether the supplies or services conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.
 - 2) **Procedures for Trial Use and Testing.** The CPO may establish operational procedures governing the testing and trial use of equipment, material, and other supplies, and the application of resulting information and data to specifications or procurements.
- c) **Conduct of Inspections**
- 1) **Inspectors.** Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector other than the Procurement Officer ~~CPO or SPO~~ may change any provision of the

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specifications or the contract without written authorization of the Procurement Officer~~CPO or SPO~~. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

- 2) Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, ~~the such~~ contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.
 - 3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.
- d) Inspection of Construction Projects
On-site inspection of construction shall be performed in accordance with the terms of the contract.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1300.7020 Records and Audits

- a) Retention of Books and Records
Books and records that relate to performance of an OAG contract, including subcontracts, and that support amounts charged to the OAG shall be maintained:
 - 1) by a contractor, for three years from the date of final payment under the prime contract;
 - 2) by a subcontractor, for three years from the date of final payment under the subcontract; and
 - 3) by a contractor and subcontractor for such larger period of time as is necessary to complete any ongoing or announced audits.
- b) Contract Audit
Types of Contracts Audited. The type of contract under which books and records should be audited is that in which price is based on costs or is subject to adjustment based on costs, or that in which auditing would be appropriate to

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assure satisfactory performance, such as a time and materials contract. Situations where an audit may be warranted include but are not limited to when a question arises in connection with:

- 1) the financial condition, integrity, and reliability of the contractor or subcontractor;
- 2) any prior audit experience;
- 3) the adequacy of the contractor's or subcontractor's accounting system;
- 4) the number or nature of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;
- 5) the use of federal assistance funds;
- 6) the fluctuation of market prices affecting the contract; or
- 7) any other situation in which ~~when~~ the Procurement Officer ~~CPO or SPO~~ finds that such an audit is necessary for the protection of the State's best interest.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Reports of Child Abuse and Neglect
- 2) Code Citation: 89 Ill. Adm. Code 300
- 3)

| | |
|-------------------------|-------------------------|
| <u>Section Numbers:</u> | <u>Proposed Action:</u> |
| 300.20 | Amended |
| 300.30 | Amended |
- 4) Statutory Authority: 42 USC 12101; 20 ILCS 505/4
- 5) A complete description of the subjects and issues involved: These amendments are being proposed to implement changes in the Abused and Neglected Child Reporting Act as described in PA 97-0189, PA 97-0293, and PA 97-0254
- 6) Published studies or reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this proposed rule replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed amendments pending on this Part? Yes

| | | |
|------------------------|-------------------------|------------------------------------|
| <u>Section Number:</u> | <u>Proposed Action:</u> | <u>Illinois Register Citation:</u> |
| 300.20 | Amendment | 35 Ill. Reg. 8005, May 27, 2011 |
- 11) Statement of statewide policy objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, place and manner in which interested parties may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services

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406 East Monroe, Station #65
Springfield, Illinois 62701-1498

Telephone: 217/524-1983
TDD: 217/524-3715
FAX: 217/557-0692
E-Mail address: cfpolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial regulatory flexibility analysis: The Department has determined that the proposed amendment will not have an economic impact on small businesses.
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: These amendments were not included on either of the 2 most recent agendas because the revisions were not anticipated at the time the regulatory agenda was completed.

The full text of the Proposed Amendments begins on the next page:

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TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 300

REPORTS OF CHILD ABUSE AND NEGLECT

| Section | |
|----------------|--|
| 300.10 | Purpose |
| 300.20 | Definitions |
| 300.30 | Reporting Child Abuse or Neglect to the Department |
| 300.40 | Content of Child Abuse or Neglect Reports |
| 300.45 | Five Year Demonstration of the Differential Response Program |
| 300.50 | Transmittal of Child Abuse or Neglect Reports |
| 300.60 | Special Types of Reports (Recodified) |
| 300.70 | Referrals to the Local Law Enforcement Agency and State's Attorney |
| 300.80 | Delegation of the Investigation |
| 300.90 | Time Frames for the Investigation |
| 300.100 | Initial Investigation |
| 300.110 | The Formal Investigative Process |
| 300.120 | Taking Children into Temporary Protective Custody |
| 300.130 | Notices Whether Child Abuse or Neglect Occurred |
| 300.140 | Transmittal of Information to the Illinois Department of Professional Regulation and to School Superintendents |
| 300.150 | Referral for Other Services |
| 300.160 | Special Types of Reports |
| 300.170 | Child Death Review Teams |
| 300.180 | Abandoned Newborn Infants |
| 300.APPENDIX A | Acknowledgement of Mandated Reporter Status |
| 300.APPENDIX B | Child Abuse and Neglect Allegations |

AUTHORITY: Implementing and authorized by the Abused and Neglected Child Reporting Act [325 ILCS 5], the Abandoned Newborn Infants Protection Act [325 ILCS 2] and Section 3 of the Consent by Minors to Medical Procedures Act [410 ILCS 210/3].

SOURCE: Adopted and codified as 89 Ill. Adm. Code 302 at 5 Ill. Reg. 13188, effective November 30, 1981; amended at 6 Ill. Reg. 15529, effective January 1, 1983; recodified at 8 Ill. Reg. 992; peremptory amendment at 8 Ill. Reg. 5373, effective April 12, 1984; amended at 8 Ill. Reg. 12143, effective July 9, 1984; amended at 9 Ill. Reg. 2467, effective March 1, 1985;

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amended at 9 Ill. Reg. 9104, effective June 14, 1985; amended at 9 Ill. Reg. 15820, effective November 1, 1985; amended at 10 Ill. Reg. 5915, effective April 15, 1986; amended at 11 Ill. Reg. 1390, effective January 13, 1987; amended at 11 Ill. Reg. 1151, effective January 14, 1987; amended at 11 Ill. Reg. 1829, effective January 15, 1987; recodified from 89 Ill. Adm. Code 302.20, 302.100, 302.110, 302.120, 302.130, 302.140, 302.150, 302.160, 302.170, 302.180, 302.190, and Appendix A at 11 Ill. Reg. 3492; emergency amendment at 11 Ill. Reg. 4058, effective February 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 12619, effective July 20, 1987; recodified at 11 Ill. Reg. 13405; amended at 13 Ill. Reg. 2419, effective March 1, 1989; emergency amendment at 14 Ill. Reg. 11356, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 17558, effective October 15, 1990; amended at 14 Ill. Reg. 19827, effective November 28, 1990; emergency amendment at 15 Ill. Reg. 14285, effective September 25, 1991; amended at 15 Ill. Reg. 17986, effective December 1, 1991; emergency amendment at 17 Ill. Reg. 15658, effective September 10, 1993, for a maximum of 150 days; emergency expired February 7, 1994; amended at 18 Ill. Reg. 8377, effective May 31, 1994; amended at 18 Ill. Reg. 8601, effective June 1, 1994; amended at 19 Ill. Reg. 3469, effective March 15, 1995; amended at 19 Ill. Reg. 10522, effective July 1, 1995; amended at 20 Ill. Reg. 10328, effective July 19, 1996; amended at 22 Ill. Reg. 18847, effective October 1, 1998; amended at 23 Ill. Reg. 13590, effective November 15, 1999; amended at 24 Ill. Reg. 7707, effective June 1, 2000; amended at 25 Ill. Reg. 12781, effective October 1, 2001; amended at 26 Ill. Reg. 7435, effective May 15, 2002; amended at 26 Ill. Reg. 11730, effective August 1, 2002; amended at 27 Ill. Reg. 1114, effective January 15, 2003; amended at 27 Ill. Reg. 9431, effective June 9, 2003; peremptory amendment at 29 Ill. Reg. 21065, effective December 8, 2005; amended at 33 Ill. Reg. 7862, effective June 15, 2009; amended at 34 Ill. Reg. 6373, effective May 1, 2010; amended at 35 Ill. Reg. 1599, effective January 15, 2011; amended at 35 Ill. Reg. 2861, effective February 8, 2011; amended at 36 Ill. Reg. _____, effective _____.

Section 300.20 Definitions

"Abandonment" means parental conduct that demonstrates the purpose of relinquishing all parental rights and claims to the child. Abandonment is also defined as any parental conduct that evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.

"Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

inflicts, causes to be inflicted, or allows to be inflicted upon such child

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physical or mental injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

creates a substantial risk of physical or mental injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss of or impairment of any bodily function;

commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 1961, as amended, and extending those definitions of sex offenses to include children under 18 years of age;

commits or allows to be committed an act or acts of torture upon such child;

inflicts excessive corporal punishment; or

commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 1961, against the child. [325 ILCS 5/3]

"Act" means the Abused and Neglected Child Reporting Act [325 ILCS 5].

"Blatant disregard" means an action or incident caused by, or a situation created by, a parent or caregiver that results in or creates an obvious risk of harm to the child. "Blatant disregard" also includes failure by a parent to act when a reasonable parent or caregiver would take action to protect the health, safety or welfare of the child.

"CANTS/SACWIS 8" or "C/S8" means the Department's document titled Notification of a Report of Suspected Child Abuse and/or Neglect. This document explains the Department's child abuse/neglect allegation investigation process.

"CANTS/SACWIS 9" or "C/S9" means the Department's document titled Notification of Intent to Indicate Child Care Worker for Report of Child Abuse and/or Neglect. This document is used to notify a person that the Department plans to indicate that person as a perpetrator of child abuse/neglect.

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"CANTS/SACWIS 10" or "C/S10" means the Department's document titled Notice of Intent to Indicate a Child Care Worker for Report of Child Abuse and/or Neglect-Questions and Answers. This is an informational document explaining the impact of a determination of indicated child abuse/neglect and the appeal process.

"CANTS/SACWIS 11" or "C/S11" means the Department's document titled Notification of Indicated Decision in an Employment Related Report of Suspected Child Abuse and/or Neglect. This is the document by which the Department notifies a person that the Department has determined that there is credible evidence that he or she is responsible for the child abuse or neglect described in that document.

"Caregiver" means the child's parents, guardian, custodian or relative with whom the child lives and who has primary responsibility for the care and supervision of the child.

"Child" means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services. [325 ILCS 5/3]

"Child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in the Child Care Act of 1969, established and maintained for the care of children. Child care facility includes a relative who is licensed as a foster family home under Section 4 of the Child Care Act of 1969. [225 ILCS 10/2.05]

"Child care worker" means any person who is employed to work directly with children and any person who is an owner/operator of a child care facility, regardless of whether the facility is licensed by the Department. Child care facilities, for purposes of this definition, include child care institutions; child welfare agencies; day care/night care centers; day care/night care homes; day care/night care group day care homes; group homes; hospitals or health care facilities; schools, including school teachers and administrators, but not tenured school teachers or administrators who have other disciplinary processes available

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to them; and before and after school programs, recreational programs and summer camps. "Child care worker" also means persons employed as full-time nannies. A child care worker may, at his or her discretion, be subject to this Part if alleged to be responsible for child abuse or neglect outside of his or her employment. "Child care worker" includes a person: currently employed as a child care worker; currently enrolled in an academic program that leads to a position as a child care worker; or who has applied for a license required for a child care worker position. A person will be considered to be "employed as a child care worker" under this Part if, at the time of the notice of the investigation, he or she: has applied for, or will apply within 180 days for, a position as a child care worker; is enrolled in, or will commence within 180 days, an academic program that leads to a position as a child care worker; or has applied for a license as a child care worker.

"Child-placing agency" means a licensed public or private agency that receives a child for the purpose of placing or arranging for the placement of the child in a foster family home or other facility for child care, apart from the custody of the child's parents. [325 ILCS 2/10]

"Child Protective Service Unit" or "CPS" means certain specialized State employees of the Department assigned by the Director or his or her designee to perform the duties and responsibilities described under this Part. CPS staff is also referred to as investigative staff. [325 ILCS 5/3]

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"CPSW" means a Child Protective Service Worker.

"Collateral contact" means obtaining information concerning a child, parent, or other person responsible for the child from a person who has knowledge of the family situation but was not directly involved in referring the child or family to the Department for services.

"Credible evidence of child abuse or neglect" means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected.

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"Delegation of an investigation" means the investigation of a report of child abuse or neglect has been deferred to another authority. The Department maintains responsibility for determining whether the report is indicated or unfounded, entering information about the report in the State Central Register and notifying the subjects of the report and mandated reporters of the results of the investigation.

"Department" or "DCFS" means the Department of Children and Family Services.

"Determination" means a final Department decision about whether there is credible evidence that child abuse or neglect occurred. A determination must be either "indicated" or "unfounded".

"DR Specialist" means a Differential Response Specialist as described in Section 300.45(e)(1).

"Disfigurement" means a serious or protracted blemish, scar, or deformity that spoils a person's appearance or limits bodily functions.

"Ecomap" means a pictorial representation of family connections to different systems and community and other resources to identify significant people and/or systems around the family to illustrate the strengths, impact and quality of each connection. (Hartman, A, Diagrammatic Assessment of Family Relationships. Social Casework, 59, 465-476. (1978))

"Emergency medical facility" means a freestanding emergency center or trauma center, as defined in the Emergency Medical Services (EMS) Systems Act. [325 ILCS 2/10]

"Emergency medical professional" includes licensed physicians, and any emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, trauma nurse specialist, and pre-hospital RN, as defined in the Emergency Medical Services (EMS) Systems Act. [325 ILCS 2/10]

"Fire station" means a fire station within the State with at least one staff person. [325 ILCS 2/10]

"Formal investigation" means those activities conducted by Department

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investigative staff necessary to make a determination as to whether a report of suspected child abuse or neglect is indicated or unfounded. Those activities shall include: *an evaluation of the environment of the child named in the report and any other children in the same environment; a determination of the risk to such children if they continue to remain in the existing environments, as well as a determination of the nature, extent and cause of any condition enumerated in such report, the name, age and condition of other children in the environment; and an evaluation as to whether there would be an immediate and urgent necessity to remove the child from the environment if appropriate family preservation services were provided. After seeing to the safety of the child or children, the Department shall forthwith notify the subjects of the report, in writing, of the existence of the report and their rights existing under the Act in regard to amendment or expungement.* [325 ILCS 5/3]

"Genogram" means a pictorial representation of an individual's family relationships.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising a child if the parent cannot raise the child. The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship. If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 must be met.

"Hospital" has the same meaning as in the Hospital Licensing Act [210 ILCS 85].

"Indicated report" means any report of child abuse or neglect made to the Department for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists.

"Initial investigation" means those activities conducted by Department investigative staff to determine whether a report of suspected child abuse or neglect is a good faith indication of abuse or neglect and, therefore, requires a formal investigation. Good faith in this context means that the report was made

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with the honest intention to identify actual child abuse or neglect.

"Initial oral report" means a report alleging child abuse or neglect for which the State Central Register has no prior records on the family.

"Involved subject" means a child who is the alleged victim of child abuse or neglect or a person who is the alleged perpetrator of the child abuse or neglect.

"Legal custody" means the relationship created by a court order in the best interest of a newborn infant that imposes on the infant's custodian the responsibility of physical possession of the infant, the duty to protect, train, and discipline the infant, and the duty to provide the infant with food, shelter, education, and medical care, except as these are limited by parental rights and responsibilities. [312 ILCS 2/10]

"Local law enforcement agency" means the police of a city, town, village or other incorporated area or the sheriff of an unincorporated area or any sworn officer of the Illinois Department of State Police.

"Mandated reporters" means those individuals required to report suspected child abuse or neglect to the Department. A list of these persons and their associated responsibilities is provided in Section 300.30 of this Part.

"Member of the clergy" means a clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs. [325 ILCS 5/3]

"Neglected child" means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support, or medical or other remedial care recognized under State law as necessary for a child's well-being (including where there is harm or substantial risk of harm to the child's health or welfare), or other care necessary for a child's well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or who is a newborn infant whose blood, urine or meconium contains any amount of controlled substance as defined in subsection (f) of Section 102 of the Illinois

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Controlled Substances Act or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or newborn infant. A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time. A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care under Section 4 of the Abused and Neglected Child Reporting Act. Where the circumstances indicate harm or substantial risk of harm to the child's health or welfare and necessary medical care is not being provided to treat or prevent that harm or risk of harm because the parent or other person responsible for the child's welfare depends upon spiritual means alone for treatment or cure, the child is subject to the requirements of this Act for the reporting of, investigation of, and provision of protective services with respect to the child and his or her health needs, and in such cases spiritual means through prayer alone for the treatment or cure of disease or for remedial care will not be recognized as a substitute for necessary medical care, if the Department or, as necessary, a juvenile court determines that medical care is necessary. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of the School Code. [325 ILCS 5/3]

"Newborn infant" means a child who a licensed physician reasonably believes is 30 days old or less at the time the child is initially relinquished to a hospital, police station, fire station, or emergency medical facility, and who is not an abused or a neglected child. [325 ILCS 2/10]

"Perpetrator" means a person who, as a result of investigation, has been determined by the Department to have caused child abuse or neglect.

"Person responsible for the child's welfare" means the child's parent, guardian, foster parent, relative caregiver, an operator, supervisor, or employee of a public or private residential agency or institution or public or private profit or not-for-profit child care facility; or any other person responsible for the child's welfare at the time of the alleged abuse or neglect, or any person who came to know the child through an official capacity or position of trust, including but not limited to health care professionals, educational personnel, recreational supervisors, members of the clergy and volunteers or support personnel in any setting where

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children may be subject to abuse or neglect. [325 ILCS 5/3]

"Police station" means a municipal police station ~~or~~ a county sheriff's office, a campus police department located on any college or university owned or controlled by the State or any private college or private university that is not owned or controlled by the State when employees of the campus police department are present, or any of the district headquarters of the Illinois State Police. [325~~315~~ ILCS 2/10]

"Private guardianship" means an individual person appointed by the court to assume the responsibilities of the guardianship of the person as defined in Section 1-3 of the Juvenile Court Act of 1987 [705 ILCS 405/1-3] or Article XI of the Probate Act of 1975 [755 ILCS 5/Art. XI].

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt, or

is the spouse of such a relative, or

is the child's step-father, step-mother, or adult step-brother or step-sister.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. [20 ILCS 505/7(b)]

"Relinquish" means to bring a newborn infant, who a licensed physician reasonably believes is 30 days old or less, to a hospital, police station, fire station, or emergency medical facility and to leave the infant with personnel of the facility, if the person leaving the infant does not express an intent to return for the infant or states that he or she will not return for the infant. In the case of a mother who gives birth to an infant in a hospital, the mother's act of leaving the

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new born infant at the hospital without expressing an intent to return for the infant or stating that she will not return for the infant is not a "relinquishment" under the Act. [325 ILCS 2/10]

"Strengthening and Supporting Families service period" means a level of service intervention that will average 90 days, but no more than 120 days.

"State Central Register" is the record of child abuse and/or neglect reports maintained by the Department pursuant to the Act.

"Subject of a report" means any child reported to the child abuse/neglect State Central Register, and his or her parent, personal guardian or other person responsible for the child's welfare who is named in the report.

"SSF worker" means a Strengthening and Supporting Families worker.

"Temporary protective custody" means custody within a hospital or other medical facility or a place previously designated by the Department, subject to review by the Court. Temporary protective custody cannot exceed 48 hours, excluding Saturdays, Sundays and holidays.

"Undetermined report" means any report of child abuse or neglect made to the Department in which it was not possible to complete an investigation within 60 days on the basis of information provided to the Department.

"Unfounded report" means any report of child abuse or neglect for which it is determined, after an investigation, that no credible evidence of the alleged abuse or neglect exists.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 300.30 Reporting Child Abuse or Neglect to the Department

- a) Reports of suspected child abuse or neglect may be immediately made to the State Central Register via its toll-free number [1-800-25A-BUSE] at any time, day or night, or on any day of the week. Reports may also be made to the nearest Department office. The Department encourages use of the toll-free hotline number.

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b) Persons Mandated to Report Child Abuse or Neglect

1) Types of Mandated Reporters

Any of the following individuals who have reasonable cause to believe that a child known to them in their professional or official capacity may be abused or neglected shall immediately report or cause a report to be made to the Department. These mandated reporters include:

- A) physicians, residents, ~~and~~ interns and physician assistants;
- B) hospitals;
- C) hospital administrators and personnel engaged in the examination, care and treatment of persons;
- D) surgeons;
- E) dentists;
- F) dentist hygienists;
- G) osteopaths;
- H) chiropractors;
- I) podiatrists;
- J) Christian Science practitioners;
- K) coroners;
- L) medical examiners;
- M) emergency medical technicians;
- N) crisis line or hotline personnel;
- O) school personnel;

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- P) educational advocate assigned to a child pursuant to the School Code;
- Q) truant officers;
- R) social workers;
- S) social services administrators;
- T) domestic violence program personnel;
- U) registered nurses;
- V) licensed practical nurses, advanced practice nurses, home health aides;
- W) directors or staff assistants of nursery schools or child day care centers;
- X) recreational program or facility personnel;
- Y) law enforcement officers;
- Z) registered psychologists;
- AA) [licensed professional counselor, licensed clinical professional counselor, and](#) assistants working under the direct supervision of a psychologist or psychiatrist;
- BB) field personnel of the Illinois Departments of [Healthcare and Family Services, Human Services, Public Aid,](#) Public Health, [Mental Health and Developmental Disabilities,](#) Corrections, Children and Family Services, Human Rights or Rehabilitation Services;
- CC) probation officers;
- DD) foster parents, homemakers or any other child care worker;

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- EE) supervisors and administrators of General Assistance under the Illinois Public Aid Code;
- FF) substance abuse treatment personnel;
- GG) funeral home directors or their employees; or
- HH) members of the clergy.
- II) licensed professional counselors of any office, clinic, or any other physical location that provides abortions, abortion referrals, or contraceptives;
- JJ) accupuncturists;
- KK) animal control officer or Illinois Department of Agriculture Bureau of Animal Health and Welfare field investigator;
- LL) members of a school board or the Chicago Board of Education or the governing body of a private school;

2) Members of the Clergy

Any member of the clergy having reasonable cause to believe that a child known to that member of the clergy in his or her professional capacity may be an abused child as defined in this part shall immediately report or cause a report to be made to the Department. [325 ILCS 5/4]Members of the clergy are only required to report or cause a report to be made when they have reasonable cause to believe that a child known to them in their professional or official capacity may be a sexually abused child.

3) Acknowledgement of Reporting Responsibility

- A) Individuals who became mandated reporters on or after July 1, 1986, by virtue of their employment shall sign statements acknowledging that they are mandated to report suspected child abuse and neglect in accordance with Section 4 of the Abused and Neglected Child Reporting Act [325 ILCS 5/4]. The statement shall be on a form prescribed by the Department, but provided by the employer. (See Appendix A.) The statement shall be signed

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before beginning employment and shall be retained by the employer as a permanent part of the personnel record.

- B) The Department shall provide, upon request at a reasonable cost of \$.50 each, copies of the Abused and Neglected Child Reporting Act to all employers employing persons who are mandated to report under this Act.
- 4) Interference with Reporting Prohibited
- A) *Whenever such person is required to report under the Act in his capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, or as a member of the clergy, he shall make report immediately to the Department in accordance with provisions of the Act and may also notify the person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque, or other religious institution, or his designated agent that such a report has been made. Under no circumstances shall any person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque or other religious institution, or designated agent to whom such notification has been made exercise any control, restraint, modification or other change in the report or the forwarding of such report to the Department. [325 ILCS 5/4]*
- B) *Any person who knowingly transmits a false report to the Department commits the offence of disorderly conduct under subsection (a)(7) of Section 26-1 of the Criminal Code of 1961. Any person who violates this provision a second or subsequent time shall be guilty of a Class 4 felony.*
- Any person who knowingly and willfully violates any provision of this Section other than a second or subsequent violation of transmitting a false report as described in this subsection, is guilty of a Class A misdemeanor for the first violation and a Class 4 felony for a second or subsequent violation. [325 ILCS 5/4]*
- C) *No employer shall discharge, demote or suspend, or threaten to discharge, demote or suspend, or in any manner discriminate*

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against any employee who makes any good faith oral or written report of suspected child abuse or neglect, or who is or will be a witness or testify in any investigation or proceeding concerning a report of suspected child abuse or neglect. [325 ILCS 5/9.1]

5) Consequences of Failure to Report

A) *The privileged quality of communication between any professional person required to report and his patient or client shall not apply to situations involving abused or neglected children and shall not constitute grounds for failure to report as required by [The Abused and Neglected Child Reporting] Act or constitute grounds for failure to share information or documents with the department during the course of a child abuse or neglect investigation. If requested by the professional, the Department shall confirm in writing that the information or documents disclosed by the professional were gathered in the course of a child abuse or neglect investigation. [325 ILCS 5/4]* Mandated reporters who willfully fail to report suspected child abuse or neglect are subject to license suspension or revocation in accordance with but not limited to the following statutes: ~~A)The privileged quality of communication between any professional person required to report and patient or client shall not constitute grounds for failure to report suspected child abuse or neglect.~~

- i) Nursing and Advanced Practice Nursing Act [225 ILCS 65];
- ii) Medical Practice Act of 1987 [225 ILCS 60];
- iii) Podiatric Medical Practice Act of 1987 [225 ILCS 100];
- iv) Clinical Psychologist Licensing Act [225 ILCS 15];
- v) Clinical Social Work and Social Work Practice Act [225 ILCS 20];
- vi) The School Code [105 ILCS 5];

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- vii) The Illinois Dental Practice Act [225 ILCS 25];
 - viii) Physician Assistant Practice Act of 1987 [225 ILCS 95];
 - ix) Illinois Optometric Practice Act of 1987 [225 ILCS 80];
 - x) Illinois Physical Therapy Act [225 ILCS 90]; and
 - xi) Illinois Athletic Trainers Act [225 ILCS 5].
- B) *Any physician who willfully fails to report child abuse or neglect shall be referred to the Illinois State Medical Disciplinary Board for action. Any other person required to report suspected child abuse or neglect who willfully fails to report such abuse or neglect shall be guilty of a Class A misdemeanor. [325 ILCS 5/4]*
- C) Members of the clergy of any religious denomination accredited by the religious body to which he or she belongs shall not be compelled to disclose a confession or admission made to him or her in his or her professional character or as a spiritual advisor.
- 6) **Written Confirmation of Reports**
Mandated reporters shall confirm their telephone report in writing on a form prescribed by the Department within 48 hours of the oral report. The Department shall provide forms to mandated reporters – one for the exclusive use of medical professionals and another for use by all other mandated reporters. These confirmation reports shall be admissible as evidence in any administrative or judicial proceeding related to child abuse or neglect. Local investigative staff shall transmit confirmation reports to the State Central Register within 24 hours of receipt.
- c) **Other Persons May Report**
Other persons may report suspected child abuse or neglect if they have reasonable cause to believe a child may be abused or neglected.
- d) **Consequences of False Reporting**
Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct under subsection (a)(7) of Section 26-1 of the Criminal Code of 1961 [720 ILCS 5/26-1(a)(7)]. A violation of this subsection is

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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a Class B misdemeanor, punishable by a term of imprisonment for not more than 6 months, or by a fine not to exceed \$500, or both. Any person who violates this provision a second or subsequent time shall be guilty of a Class 4 felony. [325 ILCS 5/4] The Department shall refer cases of false reporting to the local State's Attorney when the reporter is known.

- e) Cooperation in Court or Administrative Hearings
Any person who makes a report or who investigates a report under [The Abused and Neglected Child] Act shall testify fully in any judicial proceeding or administrative hearing resulting from such report, as to any evidence of abuse or neglect, or the cause thereof. Any person who is required to report a suspected case of abuse or neglect shall testify fully in any administrative hearing resulting from such report, as to any evidence of abuse or neglect or the cause thereof. No evidence shall be excluded by reason of any common law or statutory privilege relating to communications between the alleged perpetrator of abuse or neglect, or the child subject of the report and any person who is required to report a suspected case of abuse or neglect or the person making or investigating the report. [325 ILCS 5/10]~~Any person who makes a report or who investigates a report may be ordered by the Court to testify fully in any judicial proceeding resulting from the report about any evidence of the abuse or neglect or the cause of the abuse or neglect. Any mandated reporter listed in subsection (b)(1) who makes a report of suspected child abuse or neglect shall testify fully in any administrative hearing resulting from such report, as to any evidence of abuse or neglect or the cause thereof. No evidence shall be excluded because of any common law or statutory privilege regarding communications between the alleged perpetrator or the child subject and the person making or investigating the report.~~
- f) Referrals to Public Health
All mandated reporters listed in subsection (b)(1) may refer to the Department of Public Health any pregnant person in Illinois who is addicted as defined in the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301].
- g) Depending upon Spiritual Means Through Prayer Alone for the Treatment or Cure of Disease or Remedial Care
A child whose parent, guardian or custodian in good faith selects and depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care may be considered neglected or abused, but not for the sole reason that his parent, guardian, or custodian accepts and practices such beliefs. [325 ILCS 5/4] Where the circumstances indicate harm or substantial risk of harm to

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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the child's health or welfare and medical care necessary to treat or prevent that harm or risk of harm is not being provided because a parent or other person responsible for the child's welfare depends upon such spiritual means, the child shall be subject to the requirements of the Abused and Neglected Child Reporting Act for the reporting of, investigation of, and provision of protective services with respect to the child and his health needs.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Environmental Laboratory Certification Fee Rules
- 2) Code Citation: 35 Ill. Adm. Code 185
- 3) Section Number: 185.201 Proposed Action: Amended
- 4) Statutory Authority: Implementing and authorized by Section 17.8 of the Environmental Protection Act [415 ILCS 5/17.8]
- 5) A Complete Description of the Subjects and Issues Involved: Section 17.8 of the Environmental Protection Act requires the Agency, with the concurrence of the Environmental Laboratory Certification Committee, to determine the assessment schedules for participation in the environmental laboratory certification program. The Agency must base the assessment schedules on the actual and anticipated costs for certification under State and federal programs, and the associated costs of the Agency and Committee. 35 Illinois Administrative Code 185.201 codifies the assessment schedule. This proposed amendment seeks to update the amount of the assessments listed in Section 185.201 as determined by the Agency and concurred with by the Committee.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed amendment contain incorporations by reference? No
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will amend Section 185.201 to be consistent with the current assessment schedule. It does not create or expand a State mandate under the State Mandates Act [30 ILCS 805].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENT

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Section 17.8 of the Environmental Protection Act requires the Agency, with the concurrence of the Environmental Laboratory Certification Committee, to determine the assessment schedules for participation in the environmental laboratory certification program. [415 ILCS 5/17.8(d-5)] This rulemaking is not expected to impact small businesses, small municipalities and not for profit corporations because the assessment schedule takes effect upon the Committee's concurrence with the Agency's assessment schedule determinations. Id. This rulemaking is not changing the amount of the assessments, but is updating the Section 185.201 so that it reflects the most recent schedule.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2011

The full text of the Proposed Amendment begins on the next page:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENT

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCYPART 185
ENVIRONMENTAL LABORATORY CERTIFICATION FEE RULES

SUBPART A: GENERAL

| | |
|---------|---|
| Section | |
| 185.101 | Purpose |
| 185.102 | Applicability |
| 185.103 | Definitions |
| 185.104 | Relation to Other Fee Systems and Out-of-State Certification and Reciprocity Agreements |
| 185.105 | Severability |

SUBPART B: PROCEDURES FOR DETERMINATION
AND PAYMENT OF ASSESSMENTS

| | |
|---------|-----------------------------|
| Section | |
| 185.201 | Amount of the Assessments |
| 185.202 | Manner of Payment |
| 185.203 | Prohibition Against Refund |
| 185.204 | Audit and Access to Records |

SUBPART C: PROCEDURES FOR PROCESSING APPLICATIONS

| | |
|---------|---|
| Section | |
| 185.301 | Applications Containing the Entire Assessment |
| 185.302 | Applications Not Containing the Entire Assessment |

AUTHORITY: Implementing and authorized by Section 17.8 of the Environmental Protection Act [415 ILCS 5/17.8].

SOURCE: Adopted at 20 Ill. Reg. 13359, effective September 24, 1996; amended at 36 Ill. Reg. _____, effective _____.

SUBPART B: PROCEDURES FOR DETERMINATION

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENT

AND PAYMENT OF ASSESSMENTS

Section 185.201 Amount of the Assessments

The Agency, with the concurrence of the Environmental Laboratory Certification Committee, has established the following administrative assessment and certification assessment schedules in accordance with the procedures of Section 17.8(c) and (d-5) of the Act. This schedule shall remain in effect until an alternative schedule is established in accordance with those subsections.

- a) Administrative Assessment Schedule. Each~~Beginning January 1, 1996 and each year thereafter, each~~ laboratory requesting any of the certifications in subsection (b) of this Section shall pay an annual administrative assessment of \$2,400 per year, provided that the administrative assessment shall be \$3,900 if the laboratory was not certified at any time during the 6 months immediately preceding its application for certification~~\$350 at the time the laboratory submits its request for certification, or on the renewal date of certification and on the anniversary date of the initial certification in accordance with the certification assessment of subsection (b).~~

- b) Annual Certification Assessment. In addition to the annual administrative assessment in subsection (a)~~Beginning January 1, 1996 and each year thereafter,~~ each laboratory that requests certification shall pay the annual certification assessment for each certification requested~~at the time the laboratory submits an application and on the anniversary date of the initial certification~~ based upon the following schedule:
 - 1) For certification to conduct public water supply analyses:
 - A) \$1,000~~350~~ per year for inorganic parameters; and
 - B) \$1,000~~350~~ per year for organic parameters.
 - 2) For certification to conduct water pollution analyses:
 - A) \$1,000~~700~~ per year for inorganic parameters; and
 - B) \$1,000~~700~~ per year for organic parameters.
 - 3) For certification to conduct analyses of solid or liquid samples for

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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hazardous or other waste parameters:

A) ~~\$1,000,900~~ per year for inorganic parameters; and

B) ~~\$1,000,900~~ per year for organic parameters.

c) The annual administrative assessment and the annual certification assessments shall be paid at the time the laboratory submits its application for certification or for renewal of certification.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Foreclosure Prevention Program
- 2) Code Citation: 47 Ill. Adm. Code 385
- 3)

| <u>Section Numbers:</u> | <u>Proposed Action:</u> |
|-------------------------|-------------------------|
| 385.101 | New Section |
| 385.102 | New Section |
| 385.103 | New Section |
| 385.104 | New Section |
| 385.105 | New Section |
| 385.106 | New Section |
| 385.107 | New Section |
| 385.108 | New Section |
| 385.109 | New Section |
| 385.110 | New Section |
| 385.111 | New Section |
| 385.112 | New Section |
| 385.201 | New Section |
| 385.202 | New Section |
| 385.301 | New Section |
| 385.302 | New Section |
| 385.303 | New Section |
| 385.304 | New Section |
| 385.305 | New Section |
| 385.306 | New Section |
| 385.307 | New Section |
| 385.308 | New Section |
| 385.309 | New Section |
- 4) Statutory Authority: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 7.30(a) of the Illinois Housing Development Act [20 ILCS 3805/7.30(a)]
- 5) A Complete Description of the Subjects and Issues Involved: The rules are established to implement the program rules for the Foreclosure Prevention Program (Program) under the Save Our Neighborhoods Act of 2010. The purpose of these rules is to create uniform procedures in order to operate the Program.

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- 6) Published Studies or reports, and sources of underlying data, used to compose the rulemaking: Historical data was obtained by the Illinois Housing Development Authority who has administered housing counseling and foreclosure prevention programs, such as National Foreclosure Mitigation Counseling Program, Hardest Hit Fund Program, Predatory Lending Database Program and Cook County Mortgage Foreclosure Mediation Program and has assisted in Mortgage Relief Project Events.
- 7) Will this rulemaking replace any emergency rulemaking currently affect? Yes.
- 8) Does this rulemaking contain any automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: Rulemaking does not create or expand any State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments, data, views or arguments concerning this rulemaking in writing to:
- Arthur J. Murphy III
Legal Department
Illinois Housing Development Authority
401 N. Michigan Avenue, Suite 700
Chicago, Illinois 60611
- 312/836-5200
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: HUD-certified counseling agencies, not-for-profit community based organizations and the City of Chicago.
- B) Reporting, bookkeeping or other procedures required for compliance: Reporting requirements, books and records of each agency shall be subject to examination by allocating agency.

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- C) Types of Professional skills necessary for compliance: No new professional skills required.
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2011

The full text of the Proposed Rule begins on the next Page:

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NOTICE OF PROPOSED RULES

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 385
FORECLOSURE PREVENTION PROGRAM

SUBPART A: GENERAL RULES

- 385.101 Authority
- 385.102 Purpose and Objectives
- 385.103 Definitions
- 385.104 Compliance with Federal and State Law
- 385.105 Forms and Procedures for the Program
- 385.106 Fees and Charges
- 385.107 Authority Administrative Expenses
- 385.108 Amendment
- 385.109 Severability
- 385.110 Gender and Number
- 385.111 Non-Discrimination
- 385.112 Titles and Captions

SUBPART B: DISTRIBUTION OF FUNDS

- 385.201 Grants to Administering Agencies
- 385.202 Distribution of Funds to the City of Chicago

SUBPART C: GRANTS TO COMMUNITY-BASED ORGANIZATIONS
AND COUNSELING AGENCIES

- 385.301 Community-Based Organizations Eligibility
- 385.302 Counseling Agencies Eligibility
- 385.303 Eligible Uses of Grant Funds
- 385.304 Application Cycle
- 385.305 Application Requirements
- 385.306 Review of Applications
- 385.307 Grant Administration
- 385.308 Funding of Grants
- 385.309 Reporting Requirements

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AUTHORITY: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 7.30(a) of the Illinois Housing Development Act [20 ILCS 3805/7.30(a)].

SOURCE: Adopted by emergency rulemaking at 35 Ill. Reg. 20742, effective December 12, 2011; adopted at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL RULES

Section 385.101 Authority

The Illinois Housing Development Authority is the designated administrator for the Foreclosure Prevention Program in Illinois, which was established by Section 7.30 of the Illinois Housing Development Act [20 ILCS 3805/7.30], effective October 1, 2010. This Part is authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 7.30(a) of the Illinois Housing Development Act [20 ILCS 3805/7.30(a)].

Section 385.102 Purpose and Objectives

The purpose of the Program is to use moneys appropriated from the Foreclosure Prevention Program Fund, and any other funds appropriated for this purpose, to support housing counseling and foreclosure prevention outreach. Under the Program, the Authority will make grants to the Counseling Agencies and the Community-Based Organizations for Eligible Uses, and will make distributions to the City for Eligible Uses.

Section 385.103 Definitions

The following terms used in this Part shall have the following definitions:

"Act": The Illinois Housing Development Act [20 ILCS 3805].

"Administering Agency" or "Administering Agencies": The Community-Based Organizations and the Counseling Agencies.

"Agency" or "Agencies": The Authority or the City.

"Applicant": A prospective Administering Agency making an Application for a Grant.

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"Application": An application to an Agency on the Agency's form for a Grant completed by a prospective Administering Agency.

"Appropriation": The annual Appropriation of funds from the Foreclosure Prevention Fund, to the Illinois Department of Revenue for the Authority, by the Illinois General Assembly for the Program and any other funds appropriated for this purpose.

"Attorney General": The Attorney General of the State.

"Auditor General": The Auditor General of the State.

"Authority": The Illinois Housing Development Authority.

"City": The City of Chicago.

"Commitment": A contract executed by an Agency and an Administering Agency under which the Agency agrees to make a Grant to the Administering Agency. Each Commitment shall contain a provision to the effect that the Authority shall not be obligated to provide funds under the Commitment if the Authority has not received sufficient funds from an Appropriation.

"Community-Based Organization": A not-for-profit entity that provides educational and financial information to residents of a community through in-person contact. A Community-Based Organization does not include a not-for-profit corporation or other entity or person that provides legal representation or advice in a civil proceeding or court-sponsored mediation services, or a governmental agency.

"Computer and Equipment Expenses": Computer and equipment costs incurred by an Administering Agency or the City, as applicable, in connection with the administration of the Grant.

"Counseling Agencies": Shall have the meaning set forth in Section 385.302.

"Eligible Uses": Shall have the meaning set forth in Section 385.303.

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"Foreclosure Prevention Fund": Fund created in the State treasury for the collection of a fee of \$50 paid by a plaintiff at the time of a filing of a foreclosure complaint in connection with residential real estate.

"Foreclosure Prevention Outreach Program": A program developed by a Community-Based Organization that includes in-person contact with residents to provide pre-purchase and post-purchase home ownership counseling and education about the foreclosure process and the options of a mortgagor in a foreclosure proceeding, as well as programs developed by the Authority or Community-Based Organization in conjunction with a State or federally chartered financial institution.

"General Operational Expenses": Operational costs incurred by an Administering Agency or the City in connection with the administration of the Grant.

"Grant": The portion of the Appropriation granted by an Agency to the Administering Agencies for Eligible Uses under the Program.

"Housing Counseling": In-person counseling provided by a counselor employed by a Counseling Agency to all homeowners, or documented telephone counseling if a hardship would be imposed on one or more homeowners. A hardship shall exist in instances in which the homeowner is confined to his or her home due to medical condition, as verified in writing by a physician, or the homeowner resides 50 miles or more from the nearest approved Counseling Agency. In instances of telephone counseling, the homeowner must supply all necessary documents to the counselor at least 72 hours prior to the scheduled telephone counseling session.

"HUD": The U.S. Department of Housing and Urban Development.

"Program": The Foreclosure Prevention Program authorized by Section 7.30 of the Act.

"State": The State of Illinois.

"Statewide Activities": Shall have the meaning set forth in Section 385.303(c).

"Technical Assistance": Costs incurred by an Administering Agency or the City, as applicable, for:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED RULES

planning for Foreclosure Prevention Outreach Program or Housing Counseling; or

assistance with an Application.

Section 385.104 Compliance with Federal and State Law

Notwithstanding anything in this Part to the contrary, this Part shall be construed in conformity and compliance with applicable federal and State law.

Section 385.105 Forms and Procedures for the Program

The Authority may prepare, use, prescribe, supplement, and amend such forms, agreements, and other documents and procedures as may be necessary to implement the Program. With respect to the distribution of 25% of funds from annual Appropriations to the City, the City may prepare, use, prescribe, supplement, and amend such forms, agreements, and other documents and procedures as may be necessary to implement the Program.

Section 385.106 Fees and Charges

An Agency shall not charge an application fee for the Program.

Section 385.107 Authority Administrative Expenses

The Authority shall be entitled to deduct from each Appropriation, prior to any distribution of funds under the Program and prior to making any Grants, an amount not to exceed 8% of each Appropriation for expenses associated with the administration of the Program, including, without limitation, expenses for staff salaries and benefits for time spent on design and administration of the Program; expenses incurred in performing outreach activities and providing technical assistance to the Administering Agencies; the use of the Authority's equipment for Program purposes; the cost of office space and utilities incurred in connection with the Program; and any other expenses incurred in the administration of the Program. The Authority shall maintain a detailed accounting of its administrative expenses, which shall be available to the public for review. Notwithstanding the 8% cap on Authority deductions, in the event neither a Counseling Agency nor a Community-Based Organization is able to administer all or a portion of the Statewide Activities, the Authority may oversee and implement the Statewide Activities directly and shall be entitled to a dollar for dollar reimbursement from the Foreclosure Prevention Fund of any costs and expenses incurred in connection with the administration of all or any portion of the Statewide Activities exclusive of the 8% cap.

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Section 385.108 Amendment

This Part may be supplemented, amended, or repealed by the Authority from time to time and in a manner consistent with the Illinois Administrative Procedure Act [5 ILCS 100], this Part, the Act, and other applicable laws. This Part shall not constitute or create any contractual rights.

Section 385.109 Severability

If any clause, sentence, paragraph, subsection, Section, or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or invalidate the remainder of this Part, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section, or Subpart to which the judgment is rendered.

Section 385.110 Gender and Number

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

Section 385.111 Non-Discrimination

The Administering Agencies and the City shall comply with the applicable provisions of the Illinois Human Rights Act [775 ILCS 5] and the regulations promulgated under that Act, the Fair Housing Act (42 USC 3601), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Illinois Environmental Barriers Act [410 ILCS 25], the Illinois Accessibility Code (71 Ill. Adm. Code 400), and all other applicable State and federal law concerning discrimination and fair housing.

Section 385.112 Titles and Captions

Titles and captions of Subparts, Sections, and subsections are used for convenience and reference and are not a part of the text.

SUBPART B: DISTRIBUTION OF FUNDS

Section 385.201 Grants to Administering Agencies

The Authority shall distribute funds from annual Appropriations in accordance with the following priorities:

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- a) To the Authority for its administrative expenses.
- b) After distributing the amount listed in subsection (a), but subject to Section 385.202, the Authority shall make Grants as follows:
 - 1) 25% of the moneys remaining in the Foreclosure Prevention Fund that have been appropriated shall be used to make Grants to the Counseling Agencies that provide for Housing Counseling located outside the City.
 - 2) 25% of the moneys remaining in the Foreclosure Prevention Fund that have been appropriated shall be used to make Grants to the Community-Based Organizations located outside of the City for Foreclosure Prevention Outreach Programs.
 - 3) 25% of the moneys remaining in the Foreclosure Prevention Fund that have been appropriated shall be used to make Grants to the Community-Based Organizations located within the City for Foreclosure Prevention Outreach Programs.

Section 385.202 Distribution of Funds to the City of Chicago

After distributing the amount listed in Section 385.201(a) of this Part, the Authority shall distribute 25% of the moneys remaining in the Foreclosure Prevention Fund that have been appropriated to the City.

- a) City Administrative Expenses. The City shall be entitled to deduct from each distribution from the Authority, prior to making any Grants to the Counseling Agencies or support of foreclosure prevention programs administered by the City, an amount not to exceed 8% of the distribution from the Authority for General Operational Expenses, Computer and Equipment Expenses, and Technical Assistance associated with the administration of the Program, including, without limitation, expenses for staff salaries and benefits for time spent on design and administration of the Program; expenses incurred in performing outreach activities and providing technical assistance to the Counseling Agencies; the use of the City's equipment for Program purposes; the cost of office space and utilities incurred in connection with the Program; and any other expenses incurred in the administration of the Program. The City shall maintain a detailed accounting of its administrative expenses, which shall be available to the public for review.

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- b) Eligible City Activities. Eligible activities by the City under the Program are as follows:
 - 1) making Grants to the Counseling Agencies located within the City for Housing Counseling; and
 - 2) supporting, subject to Section 385.303(b), foreclosure prevention counseling programs administered by the City.

SUBPART C: GRANTS TO COMMUNITY-BASED ORGANIZATIONS
AND COUNSELING AGENCIES**Section 385.301 Community-Based Organizations Eligibility**

- a) The Community-Based Organizations are generally eligible to submit an Application for funding if they provide:
 - 1) pre-purchase and post-purchase home ownership counseling;
 - 2) education about the foreclosure process and the options of a homeowner in a foreclosure proceeding; and
 - 3) foreclosure prevention programs in conjunction with the Authority or a State or federally chartered financial institution.
- b) The Community-Based Organizations must agree to the terms and conditions of the Program in order to be eligible.

Section 385.302 Counseling Agencies Eligibility

The Counseling Agencies are generally eligible to submit an Application for funding if they have been certified as a housing counseling agency by HUD. The Counseling Agencies are eligible for funding if they are certified prior to their application for funding under the Program and committed to participation in the Program. The Counseling Agencies must agree to the terms and conditions of the Program in order to be eligible.

Section 385.303 Eligible Uses of Grant Funds

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- a) Eligible Uses of Grant Funds by the Administering Agencies.
- 1) Eligible uses of Grant funds by the Administering Agencies under the Program shall be:
- A) Computer and Equipment Expenses;
 - B) General Operational Expenses;
 - C) pre-purchase Housing Counseling;
 - D) post-purchase Housing Counseling;
 - E) foreclosure education;
 - F) foreclosure prevention outreach programs in conjunction with the Authority or a State or federally chartered financial institution;
 - G) counselor training;
 - H) training of an Administering Agency's employees;
 - I) capacity building that increases an Administering Agency's capacity to provide Foreclosure Prevention Outreach Programs and Housing Counseling;
 - J) Technical Assistance;
 - K) advertising and marketing of the Program, and any other housing counseling activity as may be approved by the Authority.
- 2) No Administering Agency shall receive Grant funds for Computer and Equipment Expenses, General Operational Expenses and Technical Assistance in an amount greater than 10% of the Grant funds granted to an Administering Agency during the term of the Administering Agency's Grant.

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- b) Eligible Uses of Grant Funds by the City. Eligible uses of Grant funds supporting foreclosure prevention programs administered by the City under the Program shall be:
- 1) pre-purchase home ownership counseling;
 - 2) post-purchase home ownership counseling;
 - 3) foreclosure education;
 - 4) foreclosure prevention outreach programs in conjunction with the Authority or a State or federally chartered financial institution; and
 - 5) counselor training.
- c) Eligible Uses for Statewide Activities. Eligible uses of Grant funds supporting Statewide Activities shall include, but shall not be limited to:
- 1) organizing regional homeownership, Housing Counseling and foreclosure prevention outreach fairs and events, including the promotion of these events;
 - 2) the creation and dissemination of radio and print advertising;
 - 3) the creation and dissemination of posters, flyers and information materials;
 - 4) establishing and operating a toll-free helpline to connect residents of the State;
 - 5) the creation and use of internet resources; and
 - 6) any other similar activities approved by the Authority that are deemed necessary to help ensure the success of the Program on a statewide basis.

Section 385.304 Application Cycle

An Agency will supply interested Applicants with an Application. Applications under the Program will be accepted periodically until the Appropriation is disbursed.

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Section 385.305 Application Requirements

Each Application shall include the information required by this Section, provided that those requirements are included in the Application to be completed by the Administering Agency, and any additional information the Agency may require to promote efficient Program administration and quality of performance. The Authority reserves the right to bifurcate its Applications as needed in connection with the different components of the Program.

- a) **Qualifications.** Each Applicant shall document qualifications to complete the Program activities, including, with respect to a Counseling Agency, evidence that it is a HUD certified housing counseling agency.
- b) **Number of Foreclosures.** Each Applicant shall document the number of foreclosures filed, present employment data and any known future job layoffs in the Administering Agency's service area.
- c) **Applicant's Capacity.** Each Applicant shall document its capacity and prior experiences to administer Housing Counseling and Foreclosure Prevention Outreach Programs.
- d) **Capacity Building.** Each Applicant shall document how capacity will be expanded to meet the need for Housing Counseling and Foreclosure Prevention Outreach Programs in response to subsection (b).
- e) **Activities to be Undertaken.** Each Applicant shall list which Eligible Uses are to be undertaken with Program funds, including without limitation those activities outlined in Section 385.303 and under the rest of this Part.
- f) **Time for Expending.** Each Applicant shall include a budget and timeline schedule for performing the eligible activities outlined in the Application.
- g) **Marketing and Outreach Capacity.** Each Applicant shall document its capacity and prior experiences to the sole satisfaction of the Authority to undertake and administer all or a portion of the Statewide Activities as set forth in the applicable Application.

Section 385.306 Review of Applications

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- a) **Application Screening.** An Agency shall screen all Applications to confirm that all elements of the Application package have been addressed. Applicants may be notified of deficiencies in Applications and may, at the option of the Agency, be given the opportunity to correct those deficiencies. Completed Applications will be reviewed and evaluated by Agency staff in accordance with criteria in subsections (b) through (e).
- b) **Basic Eligibility Evaluation.** Each Application will be reviewed to assure compliance with Sections 385.301 and 385.302.
- c) **Willingness to Perform.** The Administering Agency must commit to remain ready, willing and able to perform Foreclosure Prevention Outreach Programs, Housing Counseling and Statewide Activities as applicable throughout the Grant term.
- d) **Costs.** The Administering Agency must demonstrate that the costs identified in the Application are eligible Program costs under Section 385.303.
- e) **Capacity.** The Applicant must demonstrate that the proposed activities identified in the Application can be accomplished.

Section 385.307 Grant Administration

- a) **Commitment.** Each Administering Agency shall enter into a Commitment with the Agency that is making its Grant; the Grant may be less than the amount requested in the Application. The term of Commitment shall be up to one year, subject to the availability of funds from an Appropriation, and may be renewed for one additional year at the discretion of the Agency.
- b) **Record Retention.** Each Administering Agency shall maintain records in connection with the Grant under the Administering Agency's Commitment for five years after the date of termination of the Commitment.
- c) **Monitoring.** An Agency, the Auditor General and the Attorney General shall have the right to monitor all Administering Agency books and records relating to the implementation of the Program by an Agency. Each Administering Agency shall make all records relating to its Grant available for inspection, examination and copying by an Agency, the Auditor General and the Attorney General upon reasonable prior notice, as an Agency, the Auditor General or the Attorney

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General may reasonably require. The required documentation may include, but is in no way limited to a copy of the Administering Agency's Application to an Agency; all records relating to the eligible uses of Grant funds under the Program as set forth in Section 385.303; and any other documentation required by an Agency, the Auditor General and the Attorney General.

Section 385.308 Funding of Grants

Subject to the terms of the applicable Commitment with an Administering Agency and the related documents evidencing the Grant, an Agency shall provide funds to the Administering Agencies when the Appropriation is made available and as set forth in Section 385.303.

Section 385.309 Reporting Requirements

- a) Administering Agency. Each Administering Agency shall provide reports to the Agency that made the Grant, on forms provided by the Authority, at the end of each quarter of the term of its Commitment. The Administering Agency shall identify, at a minimum, the number of households that attended pre-purchase home ownership counseling, post-purchase home ownership counseling, foreclosure education, and foreclosure prevention outreach programs; the number of existing counselors who attended training; the number of Administering Agencies who attended training; the number of new counselors hired to increase an Administering Agency's capacity; the expenditures incurred for Technical Assistance; and the expenditures incurred for Computer and Equipment Expenses and General Operational Expenses. In the event an Administering Agency administers all or a portion of the Statewide Activities, the Administering Agency shall identify, at a minimum, the costs and expenses incurred in connection with the administration of the Statewide Activity.
- b) City. If the City uses the Grant proceeds to support foreclosure prevention counseling programs administered by the City, the City shall provide quarterly reports to the Authority. The City shall identify, at a minimum, the number of households that attended pre-purchase home ownership counseling, post-purchase home ownership counseling, foreclosure education, and Foreclosure Prevention Outreach Programs; the number of existing counselors who attended training; the number of City's employees who attended training; the number of new counselors hired to increase the City's capacity; the expenditures incurred for Technical Assistance; and the expenditures incurred for Computer and Equipment Expenses and General Operational Expenses.

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- c) Authority. In the event the Authority administers all or a portion of the Statewide Activities, the Authority shall maintain a detailed accounting of its costs and expenses in connection with the administration of Statewide Activity, which shall be available to the public for review.

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Programs for the Preparation of Principals in Illinois
- 2) Code Citation: 23 Ill. Adm. Code 30
- 3)

| | |
|--------------------------|--------------------------|
| <u>Section Numbers</u> : | <u>Proposed Action</u> : |
| 30.20 | Amendment |
| 30.45 | Amendment |
- 4) Statutory Authority: 105 ILCS 5/21-7.6
- 5) A Complete Description of the Subjects and Issues Involved: This set of proposed amendments addresses two Sections of Part 30 to incorporate newly enacted legislation and to update a reference to a set of national standards used by candidates in principal preparation programs.

Section 30.20 is being amended in accordance with PA 97-607, effective August 26, 2011, to state that institutions of higher education can no longer entitle principals with a general administrative endorsement after August 31, 2014. Previous to this legislative change, the effective date had been June 30, 2014.

Section 30.45 is being amended to reflect the updated standards for staff development published by Learning Forward (previously, the National Staff Development Council (NSDC)) earlier this year. Previously called "Standards for Staff Development", they are now titled "Standards for Professional Learning", and the website link has been changed.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes; see Section 30.45.
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a State mandate.

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NOTICE OF PROPOSED AMENDMENT

- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days after the publication of this Notice to:

Shelley Helton
Agency Rules Coordinator
Illinois State Board of Education
100 North First Street (S-493)
Springfield, Illinois 62777

217/782-5270

Comments may also be submitted via e-mail, addressed to:

rules@isbe.net

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Certain not-for-profit entities may apply for approval to offer principal preparation programs (see Section 30.10 of adopted rules).
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent Agendas because: the law necessitating the rulemaking took effect after the publication of the July 2011 regulatory agenda.

The full text of the Proposed Amendments begins on the next page:

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENT

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER b: PERSONNEL

PART 30

PROGRAMS FOR THE PREPARATION OF PRINCIPALS IN ILLINOIS

Section

| | |
|---------------|------------------------------|
| 30.10 | Definitions |
| 30.20 | Purpose and Applicability |
| 30.30 | General Program Requirements |
| 30.40 | Internship Requirements |
| 30.45 | Assessment of the Internship |
| 30.50 | Coursework Requirements |
| 30.60 | Staffing Requirements |
| 30.70 | Candidate Selection |
| 30.80 | Program Approval and Review |
| 30.APPENDIX A | Internship Assessment Rubric |

AUTHORITY: Implementing and authorized by Section 21-7.6 of the School Code [105 ILCS 5/21-7.6].

SOURCE: Old Part repealed at 29 Ill. Reg. 18439, effective October 31, 2005; new Part adopted at 35 Ill. Reg. 9060, effective June 1, 2011; amended at 36 Ill. Reg. _____, effective _____.

Section 30.20 Purpose and Applicability

- a) This Part sets forth the requirements for the approval of programs to prepare individuals *to be highly effective in leadership roles to improve teaching and learning and increase academic achievement and the development of all students* [105 ILCS 5/21-7.6].
- b) Requirements of this Part are in addition to the requirements for the approval of new educator preparation programs set forth in 23 Ill. Adm. Code 25.Subpart C. *Any program offered in whole or in part by a not-for-profit entity also must be approved by the Board of Higher Education* [105 ILCS 5/21-7.1].

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NOTICE OF PROPOSED AMENDMENT

- c) *Candidates successfully completing a principal preparation program shall obtain a principal endorsement on an administrative certificate and are eligible to work as a principal, assistant principal, assistant or associate superintendent, and junior college dean* (Section 21-7.1 of the School Code; also see 23 Ill. Adm. Code 25.337).
- d) No later than ~~September~~[July](#) 1, 2014, all programs for the preparation of principals shall meet the requirements set forth in this Part.
- e) Beginning September 1, 2012, institutions or not-for-profit entities may admit new candidates only to principal preparation programs that have been approved under this Part.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 30.45 Assessment of the Internship

- a) The principal preparation program shall rate each candidate's level of knowledge and abilities gained and dispositions demonstrated as a result of the candidate's participation in the internship required under Section 30.40 of this Part. The candidate shall demonstrate competencies listed in subsections (a)(1) through (4) of this Section by the completion during the course of the internship of the tasks specified.
- 1) The candidate conveys an understanding of how the school's mission and vision affect the work of the staff in enhancing student achievement. He or she understands and is able to perform activities related to data analysis and can use the results of that analysis to formulate a plan for improving teaching and learning. As evidence of meeting this competency, the candidate shall:
- A) review school-level data, including, but not limited to, State assessment results or, for nonpublic schools, other standardized assessment results; use of interventions; and identification of improvement based on those results;
- B) participate in a school improvement planning (SIP) process, including a presentation to the school community explaining the SIP and its relationship to the school's goals; and

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- C) present a plan for communicating the results of the SIP process and implementing the school improvement plan.
- 2) The candidate demonstrates a comprehensive understanding of the process used for hiring staff who will meet the learning needs of the students. The candidate presents knowledge and skills associated with clinical supervision and teacher evaluation, including strong communication, interpersonal and ethics skills. The candidate can apply [Learning Forward's](http://www.learningforward.org/standards/index.cfm) ~~the National Staff Development Council's~~ Standards for [Professional Learning \(2011\)](http://www.learningforward.org/standards/index.cfm) ~~Staff Development (2001)~~ posted at www.learningforward.org/standards/index.cfm ~~http://www.nsde.org/standards/index.cfm~~. No later amendments to or editions of these standards are incorporated by this Section. As evidence of meeting this competency, the candidate shall:
- A) create a job description, including development of interview questions and an assessment rubric, participate in interviews of candidates, make recommendations for hiring (i.e., rationale for action and supporting data), and prepare letters for candidates not selected;
- B) participate in a model evaluation of a teacher, to include at least notes, observations, student achievement data, and examples of interventions and support, as applicable, based on the evaluation results, with the understanding that no candidate will participate in the official evaluation process for any particular teacher; and
- C) create a professional development plan for the school to include the data used to develop the plan, the rationale for the activities chosen, options for participants, reasons why the plan will lead to higher student achievement, and a method for evaluating the effect of the professional development on staff.
- 3) The candidate demonstrates the ability to understand and manage personnel, resources and systems on a schoolwide basis to ensure adequacy and equity, including contributions of the learning environment to a culture of collaboration, trust, learning and high expectations; the impact of the budget and other resources on special-needs students, as well

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as the school as a whole; and management of various systems (e.g., curriculum, assessment, technology, discipline, attendance, transportation) in furthering the school's mission. As evidence of meeting this competency, the candidate shall:

- A) investigate two areas of the school's learning environment (i.e., professional learning community, school improvement process, professional development, teacher leadership, school leadership teams, cultural proficiency, curriculum, and school climate), to include showing connections among areas of the learning environment, identification of factors contributing to the environment's strengths and weaknesses, and recommendations for improvement of areas determined to be ineffective;
 - B) analyze the school's budget, to include a discussion of how resources are used and evaluated for adequacy and effectiveness; recommendations for improvement; and the impact of budget choices, particularly on low-income students, students with disabilities, and English language learners; and
 - C) review the mission statement for the school, to include an analysis of the relationship among systems that fulfill the school's mission, a description of two of these systems (i.e., curriculum, instruction, assessment, discipline, attendance, maintenance, and transportation) and creation of a rating tool for the systems, and recommendations for system improvement to be discussed with the school's principal.
- 4) The candidate demonstrates a thorough understanding of the requirements for, and development of, individualized education programs pursuant to 23 Ill. Adm. Code 226.Subpart C (The Individualized Education Program (IEP)), individual family service plans (IFSP) pursuant to 23 Ill. Adm. Code 226 and 34 CFR 300.24 (2006), and plans under Section 504 of the Rehabilitation Act of 1973 (29 USC 794), including the ability to disaggregate student data, as well as employ other methods for assisting teachers in addressing the curricular needs of students with disabilities. The candidate can work with school personnel to identify English language learners (ELLs) and administer the appropriate program and services, as specified under Article 14C of the School Code [105 ILCS

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5/Art. 14C] and 23 Ill. Adm. Code 228 (Transitional Bilingual Education) to address the curricular and academic needs of English language learners. As evidence of meeting this competency, the candidate shall:

- A) use student data to work collaboratively with teachers to modify curriculum and instructional strategies to meet the needs of each student, including ELLs and students with disabilities, and to incorporate the data into the School Improvement Plan;
- B) evaluate a school to ensure the use of a wide range of printed, visual, or auditory materials and online resources appropriate to the content areas and the reading needs and levels of each student (including ELLs, students with disabilities, and struggling and advanced readers);
- C) in conjunction with special education and bilingual education teachers, identify and select assessment strategies and devices that are nondiscriminatory to be used by the school, and take into consideration the impact of disabilities, methods of communication, cultural background, and primary language on measuring knowledge and performance of students leading to school improvement;
- D) work with teachers to develop a plan that focuses on the needs of the school to support services required to meet individualized instruction for students with special needs (i.e., students with IEPs, IFSPs, or Section 504 plans, ELLs, and students identified as gifted);
- E) proactively serve all students and their families with equity and honor and advocate on their behalf, ensuring an opportunity to learn and the well-being of each child in the classroom;
- F) analyze and use student information to design instruction that meets the diverse needs of students and leads to ongoing growth and development of all students; and
- G) recognize the individual needs of students and work with special education and bilingual education teachers to develop school

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support systems so that teachers can differentiate strategies, materials, pace, levels of complexity, and language to introduce concepts and principles so that they are meaningful to students at varying levels of development and to students with diverse learning needs.

- 5) A principal preparation program shall rate a candidate's demonstration of having achieved the competencies listed in this subsection (a)(1) through (3) as "meets the standards" or "does not meet the standards" in accordance with Section 30.Appendix A of this Part.
 - A) A candidate must achieve a "meets the standards" on each competency in order to successfully complete the internship.
 - B) A candidate who fails to achieve a "meets the standards" on any of the three areas of competency may repeat the tasks associated with the failed competency at the discretion of the principal preparation program.
- b) Each candidate shall participate in, and demonstrate mastery of, the 36 activities listed in Appendix 3 of the document referenced in Section 30.30(b)(3) of this Part. The principal preparation program shall implement a process to assess both the candidate's understanding of school practices that foster student achievement and his or her ability to provide effective leadership. The assessment process and any rubrics to be used shall be submitted as part of the program's application for approval under Section 30.80 of this Part.
 - 1) Programs shall ensure that each candidate demonstrates the participation level in 100 percent of the activities associated with the critical success factors described and defined in Section 30.30(b)(3) of this Part.
 - 2) The assessment shall at least determine at what point a candidate demonstrates leadership in conducting the activities. Each candidate must demonstrate leadership in at least 80 percent of the activities associated with the critical success factors described and defined in Section 30.30(b)(3) of this Part in order to successfully complete the internship.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: The Administration and Operation of the Teachers' Retirement System
- 2) Code Citation: 80 Ill. Adm. Code 1650
- 3)

| <u>Section Numbers:</u> | <u>Proposed Action:</u> |
|-------------------------|-------------------------|
| 1650.511 | Amendment |
| 1650.3005 | Amendment |
| 1650.3010 | Amendment |
| 1650.3015 | Amendment |
| 1650.3020 | Amendment |
| 1650.3025 | Amendment |
| 1650.3030 | Amendment |
| 1650.3032 | New |
| 1650.3035 | Amendment |
| 1650.3040 | Amendment |
- 4) Statutory Authority: Implementing and authorized by Article 16 of the Illinois Pension Code [40 ILCS 5/Art. 16]
- 5) A Complete Description of the Subjects and Issues Involved: Section 1650.511 is being modified to reflect the return to the 100-day/500-hour post-retirement teaching limits that took effect July 1, 2011. The legislature did not extend the 120-day/600-hour limits during the spring legislative session.

Subpart P: Competitive Selection Procedures for Investment Services are being amended to reflect process-related changes made by the Board of Trustees over the past year, including a change in the investment process for the selection of public markets investment managers allowing for staff selection and/or termination of managers in certain circumstances, the addition of a private equity co-investment program, and updating language relating to the absolute return portfolio to reflect direct investment in addition to the existing funds of funds process.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No

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- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate under the State Mandates Act [30 ILCS 805].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed amendment may be submitted in writing for a period of 45 days following publication of this Notice to:
- Cynthia M. Fain
Sr. Asst. General Counsel
Teachers' Retirement System
2815 West Washington
P. O. Box 19253
Springfield, Illinois 62794-9253
- 217/753-0375
- 13) Initial Regulatory Flexibility Analysis: These rules will not affect small businesses.
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2011

The full text of the Proposed Amendments begin on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

SUBTITLE D: RETIREMENT SYSTEMS

CHAPTER III: TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

PART 1650

THE ADMINISTRATION AND OPERATION OF THE
TEACHERS' RETIREMENT SYSTEM

SUBPART A: REPORTS BY BOARD OF TRUSTEES

Section

1650.10 Annual Financial Report (Repealed)

SUBPART B: BASIC RECORDS AND ACCOUNTS

Section

1650.110 Membership Records
 1650.120 Claims Records (Repealed)
 1650.130 Individual Accounts (Repealed)
 1650.140 Ledger and Accounts Books (Repealed)
 1650.150 Statistics (Repealed)
 1650.160 Confidentiality of Records
 1650.180 Filing and Payment Requirements
 1650.181 Early Retirement Incentive Payment Requirements (Repealed)
 1650.182 Waiver of Additional Amounts Due
 1650.183 Definition of Employer's Normal Cost

SUBPART C: FILING OF CLAIMS

Section

1650.201 Disability Benefits – Application Procedure; Effective Date
 1650.202 Disability Benefits – Definitions
 1650.203 Disability Retirement Annuity – Definitions
 1650.204 Gainful Employment – Consequences
 1650.205 Medical Examinations and Investigation of Disability Claims
 1650.206 Physician Certificates
 1650.207 Disability Due to Pregnancy
 1650.208 Disability Payments
 1650.209 Computation of Annual Salary When Member Has Different Semester Salary

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| | |
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| | Rates (Repealed) |
| 1650.210 | Claim Applications |
| 1650.211 | Disability Recipient Eligible to Receive an Age or Disability Retirement Annuity |
| 1650.220 | Reclassification of Disability Claim (Repealed) |
| 1650.221 | When Member Becomes Annuitant |
| 1650.222 | Death Out of Service |
| 1650.230 | Medical Examinations and Investigations of Claims (Repealed) |
| 1650.240 | Refunds; Canceled Service; Repayment |
| 1650.250 | Death Benefits |
| 1650.260 | Evidence of Age |
| 1650.270 | Reversionary Annuity – Evidence of Dependency |
| 1650.271 | Evidence of Parentage |
| 1650.272 | Eligible Child Dependent By Reason of a Physical or Mental Disability |
| 1650.280 | Evidence of Marriage |
| 1650.290 | Offsets |

SUBPART D: MEMBERSHIP AND SERVICE CREDITS

| | |
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| Section | |
| 1650.301 | Early Retirement Without Discount – Return to Teaching from a Break in Service |
| 1650.310 | Effective Date of Membership |
| 1650.315 | Verifying Service Credit |
| 1650.320 | Method of Calculating Service Credits |
| 1650.325 | Method of Calculating Service Credit for Recipients of a Disability Benefit or Occupational Disability Benefit |
| 1650.330 | Duplicate Service Credit |
| 1650.335 | Unreported Regular Service Credit and Earnings |
| 1650.340 | Service Credit for Leaves of Absence |
| 1650.341 | Service Credit for Involuntary Layoffs |
| 1650.345 | Service Credit for Periods Away From Teaching Due to Pregnancy |
| 1650.346 | Service Credit for Periods Away From Teaching Due to Adoption |
| 1650.350 | Service Credit for Unused Accumulated Sick Leave Upon Retirement |
| 1650.351 | Employer Contribution for Excess Sick Leave |
| 1650.355 | Purchase of Optional Service – Required Minimum Payment |
| 1650.356 | Payroll Deduction Program (Repealed) |
| 1650.357 | Employer Payment of Member's Optional Service and/or Upgrade Contribution Balance (Repealed) |
| 1650.360 | Settlement Agreements and Judgments |
| 1650.370 | Calculation of Average Salary (Renumbered) |

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- 1650.380 Definition of Actuarial Equivalent (Repealed)
- 1650.390 Independent Contractors
- 1650.391 Optional 2.2 Upgrade of Earned and Credited Service
- 1650.392 2.2 Upgrade of Optional Service Not Credited at Initial Upgrade

SUBPART E: CONTRIBUTION CREDITS AND PAYMENTS

Section

- 1650.410 Return of Contributions for Duplicate or Excess Service
- 1650.415 Return of Optional Increase in Retirement Annuity Contributions
- 1650.416 Optional Increase in Retirement Annuity – 1% Contribution Reduction
- 1650.417 Mandatory Distributions Pursuant to Section 401(a)(9) of the Internal Revenue Code
- 1650.420 Interest on Deficiencies (Repealed)
- 1650.430 Installment Payments (Repealed)
- 1650.440 Small Deficiencies, Credits or Death Benefit Payments (Repealed)
- 1650.450 Compensation Recognized As "Salary"
- 1650.451 Reporting of Conditional Payments
- 1650.460 Calculation of Average Salary
- 1650.470 Rollover Distributions
- 1650.480 Rollovers to the System
- 1650.481 Employer Contribution Required for Salary Increases in Excess of 6%
- 1650.482 Contracts and Collective Bargaining Agreements – Loss of Exemption from Employer Contributions
- 1650.483 Employer Contributions for Salary Increases in Excess of 6% and Excess Sick Leave Exemption from Contributions
- 1650.484 Members Not Covered by Collective Bargaining Agreements or Employment Contracts
- 1650.485 Employer Contributions for Salary Increases in Excess of 6% – Receipt of Bill

SUBPART F: ANNUITANTS AND BENEFICIARIES

Section

- 1650.505 Beneficiary (Repealed)
- 1650.510 Re-entry Into Service (Repealed)
- 1650.511 Separation from Service
- 1650.512 Verification of Compliance with Post-Retirement Employment Limitations
- 1650.520 Suspension of Benefits
- 1650.530 Power of Attorney

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- 1650.540 Conservators/Guardians
- 1650.550 Presumption of Death
- 1650.560 Benefits Payable on Death
- 1650.561 Valid Beneficiary Designations
- 1650.570 Survivors' Benefits
- 1650.571 Payment of Monthly Survivor Benefits to a Trust
- 1650.575 Full-time Student – Receipt of Survivors Benefits Until Age 22
- 1650.580 Evidence of Eligibility
- 1650.590 Comptroller Offset
- 1650.595 Overpayments

SUBPART G: ATTORNEY GENERALS' OPINION

- Section
- 1650.605 Policy of the Board Concerning Attorney Generals' Opinion (Repealed)

SUBPART H: ADMINISTRATIVE REVIEW

- Section
- 1650.610 Staff Responsibility
- 1650.620 Right of Appeal
- 1650.630 Form of Written Request
- 1650.635 Presiding Hearing Officer – Duties and Responsibilities
- 1650.640 Prehearing Procedure
- 1650.641 Claims Hearing Committee Hearing Packet
- 1650.650 Hearing Procedure
- 1650.660 Rules of Evidence (Repealed)

SUBPART I: AMENDMENTS TO BYLAWS AND RULES

- Section
- 1650.710 Amendments

SUBPART J: RULES OF ORDER

- Section
- 1650.810 Parliamentary Procedure

SUBPART K: PUBLIC RECORD REQUESTS

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Section

- 1650.910 Summary and Purpose (Repealed)
- 1650.920 Definitions (Repealed)
- 1650.930 Submission of Requests
- 1650.940 Form and Content of FOIA Requests (Repealed)
- 1650.950 Appeal of a Denial (Repealed)
- 1650.960 Executive Director's Response to Appeal (Repealed)
- 1650.970 Response to FOIA Requests (Repealed)
- 1650.980 Inspection of Records at System Office
- 1650.990 Copies of Public Records
- 1650.995 Materials Immediately Available

SUBPART L: BOARD ELECTION PROCEDURES

Section

- 1650.1000 Nomination of Candidates
- 1650.1001 Elections Date/Election Day – Defined
- 1650.1010 Petitions
- 1650.1020 Eligible Voters
- 1650.1030 Election Materials
- 1650.1040 Marking of Ballots
- 1650.1050 Return of Ballots
- 1650.1060 Observation of Ballot Counting
- 1650.1070 Certification of Ballot Counting
- 1650.1080 Challenges to Ballot Counting
- 1650.1090 Special Election to Fill Un-Expired Term of Elected Trustee

SUBPART M: QUALIFIED ILLINOIS DOMESTIC RELATIONS ORDERS

Section

- 1650.1110 Definitions
- 1650.1111 Requirements for a Valid Qualified Illinois Domestic Relations Order
- 1650.1112 Requirements for a Valid QILDRO Calculation Order
- 1650.1113 Required Forms
- 1650.1114 Filing a QILDRO or a Calculation Order with the System
- 1650.1115 Benefits Affected by a QILDRO
- 1650.1116 Effect of a Valid QILDRO
- 1650.1117 QILDROs Against Persons Who Became Members Prior to July 1, 1999

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| 1650.1118 | Alternate Payee's Address |
| 1650.1119 | Electing Form of Payment |
| 1650.1120 | Automatic Annual Increases |
| 1650.1121 | Reciprocal Systems QILDRO Policy Statement (Repealed) |
| 1650.1122 | Providing Benefit Information for Divorce Purposes |
| 1650.1123 | Suspension and Expiration of a QILDRO |
| 1650.1124 | Income Tax Reporting |
| 1650.1125 | Lump-Sum Death Benefit Allocation to Alternate Payee |

SUBPART N: PAYROLL DEDUCTION PROGRAM

| | |
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| Section | |
| 1650.1200 | Payroll Deduction Program Guidelines |
| 1650.1201 | Employer Responsibility Under the Payroll Deduction Program |
| 1650.1202 | Payroll Deduction Agreements – Suspensions and Terminations |
| 1650.1203 | Payroll Deduction Program – Full Time Employment Defined |
| 1650.1204 | Payroll Deduction Program – Disability Defined |
| 1650.1205 | Employer Payment of Member's Optional Service, Refund and/or Upgrade Contribution Balance |

SUBPART O: RETIREMENT BENEFITS

| | |
|-----------|----------------------------|
| Section | |
| 1650.2900 | Excess Benefit Arrangement |

SUBPART P: COMPETITIVE SELECTION PROCEDURES
FOR INVESTMENT SERVICES

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| Section | |
| 1650.3000 | Summary and Purpose |
| 1650.3005 | Definitions |
| 1650.3010 | Public Markets Manager Database |
| 1650.3015 | Emerging Investment Managers |
| 1650.3020 | Public Market Searches |
| 1650.3025 | Small and Mid Cap Equity Searches |
| 1650.3030 | Private Market and Commingled Fund Searches |
| 1650.3032 | Co-Investment Opportunities |
| 1650.3035 | Private Market Real Estate Separate Account Searches |
| 1650.3040 | Consultant Searches |

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1650.3045 Evaluation by Investment Committee

SUBPART Q: PLAN QUALIFICATION

1650.3100 Summary and Purpose
1650.3105 Exclusive Benefit Rule
1650.3110 USERRA (Uniformed Services Employment and Reemployment Rights Act (38 USC 4301-4335)) Compliance
1650.3115 Required Minimum Distributions
1650.3120 Federal Contribution and Benefit Limitations
1650.3125 Mortality Tables and Interest Rates

AUTHORITY: Implementing and authorized by Articles 1 and 16 of the Illinois Pension Code [40 ILCS 5/Arts. 1 and 16]; Freedom of Information Act [5 ILCS 140]; Internal Revenue Code (26 USC 1 et seq.); Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

SOURCE: Filed June 20, 1958; emergency rules adopted at 2 Ill. Reg. 49, p. 249, effective November 29, 1978, for a maximum of 150 days; adopted at 3 Ill. Reg. 9, p. 1, effective March 3, 1979; codified at 8 Ill. Reg. 16350; amended at 9 Ill. Reg. 20885, effective December 17, 1985; amended at 12 Ill. Reg. 16896, effective October 3, 1988; amended at 14 Ill. Reg. 18305, effective October 29, 1990; amended at 15 Ill. Reg. 16731, effective November 5, 1991; amended at 17 Ill. Reg. 1631, effective January 22, 1993; amended at 18 Ill. Reg. 6349, effective April 15, 1994; emergency amendment at 18 Ill. Reg. 8949, effective May 24, 1994, for a maximum of 150 days; emergency modified at 18 Ill. Reg. 12880; amended at 18 Ill. Reg. 15154, effective September 27, 1994; amended at 20 Ill. Reg. 3118, effective February 5, 1996; emergency amendment at 21 Ill. Reg. 483, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 2422, effective January 31, 1997; amended at 21 Ill. Reg. 4844, effective March 27, 1997; emergency amendment at 21 Ill. Reg. 17159, effective December 9, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 7243, effective April 9, 1998; emergency amendment at 22 Ill. Reg. 7314, effective April 9, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 9374, effective May 14, 1998, for a maximum of 150 days; emergency rule modified in response to JCAR Objection at 22 Ill. Reg. 11640; emergency amendment at 22 Ill. Reg. 13151, effective June 29, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 15620, effective August 17, 1998; amended at 22 Ill. Reg. 19079, effective October 1, 1998; amended at 22 Ill. Reg. 22090, effective December 1, 1998; amended at 23 Ill. Reg. 3079, effective February 23, 1999; amended at 24 Ill. Reg. 2440, effective January 27, 2000; amended at 24 Ill. Reg. 10300, effective June 26, 2000; amended at 25 Ill. Reg. 203, effective December 22, 2000; amended at 26 Ill. Reg. 2758, effective February 11, 2002; amended at 26 Ill. Reg. 11476, effective July 11, 2002; amended at 27 Ill. Reg. 1668, effective

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January 17, 2003; amended at 27 Ill. Reg. 9209, effective May 28, 2003; amended at 28 Ill. Reg. 10055, effective June 29, 2004; amended at 29 Ill. Reg. 1546, effective January 14, 2005; amended at 29 Ill. Reg. 13244, effective August 9, 2005; amended at 30 Ill. Reg. 194, effective December 23, 2005; amended at 30 Ill. Reg. 472, effective December 21, 2005; amended at 30 Ill. Reg. 11728, effective June 23, 2006; amended at 30 Ill. Reg. 17525, effective October 18, 2006; amended at 31 Ill. Reg. 10688, effective July 13, 2007; amended at 32 Ill. Reg. 4073, effective February 28, 2008; amended at 32 Ill. Reg. 7979, effective May 6, 2008; amended at 32 Ill. Reg. 13534, effective August 6, 2008; amended at 33 Ill. Reg. 4401, effective March 3, 2009; amended at 33 Ill. Reg. 15863, effective November 2, 2009; amended at 34 Ill. Reg. 4900, effective March 22, 2010; amended at 34 Ill. Reg. 7787, effective May 21, 2010; amended at 35 Ill. Reg. 2413, effective January 21, 2011; amended at 35 Ill. Reg. 2788, effective January 25, 2011; amended at 35 Ill. Reg. 3781, effective February 18, 2011; amended at 35 Ill. Reg. 19541, effective November 18, 2011; amended at 36 Ill. Reg. _____, effective _____.

SUBPART F: ANNUITANTS AND BENEFICIARIES

Section 1650.511 Separation from Service

- a) Under the provisions of section 401(a) of the Internal Revenue Code (26 USC 401(a)), a member must "separate from service" to be eligible to receive a retirement benefit from the System.
- b) To meet the "separation from service" requirement of the Internal Revenue Code, an annuitant cannot return to work with his or her last employer in the same position unless:
 - 1) ~~Re-employment~~ reemployment was not discussed nor arranged until 30 days after the annuitant's date of retirement.
 - 2) The annuitant is not employed by the annuitant's former employer prior to 30 days after the annuitant's retirement and until the next school year after retirement.
 - 3) The annuitant is only employed by his or her last employer in the annuitant's last position no more than the limit provided in Section 16-118(a)(2) of the Pension Code [40 ILCS 5/16-118(a)(2)] in the school year following the school year of retirement.

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- 4) The annuitant's employer must fill the annuitant's former position with a new employee after the above ~~100+20~~ day or ~~500600~~ hour employment period has elapsed.
- c) This Section shall apply whether or not the position requires certification or the member can fill the position post-retirement without certification.
- d) A change in job title is not sufficient to demonstrate "separation from service".
- e) Failure to "separate from service" shall nullify an annuitant's retirement and constitute a return to service under Section 16-150(d) of the Pension Code.
- f) Return to part-time non-tenured or substitute teaching with the annuitant's last employer shall not be a return to the same position.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART P: COMPETITIVE SELECTION PROCEDURES
FOR INVESTMENT SERVICES**Section 1650.3005 Definitions**

- a) The definitions in Articles 1 and 16 of the Illinois Pension Code [40 ILCS 5/Arts. 1 and 16] apply to this Subpart.
- b) The definition of "investment services" in the Illinois Pension Code [40 ILCS 5/1-113.14(a)] applies to this Subpart.
- c) "System" means the Teachers' Retirement System of the State of Illinois.
- d) "Consultant" means the independent investment consulting firm or firms contractually engaged by the System to provide general or specialty investment consulting services for the prudent administration of the System's investment portfolio.
- e) "Board" means the Board of Trustees of the Teachers' Retirement System of the State of Illinois.

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- f) "Investment Committee" means the investment committee of the Board of Trustees of the Teachers' Retirement System of the State of Illinois.
- g) "Manager Database" means an industry database of institutional quality registered investment management firms utilized by the consultant as described in [this Subpart Section 1650.3010](#).
- h) "PEOC" means the internal Staff Private Equity Oversight Committee.
- i) "PMOC" means the internal Staff Public Market Oversight Committee.
- j) "REOC" means the internal Staff Real Estate Oversight Committee.
- k) "Staff" means the professional investment staff of the Teachers' Retirement System responsible for the applicable asset class.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1650.3010 Public Markets Manager Database

- a) The consultant ~~makes~~~~will make~~ use of an industry database (Manager Database) containing institutional quality firms that are registered investment managers. No fee is required to participate in the Manager Database.
- b) The Manager Database serves as the primary pool from which the System identifies candidates for public market investment manager searches.
- c) To be considered in a public market search, all interested investment managers not currently in the Manager Database should ensure that all required information has been submitted to the Manager Database prior to the screening dates specified in the candidate profiles described in Sections 1650.3020 and 1650.3025. Should a search be conducted for which a developed database does not exist or is incomplete, investment managers may also submit or be requested to submit a written Request for Information (RFI).
- d) The consultant's contact information is available on the TRS web site (trs.illinois.gov).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 1650.3015 Emerging Investment Managers

- a) The System's emerging managers program is broadly available across all asset classes. The program is open to any firm meeting the definition of "emerging investment manager" as defined in Section 1-109.1(4) of the Illinois Pension Code and to any other younger, growing investment firms with smaller asset bases and developing track records. Any firm interested in participating in the emerging managers program may submit the appropriate questionnaire provided on the TRS web site (trs.illinois.gov). All responses are reviewed by staff and included in the System's emerging manager database.
- b) Staff screens the System's database for emerging manager candidates across all asset classes and actively pursues other potential candidates not included within the database through industry participation and other networking channels. Any candidate meeting the definition of "emerging investment manager" as defined in the Illinois Pension Code [40 ILCS 5/1-109.1(4)] or any promising younger, growing investment manager that currently has smaller asset bases and developing track records, and meeting the minimum criteria for a related search, is invited to meet with staff to discuss its product.
- c) Based on review of the database and submitted questionnaires, staff meets to identify managers ~~the results of the meetings, staff selects semi-finalist firms~~ that appear to have the highest probability of success over the next three to five years and the potential for graduation from the emerging manager program into the main portfolio.
- d) Staff and the consultant conduct in-person interviews of managers ~~semi-finalist firms~~ at the System's offices or an alternate location agreed upon by the System and the manager ~~firm~~. ~~Semi-finalists must be approved by the applicable staff oversight committee (PMOC, PEOC or REOC).~~
- e) Following favorable results of the in-person interviews, staff identifies finalist firms for on-site due diligence at the candidate firm's offices. On-site visits and finalist recommendations must be approved by the applicable staff oversight committee (PMOC, PEOC or REOC).
- f) After on-site due diligence is completed, staff initiates fee and contract negotiations with the finalist firms. All contracts and related documentation

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relative to hiring an investment manager ~~should~~**must** be negotiated in final form prior to Investment Committee consideration. Any open items relating to fee and contract negotiation must be disclosed prior to Investment Committee consideration.

- g) Any finalist firm that successfully passes staff due diligence review (including approval of the appropriate oversight committee) and fee and contract negotiations is presented to the Investment Committee for consideration.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1650.3020 Public Market Searches

- a) The Board authorizes the System's asset allocation targets and investment manager structure~~every search for a new or replacement public market investment mandate (excluding small and mid cap equities; see Section 1650.3025)~~ by recorded vote ~~of the Board~~ in a business meeting of the Board conducted in accordance with the Open Meetings Act [5 ILCS 120]. Staff may initiate searches as necessary to implement the System's asset allocation and/or fill vacancies within the manager structure.
- b) At each meeting of the Investment Committee, staff will notify the Board of any new manager search, the status of all existing searches, and the outcome of all completed searches. ~~The Board's vote authorizing a search is reported in the System's press release issued to the financial press and posted on the TRS web site (trs.illinois.gov) as soon as possible and no later than two business days following conclusion of the Board meeting.~~
- c) With the initiation of a search,~~Following Board authorization,~~ staff, working with the consultant, prepares a written candidate profile that lists specific requirements for each search. The candidate profile identifies specific quantitative and qualitative factors, such as:
- 1) Minimum assets under management;
 - 2) Minimum track record;
 - 3) Risks relative to benchmarks;

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- 4) Return relative to benchmarks over various time periods;
 - 5) Size and tenure of professional staff;
 - 6) Investment strategy and process; and
 - 7) Organizational stability and strength.
- d) The candidate profile is posted on the TRS web site to allow ~~all~~any interested ~~candidate~~candidate to review the search criteria and understand how to participate in the search.
 - e) The candidate profile identifies a specific screening period during which the consultant will screen the Manager Database or other candidate information to identify all managers meeting the criteria of the candidate profile.
 - f) During the screening period identified in the candidate profile, staff and the consultant identify and rank all candidates in the Manager Database that meet the quantitative criteria specified in the candidate profile.
 - g) Staff and the consultant review the candidate list to eliminate any managers that fail to meet qualitative screens. All emerging managers, as defined in Section 1-119.1(4) of the Illinois Pension Code, that meet the minimum criteria of the search will be identified and the most promising emerging manager candidates will be included in the selection process described in this Section.
 - h) Staff and the consultant further refine the candidate list to identify semi-finalist firms that, based on criteria in the candidate profile, appear to have the highest probability of success over the next three to five years. In the event more information is necessary to narrow the semi-finalist list, a standardized Request for Information (RFI) may be issued to the pool of eligible semi-finalists to facilitate further in-depth analysis by staff and the consultant. Semi-finalists in this case are selected from the RFI submissions.
 - i) Staff conducts in-person interviews of semi-finalist firms at the System's offices or an alternate location agreed upon by the System and the firm. Semi-finalist~~Semi-finalists~~ candidates must be approved by the PMOC.

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- j) Following favorable results of the in-person interviews, staff identifies finalist firms for formal due diligence meetings, typically at the candidate firm's offices. Due diligence meetings and finalist recommendations must be approved by the PMOC. ~~If any eligible emerging managers, as defined in the Illinois Pension Code [40 ILCS 5/1-119.1(4)], meet the minimum criteria of the search, the most qualified emerging candidate will be invited to present as a finalist to the Investment Committee at its next scheduled meeting allowing sufficient time on the meeting agenda.~~
- k) ~~Following favorable due diligence review and successful contract and fee negotiations, a finalist candidate is, or candidates are, presented to the PMOC for final approval. After due diligence is completed, staff initiates fee and contract negotiations with the finalist firms. All contracts and related documentation relative to hiring an investment manager must be negotiated in final form prior to Investment Committee consideration.~~
- l) ~~With approval from the PMOC, staff will present the recommendation to the Investment Committee Chair and/or Vice Chair. Documentation to the Chair will include a timeline of the search process, a summary of that process, and confirmation that the search was conducted in accordance with TRS policy. Any finalist firm that successfully passes due diligence review and fee and contract negotiations is presented to the Investment Committee for consideration.~~
- m) ~~With approval of the Investment Committee Chair and/or Vice Chair, staff is authorized to implement the recommendation.~~
- n) ~~At the next scheduled meeting of the Investment Committee following the completion of any search, staff will provide the Committee a full report of the search process, including a summary of the search criteria and candidate firms. The Investment Committee and Board will provide final ratification for the long-term selection of the investment manager.~~
- o) ~~If any eligible managers, as defined in Section 1-119.1(4) of the Illinois Pension Code, meet the minimum criteria of the search, the most qualified emerging candidate will be invited to present as a finalist to the Investment Committee at its next scheduled meeting.~~

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 1650.3025 Small and Mid Cap Equity Searches

- a) The Board has authorized and directed staff to continuously monitor the investment manager universe for attractive small and mid cap public equity candidates. Staff and the consultant formally screen the full manager universe on a semi-annual basis following the end of each fiscal and calendar year.
- b) ~~Following the semi-annual screening of the small cap and/or mid-cap equity database, the search process continues in a manner consistent with Section 1650.3020. Staff, working with the consultant, has prepared a written candidate profile that lists specific requirements for small and mid cap public equity candidates. The candidate profile identifies specific quantitative and qualitative factors, such as:~~
- ~~1) Minimum assets under management;~~
 - ~~2) Minimum track record;~~
 - ~~3) Risks relative to benchmarks;~~
 - ~~4) Return relative to benchmarks over various time periods;~~
 - ~~5) Size and tenure of professional staff;~~
 - ~~6) Investment strategy and process; and~~
 - ~~7) Organizational stability and strength.~~
- e) ~~The candidate profile is continuously posted on the TRS web site (trs.illinois.gov) to allow any interested candidate to review the search criteria.~~
- d) ~~The candidate profile identifies a specific screening period during which the consultant will screen the Manager Database to identify all managers meeting the criteria of the candidate profile.~~
- e) ~~During the screening period identified in the candidate profile, staff and the consultant identify and rank all candidates in the Manager Database that meet the quantitative criteria specified in the candidate profile.~~

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- f) ~~Staff and the consultant review the candidate list to eliminate any managers that fail to meet qualitative screens.~~
- g) ~~Staff and the consultant further refine the candidate list to identify firms that, based on criteria in the candidate profile, appear to have the highest probability of success over the next three to five years. In the event more information is necessary to narrow the semi-finalist list, a standardized Request for Information (RFI) may be issued to the pool of eligible semi-finalists to facilitate further in-depth analysis by staff and the consultant. Semi-finalists in this case are selected from the RFI submissions.~~
- h) ~~Staff and the consultant conduct in-person interviews of semi-finalist firms at the System's offices or alternate location agreed upon by the System and the firm. Semi-finalists must be approved by the PMOC.~~
- i) ~~Following favorable results of the in-person interviews, staff identifies finalist firms for formal due diligence meetings, typically at the candidate firm's offices. Due diligence meetings and finalist recommendations must be approved by the PMOC.~~
- j) ~~After due diligence is completed, staff initiates fee and contract negotiations with the finalist firms. All contracts and related documentation relative to hiring an investment manager must be negotiated in final form prior to Investment Committee consideration.~~
- k) ~~Any finalist firm that successfully passes due diligence review and fee and contract negotiations is presented to the Investment Committee for consideration.~~

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1650.3030 Private Market and Commingled Fund Searches

- a) Funds and managers are opportunistically reviewed as they are available in the ~~private~~ market based on the System's ~~annual private equity and real estate~~ tactical plans and quality of the fund's or manager's team, process and strategy.
- b) ~~Each year, staff~~Staff, working with the consultants, ~~prepare~~prepares a private equity tactical plan and a real estate tactical plans for private equity, real estate, and absolute return plan for presentation to the Investment Committee_ at the

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~~beginning of each fiscal year.~~ The annual tactical plans establish allocation targets for opportunistic investments within the private equity, real estate, and absolute return~~private markets~~ asset classes for the upcoming year.

- c) Summaries of the System's annual tactical plans are posted on the TRS web site (trs.illinois.gov) following Board approval. Investment focus for the fiscal year is specified in the annual tactical plan summaries for all interested funds and managers to review.
- d) Funds and managers interested in participating in the System's alternative investment~~private market~~ program and meeting the investment focus specified in the annual tactical plans~~plan~~ may identify themselves to the System or ~~its~~the consultants via email, as instructed on the TRS web site.
- e) Over the course of the tactical plan period, staff reviews all information received from funds and managers that best position the System's investment portfolio for its intended strategic allocation targets.
- f) Staff eliminates any investment opportunities that fail to meet the System's qualitative requirements and/or do not fit into a strategic allocation defined in the annual tactical plans~~plan~~.
- g) Any fund or manager meeting the criteria set forth in the annual tactical plan and deemed to be a complementary~~complimentary~~ fit to the portfolio is invited to interview with staff in person or via conference call. Any decision to interview a prospective fund or manager must be approved by the applicable staff oversight committee (PEOC, ~~or~~ REOC, or PMOC).
- h) Following favorable interview results and staff research into the fund offering or manager, the fund or manager is asked to complete the System's standardized comprehensive due diligence questionnaire. Any recommendation to send the due diligence questionnaire must be approved by the applicable staff oversight committee.
- i) Following continued favorable review,~~favorable results of the completed due diligence questionnaire~~, staff proceeds with formal due diligence meetings, typically at the candidate firm's offices. Any recommendation for due diligence meetings must be approved by the applicable staff oversight committee.

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- j) After due diligence is completed, staff initiates fee and contract negotiations with the finalist firm. All contracts and related documentation relative to hiring a fund or manager ~~should~~**must** be negotiated in final form prior to Investment Committee consideration. Disclosure must be made to the Investment Committee prior to consideration in the event of any contractual issues still under negotiation.
- k) Any finalist firm that successfully passes due diligence review and fee and contract negotiations is presented to the Investment Committee for consideration.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 1650.3032 Co-Investment Opportunities

- a) The System's alternative investment relations will often present opportunities for co-investment alongside fund investments. When these investments are complementary to the portfolio, it is advantageous to the System to participate in these opportunities as they provide return enhancement at lower fee structures.
- b) Co-investment opportunities are typically presented to TRS staff from existing alternative investment managers. Staff conducts their own separate due diligence on each co-investment opportunity.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 1650.3035 Private Market Real Estate Separate Account Searches

- a) Real estate separate account managers are opportunistically reviewed as they are available in the market based on the System's annual real estate tactical plan and quality of the manager's team, process and strategy.
- b) Staff, working with the consultant, prepares a real estate tactical plan for presentation to the Investment Committee at the beginning of each fiscal year. The annual real estate tactical plan establishes the search criteria, investment strategy and allocation targets.
- c) A real estate tactical plan summary is posted on the TRS web site (trs.illinois.gov) following Board approval. Search criteria for the fiscal year are listed in the real estate tactical plan summary for all interested managers to review.

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- d) Managers interested in participating in the System's real estate program and meeting the criteria specified in the annual real estate tactical plan may identify themselves to the System or the consultant via email, as instructed on the TRS web site.
- e) Over the course of the real estate tactical plan period, staff reviews all information received from managers that best position the System's investment portfolio for its intended strategic allocation targets.
- f) Staff eliminates any investment opportunities that fail to meet the System's qualitative requirements and/or do not fit into a strategic allocation defined in the annual real estate tactical plan.
- g) Any manager meeting the criteria set forth in the annual real estate tactical plan and deemed to be a ~~complementary~~complimentary fit to the portfolio is invited to interview with staff in person or via conference call. Any decision to interview a prospective manager must be approved by the REOC.
- h) Following favorable results of interview and staff research, the manager is asked to complete the System's standardized comprehensive due diligence questionnaire. Any recommendation to send the due diligence questionnaire must be approved by the REOC.
- i) Following favorable results of the completed due diligence questionnaire, staff proceeds with formal due diligence meetings, typically at the candidate firm's offices. Any recommendation for due diligence meetings must be approved by the REOC.
- j) After due diligence is completed, staff initiates fee and contract negotiations with the finalist firm. All contracts and related documentation relative to hiring a manager must be negotiated in final form prior to Investment Committee consideration.
- k) Any finalist firm that successfully passes due diligence review and fee and contract negotiations is presented to the Investment Committee for consideration.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 1650.3040 Consultant Searches

- a) The Board authorizes every search for a new or replacement consultant to provide general or specialty investment consulting services to the System by recorded vote ~~of the Board~~ in a business meeting of the Board conducted in accordance with the Open Meetings Act [5 ILCS 120].
- b) The Board's vote authorizing a search is reported in the System's press release issued to the financial press and posted on the TRS web site (trs.illinois.gov) as soon as possible and no later than two business days following conclusion of the Board meeting.
- c) Following Board authorization, staff prepares a Request for Proposal (RFP) containing the following information:
 - 1) The type of services required;
 - 2) An estimate of when and for how long the services will be required;
 - 3) The contract to be used;
 - 4) The date and time by which proposals must be submitted; and
 - 5) A statement of the information the proposal must contain.
- d) The RFP is posted on the TRS web site to allow any interested candidate to review the search criteria. The RFP notice posted on the TRS Web site summarizes the services sought, tells how and where to submit proposals, specifies the deadline for submitting proposals, and tells when and where proposals will be publicly opened and how to obtain paper copies of the RFP.
- e) Proposals submitted in response to an RFP must comply with all requirements set forth in the RFP and submitted within the time frame specified in the RFP. Proposals are date and time stamped upon receipt. Proposals that arrive late for any reason will not be considered.
- f) Proposals are publicly opened at the date and time specified on the TRS web site. Staff reviews all proposals timely received to ensure all required information is

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included. Proposal information is publicly available following execution of a contract with the successful firm.

- g) Staff identifies and ranks all proposals meeting all minimum qualifications specified in the RFP to identify semi-finalist firms.
- h) Staff conducts in-person interviews of semi-finalist firms at the System's offices or alternate location agreed upon by the System and the firm.
- i) Following favorable results of the in-person interviews, staff identifies finalist firms for formal due diligence meetings, typically at the candidate firm's offices.
- j) After due diligence is completed, staff initiates fee and contract negotiations with finalist firms. All contracts and related documentation relative to hiring a consultant must be negotiated in final form prior to Investment Committee consideration. Contracts for consultant services may not exceed five years in duration.
- k) Any finalist firm that successfully passes due diligence review and fee and contract negotiations is presented to the Investment Committee for consideration.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Collaborative Baccalaureate Degree Development Grant Program
- 2) Code Citation: 23 Ill. Adm. Code 1090
- 3)

| <u>Section Numbers</u> : | <u>Adopted Action</u> : |
|--------------------------|-------------------------|
| 1090.10 | New |
| 1090.20 | New |
| 1090.30 | New |
| 1090.40 | New |
| 1090.50 | New |
| 1090.60 | New |
| 1090.70 | New |
| 1090.80 | New |
| 1090.90 | New |
- 4) Statutory Authority: Implementing and authorized by Section 9.33 of the Board of Higher Education Act [110 ILCS 205/9.33]
- 5) Effective Date of Rules: December 14, 2011
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? The rulemaking does not include incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act.
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Board of Higher Education's office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: June 24, 2011; 35 Ill. Reg. 9217
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: In Section 1090.50(b)(1), after "projects" a comma has been added.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Rules: The purpose of this Part is to provide for the distribution of competitive grant funds to help deliver upper division courses and bachelor's degree programs offered by bachelor's degree-granting colleges and universities at a location geographically convenient to student populations currently being served by existing public community colleges [110 ILCS 205/9.33(a)].
- 16) Information and questions regarding these adopted rules shall be directed to:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
431 East Adams Street, 2nd Floor
Springfield, Illinois 62701

Telephone: 217/557-7358
E-Mail: helland@ibhe.org
Facsimile: 217/782-8548

The full text of the Adopted Rules begins on the next page:

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NOTICE OF ADOPTED RULES

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1090

COLLABORATIVE BACCALAUREATE DEGREE DEVELOPMENT GRANT PROGRAM

Section

| | |
|---------|--------------------------------------|
| 1090.10 | Purpose |
| 1090.20 | Definitions |
| 1090.30 | Eligibility |
| 1090.40 | Application |
| 1090.50 | Use of Grant Funds |
| 1090.60 | Review and Evaluation of Application |
| 1090.70 | Grant Award |
| 1090.80 | Grant Agreement |
| 1090.90 | Audit Guidelines |

AUTHORITY: Implementing and authorized by Section 9.33 of the Board of Higher Education Act [110 ILCS 205/9.33].

SOURCE: Adopted at 35 Ill. Reg. 21036, effective December 14, 2011.

Section 1090.10 Purpose

The purpose of this Part is to provide for the distribution of competitive grant funds *to help deliver upper division courses and bachelor's degree programs offered by bachelor's degree-granting colleges and universities at a location geographically convenient to student populations currently being served by existing public community colleges* [110 ILCS 205/9.33(a)].

Section 1090.20 Definitions

"Baccalaureate completion program" means *upper division courses and bachelor's degree programs offered by 4-year degree-granting colleges and universities at a location geographically convenient to student populations currently being served by existing public community colleges* [110 ILCS 205/9.33(a)]. The programs offered must have been authorized by the Board or are exempt from Board authorization pursuant to the Academic Degree Act [110 ILCS 1010].

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"Board" or "IBHE" means the Illinois Board of Higher Education.

"Community college" means the public community colleges of this State.

"DFPR" means the Illinois Department of Financial and Professional Regulation or its successor.

"4-year degree-granting colleges and universities" means, solely for the purposes of this Part, a public or nonpublic institution of higher education located in this State that offers baccalaureate degrees and meets one of the following categories:

"Public universities" means Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Southern Illinois University, University of Illinois, and Western Illinois University.

"Nonpublic, not-for-profit institutions" means colleges and universities based in Illinois that have been authorized to operate within the State of Illinois pursuant to the Private College Act [110 ILCS 1005] and/or the Academic Degree Act [110 ILCS 1010] or have been in continuous operation and granted degrees within the State of Illinois before the effective date of those Acts and have not modified the business entity since the effective dates of those Acts.

"Grantee" means partnership of community college or colleges and 4-year degree-granting institution or institutions jointly applying for the grant.

"Instructional technology tools" means the equipment and materials necessary to bring the academic experience of the baccalaureate program to the student. This includes the equipment to bring instructional communications from a partnering institution or its providers to the site, lab equipment, learning resources, and other program-specific materials. It does not include the replacement of equipment or materials.

"Investment" means documentation of a monetary contribution, an in-kind contribution, or a combination of both that equals no less than 50 percent of the amount of the grant award. Contributions must be used to provide the components that are necessary to bring the academic experience of the

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baccalaureate program to the student. This includes faculty, equipment, classroom space, learning resources, student services, program-specific materials, and other academic-related resources.

Section 1090.30 Eligibility

- a) Eligible applications *must be jointly submitted by one or more public community colleges and one or more public and/or private, not-for-profit, 4-year colleges or universities* [110 ILCS 205/9.33(b)].
- b) *Each partnering institution (both the community college or colleges and the 4-year institution or institutions) must also invest in the partnership. The combined investment of the partner institutions must equal no less than 50% of the amount of the grant* [110 ILCS 205/9.33(d)].
- c) New partnerships are eligible. An existing partnership may be eligible if the partnering institutions are providing an additional baccalaureate completion program that was not offered prior to applying for grant funding. Proposals to continue a program funded by this grant program for a second or third year will be considered if at least 75 percent of the original cohort is retained or, if approved by IBHE, an alternative measure demonstrating low student attrition.
- d) Grants will be awarded only to baccalaureate completion programs as defined in Section 1090.20.

Section 1090.40 Application

Applications *must be jointly submitted by one or more public community colleges and one or more public or private, not-for-profit, 4-year colleges or universities* [110 ILCS 205/9.33(b)].

- a) Applications for grant funds shall be made on prescribed forms developed by the Board and shall include, at a minimum, the following provisions and information:
 - 1) The names, addresses, chief officers and general descriptions of the applicants;
 - 2) The 4-year degree-granting college or university that will serve as the fiscal agent;

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- 3) A grant proposal for which grant funding is requested. A request for proposals (RFP) will provide any restrictions or priorities regarding the degree program areas as furnished by the Board at the time the RFP is announced;
 - 4) If the proposal involves an existing degree program, the grantee will provide a plan describing how the existing program outcomes will be incorporated into evaluating the proposed degree program offering;
 - 5) Data from the partnering institutions for each of the previous 3 academic years, reported both at the institutional level and at the program level that aligns with this grant proposal, including the following:
 - A) Number of students who enroll in the starting term;
 - B) Number of students who successfully complete the academic year; and
 - C) Retention rate of students during the academic year;
 - 6) Proposals to continue a program funded by this grant program for a second or third year will be considered if at least 75 percent of the original cohort is retained or, if approved by IBHE, an alternative measure demonstrating low student attrition;
 - 7) An annual evaluation of the program as provided by the grantees at the end of the grant period; and
 - 8) Cost estimates and proposed expenditures of the program.
- b) Grant applications may be obtained from the Illinois Board of Higher Education, 431 East Adams Street, Second Floor, Springfield, Illinois 62701-1404 or the Board's website at www.ibhe.org.
 - c) Completed applications must be submitted to the Board at the address indicated in subsection (b) and must be received by the announced deadline for the submission of applications, which shall not be less than 45 days after the announcement and release of application materials.

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Section 1090.50 Use of Grant Funds

- a) Grant funds may be used for any combination of the following:
- 1) *Instructional space on or near a community college* [110 ILCS 205/9.33(c)(1)];
 - 2) *Required training and advanced education of faculty for the new programs* [110 ILCS 205/9.33(c)(2)];
 - 3) *Instructional technology tools* defined in Section 1090.10 [110 ILCS 205/9.33(c)(3)];
 - 4) *Marketing and promotion for joint efforts* [110 ILCS 205/9.33(c)(4)];
 - 5) Salaries of faculty and administrators;
 - 6) Access to learning resources and student services;
 - 7) Travel by faculty and administrators;
 - 8) Experience-based learning opportunities; and
 - 9) Auditor services for the report required in Section 1090.80.
- b) Grant funds shall not be used for the following:
- 1) Capital projects, including construction, repair, renovation and miscellaneous capital improvements; and
 - 2) Expenditures for services or goods not directly associated with the grant.

Section 1090.60 Review and Evaluation of Application

Grant awards shall be determined using a competitive process after reviewing the applications for compliance and evaluating the applicant proposals.

- a) Board staff shall review the application for compliance that shall include but is not limited to the following:

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- 1) Definitions in Section 1090.20;
 - 2) Eligibility in Section 1090.30;
 - 3) Application in Section 1090.40; and
 - 4) Use of grant funds in Section 1090.50.
- b) Board staff shall evaluate the grant proposals using criteria that include but are not limited to the following:
- 1) Evidence that the partnering institutions can or have delivered programs in an effective manner, i.e., the annual number of students enrolled and completions by field;
 - 2) Evidence that the academic program will meet a regional or State need for a workforce with the training or skills provided;
 - 3) Evidence of an innovative approach or method that is supported by current research and best practices;
 - 4) An agreed upon pathway for students to articulate courses offered by the community college to the 4-year degree program;
 - 5) Evidence of the best use of existing resources in the investments defined in Section 1090.20; and
 - 6) Effective use of grant funds.
- c) The Board staff may request additional documentation and/or a meeting with the institutional representatives to resolve questions about the application. In the event that material submitted by an applicant institution is incomplete or not of sufficient detail to provide an understanding of the proposed program, the Board staff will request additional information.
- d) After the evaluation is complete, the Board shall provide written notification to an applicant indicating whether the application is in compliance.

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Section 1090.70 Grant Award

The number and amount of grant awards shall be determined annually, based upon the appropriation or allocation of funds. The awards will provide assistance with the grantee's starting costs to provide a baccalaureate completion program.

Section 1090.80 Grant Agreement

- a) Grant funds may not be expended except pursuant to a written grant agreement, and disbursement of grant funds without a grant agreement is prohibited. At a minimum, a grant agreement shall:
 - 1) *Include how the State's grant will be matched by dollars from the partner institutions. The combined investment of the partner institutions must equal no less than 50% of the amount of the grant. [110 ILCS 205/9.33(d)];*
 - 2) Describe the purpose of the grant and be signed by authorized representatives of the Board, the community college, and the 4-year degree-granting partner institution or institutions;
 - 3) Specify how payments shall be made and the financial controls applicable to the grant, including an agreement to file quarterly reports describing the progress of the projects and the expenditure of the related grant funds;
 - 4) Specify that the use of grant funds will be consistent with Section 1090.50;
 - 5) Specify the period of time for which the grant is valid and the period of time during which grant funds may be expended by the grantee;
 - 6) Contain a provision that all funds remaining at the end of the grant agreement, or at the expiration of the period of time grant funds are available for expenditure or obligation by the grantee, shall be returned to the State within 45 days;
 - 7) Contain a provision that any grantees receiving grant funds are required to permit the Board, the Auditor General or the Attorney General to inspect

BOARD OF HIGHER EDUCATION

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and audit any books, records or papers related to the projects for which grant funds were provided;

- 8) Contain a provision in which the grantee certifies under oath that all information in the grant agreement is true and correct to the best of the grantee's knowledge, information and belief; that the funds shall be used only for the purposes described in the grant agreement; and that the award of grant funds is conditioned upon that certification;
 - 9) Provide that the grantee shall contract with an external auditor who is a certified public accountant licensed by DFPR to conduct an audit of the expenditure of grant funds provided under this program at the end of the grant period to verify that grant funds were expended pursuant to the grant agreement and not for unauthorized purposes; and
 - 10) Require grantee to use the interest earned on any grant funds for eligible projects. The interest earned on grant funds shall not change the amount of the grant.
- b) The Board may withhold or suspend the distribution of grant funds for failure to file required quarterly reports.
 - c) Upon the execution of a grant agreement, the Board will process a voucher to the grantee in accordance with the terms of the grant agreement, provided that the funds have been appropriated and have been made available to the Board.

Section 1090.90 Audit Guidelines

- a) To fulfill the audit requirements of this Part, the grantee shall contract with an external auditor who is a certified public accountant licensed by DFPR to perform an audit as specified in subsection (b).
- b) The external auditor shall:
 - 1) Receive copies of the grantee's application, a certified grant agreement and a copy of this Part;
 - 2) Verify the expenditure of funds as provided for in this Part and ensure that funds were expended for the uses that were listed in the grant agreement;

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and

- 3) Provide an audit report to the Board including a description of the tests performed and the audit findings.
- c) In the event that an audit or other evidence establishes that an overpayment was made in a grant to a grantee, a reimbursement to the Board shall be required. A reimbursement is required in the following situations:
- 1) Grant funds were not expended within the grant period; or
 - 2) Grant funds were expended for purposes not authorized under the grant agreement.
- d) In the event that no audit is submitted, the partnering institutions that make up the grantee shall reimburse the State in the same proportion as their contributions to match the grant.

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of Part: Illinois Police Training Act
- 2) Code Citation: 20 Ill. Adm. Code 1720
- 3)

| <u>Section Numbers</u> : | <u>Adopted Action</u> : |
|--------------------------|-------------------------|
| 1720.300 | New Section |
| 1720.310 | New Section |
| 1720.320 | New Section |
| 1720.330 | New Section |
| 1720.340 | New Section |
| 1720.350 | New Section |
- 4) Statutory Authority: 50 ILCS 705/10 and P.A. 96-1111
- 5) Effective Date of Rulemaking: January 1, 2012
- 6) Does this rulemaking contain an automatic repeal date: No
- 7) Does this rulemaking contain incorporation by reference: No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 8, 2011; 35 Ill. Reg. 10482
- 10) Has JCAR issued a Statement of Objection to this rulemaking: No
- 11) Differences between proposal and final version: The waiver fee provision was revised to include a maximum fee of \$75.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR: Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect: No
- 14) Are there any other proposed rulemakings pending on this Part: No
- 15) Summary and Purpose of Rulemaking: The proposed amendments are necessary to guide implementation of P.A. 96-1111, which requires that the Illinois Law Enforcement

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

NOTICE OF ADOPTED AMENDMENTS

Training and Standards Board ("the Board") offer a course of training culminating in the certification of officers as lead investigators in death and homicide investigations.

- 16) Information and questions regarding these adopted rules shall be directed to:

Agency Rules Coordinator
Illinois Law Enforcement Training and Standards Board
4500 South Sixth Street Road, Room 173
Springfield, IL 62703-6617

217/782-4540

The full text of the Adopted Amendments begins on the next page:

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER V: ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

PART 1720
ILLINOIS POLICE TRAINING ACT

SUBPART A: CERTIFICATION OF POLICE OFFICERS

- Section
- 1720.10 Course Requirements
- 1720.15 Equivalency Examination
- 1720.20 Minimum Requirements of the Trainee
- 1720.25 Procedures for Administration of Law Enforcement and Correctional Officers
Certification Examination
- 1720.30 School Standards and Requirements
- 1720.35 Academy Entrance Qualifications
- 1720.40 Qualification of Police Instructors
- 1720.50 Reimbursements
- 1720.60 Requirements of Participating Local Agencies
- 1720.70 Minimum Training Requirements for Illinois Sheriffs
- 1720.80 Conservator of the Peace Training Course

SUBPART B: DECERTIFICATION OF POLICE OFFICERS

- Section
- 1720.100 Purpose
- 1720.110 Definitions
- 1720.120 Submission and Review of a Complaint
- 1720.130 Certification Revocation
- 1720.140 Reporting
- 1720.150 Law Enforcement Training and Standards Board Costs and Attorney Fees Fund

SUBPART C: WEAPON CERTIFICATION FOR
RETIRED LAW ENFORCEMENT OFFICERS

- Section
- 1720.200 Purpose
- 1720.210 Statutory Authority
- 1720.220 Definitions

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

NOTICE OF ADOPTED AMENDMENTS

| | |
|----------|--|
| 1720.230 | Compliance with Laws and Rules |
| 1720.240 | Eligibility Requirements |
| 1720.245 | Background Investigation |
| 1720.250 | Application Procedure |
| 1720.260 | Permits |
| 1720.270 | Denial, Suspension and Revocation |
| 1720.280 | Firearms Firearm Certification Program – Approval |
| 1720.290 | Range Officer – Approval |

SUBPART D: CERTIFICATION OF LEAD DEATH AND HOMICIDE INVESTIGATORSSection

| | |
|-----------------|---|
| <u>1720.300</u> | <u>Purpose</u> |
| <u>1720.310</u> | <u>Definitions</u> |
| <u>1720.320</u> | <u>Lead Death and Homicide Investigation Course</u> |
| <u>1720.330</u> | <u>Waiver</u> |
| <u>1720.340</u> | <u>Certificate</u> |
| <u>1720.350</u> | <u>Certificate Renewal</u> |

| | |
|-----------------|---|
| 1720.APPENDIX A | Physical Fitness Standards |
| 1720.APPENDIX B | Complaint Form |
| 1720.APPENDIX C | Firearm <u>Qualification</u> Course-of-Fire |

AUTHORITY: Implementing 50 ILCS 705 (the Illinois Police Training Act) as amended by P.A. 96-1111.

SOURCE: Filed and effective July 26, 1966; codified at 7 Ill. Reg. 11232; amended at 8 Ill. Reg. 12259, effective July 1, 1984; amended at 11 Ill. Reg. 16692, effective October 6, 1987; amended at 12 Ill. Reg. 3728, effective February 2, 1988; amended at 13 Ill. Reg. 19957, effective December 11, 1989; amended at 14 Ill. Reg. 14800, effective September 4, 1990; amended at 15 Ill. Reg. 999, effective January 14, 1991; amended at 16 Ill. Reg. 4002, effective February 28, 1992; emergency amendment at 16 Ill. Reg. 727, effective January 1, 1992; amended at 16 Ill. Reg. 18811, effective November 19, 1992; emergency amendment at 28 Ill. Reg. 6479, effective April 12, 2004, for a maximum of 150 days; emergency expired September 8, 2004; amended at 28 Ill. Reg. 13537, effective September 23, 2004; emergency amendment at 29 Ill. Reg. 19708, effective November 15, 2005, for a maximum of 150 days; amended at 30 Ill. Reg. 7925, effective April 11, 2006; amended at 32 Ill. Reg. 14749, effective August 28, 2008; amended at 35 Ill. Reg. 21047, effective January 1, 2012.

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

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SUBPART D: CERTIFICATION OF LEAD DEATH AND HOMICIDE INVESTIGATORS**Section 1720.300 Purpose**

To provide training for lead death and homicide investigators.

(Source: Added at 35 Ill. Reg. 21047, effective January 1, 2012)

Section 1720.310 Definitions

"Act" means the Illinois Police Training Act [50 ILCS 705].

"Board" means the Illinois Law Enforcement Training and Standards Board created by the Illinois Police Training Act [50 ILCS 705].

"Course" means the Lead Death and Homicide Investigation Course offered by the Board pursuant to P.A. 96-1111.

"Death and Homicide Investigations" include only those investigations that have a substantial likelihood of an individual being charged with an offense of homicide.

"Officer" means any person who, by virtue of his or her office or public employment, is vested by law with a primary duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, and who is employed in that capacity by any county or municipality in Illinois. The term "officer" does not include any employee of the Illinois State Police.

(Source: Added at 35 Ill. Reg. 21047, effective January 1, 2012)

Section 1720.320 Lead Death and Homicide Investigator Course

- a) The content of the Course shall be determined by the Board and shall include, but not be limited to, the following topics:
- 1) Types of death investigations;
 - 2) Death and homicide investigation techniques;

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

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- 3) Crime scene management and preservation of evidence;
- 4) Interviews and interrogations.
- b) The Course shall include 40 to 50 hours of content and those hours must be offered within no greater than a 7 consecutive day period.
- c) The Course shall be taught by instructors approved by the Board.
- d) The timing and location of Course offerings shall be determined at the discretion of the Board, but the Course shall be offered within the State of Illinois in a manner that provides reasonable access to officers in terms of time of year.

(Source: Added at 35 Ill. Reg. 21047, effective January 1, 2012)

Section 1720.330 Waiver

- a) The Board may issue a waiver on a case by case basis stating that an officer has previously received training and experience that is substantially equal to that provided in the Course.
- b) A waiver may be issued only upon the presentation of documentation to the Board evidencing that, at the time of application, the individual seeking the waiver:
 - 1) Is currently employed full-time as a law enforcement officer in Illinois;
 - 2) Has at least 3 years of experience as a full-time law enforcement officer;
 - 3) Has completed formal training regarding death and homicide investigations; and
 - 4) Has substantial experience in a supervisory or leadership role in homicide investigations.
- c) Only a duly authorized representative of the law enforcement agency may request a waiver for its officers.

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

NOTICE OF ADOPTED AMENDMENTS

- d) The agency seeking a waiver must apply on a form prescribed by the Board. The form shall require disclosure of all information requested by the Board regarding the applicant, including, but not limited to, the applicant's training, experience and background.
- e) Any information requested by the Board and submitted by the applicant shall be considered confidential and shall not be utilized for any purpose other than that described in this Section.
- f) All waiver decisions by the Board are final.

(Source: Added at 35 Ill. Reg. 21047, effective January 1, 2012)

Section 1720.340 Certificate

- a) Officers who complete the Course or receive a waiver shall be issued a numbered certificate by the Board.
- b) The certificate issued by the Board upon completion of the Course or receipt of a waiver shall be valid for a period of 4 years and must be renewed to remain valid.

(Source: Added at 35 Ill. Reg. 21047, effective January 1, 2012)

Section 1720.350 Certificate Renewal

- a) The certificate issued by the Board may be renewed if the officer completes a total of 32 hours of Board-approved death and homicide related training during the 4 year certification period, a satisfactory background investigation has been performed by the Board, and the officer is in compliance with all other requirements of the Act.
- b) Any application for certification renewal must be sent from the duly authorized representative of the law enforcement agency employing the officer.
- c) If the officer has not completed the 32 hours of Board-approved training within the 4 year certification period, the officer shall be required to take the Lead Death and Homicide Investigator course in order to renew his or her certificate.

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

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- d) The Board may assess a renewal fee of no more than \$75 to meet the costs of the implementation of the lead death and homicide investigator program.

(Source: Added at 35 Ill. Reg. 21047, effective January 1, 2012)

BOARD OF HIGHER EDUCATION

JANUARY 2012 REGULATORY AGENDA

- a) Part(s) (Heading and Code Citations): Approval of Private Business and Vocational Schools, 23 Ill. Adm. Code 1095
- 1) Rulemaking:
- A) Description: The Board proposes the adoption of new IBHE rules if Senate Bill 1795 or similar legislation is passed by the 97th Illinois General Assembly and becomes law. This legislation repeals the existing act, enacts the Private Business and Vocational Schools Act of 2012, and transfers the oversight process from the State Board of Education to the Board on February 1, 2012.
- B) Statutory Authority: Private Business and Vocational School Act of 2012
- C) Scheduled meeting/hearing dates: No meetings or hearings have been scheduled
- D) Date agency anticipates First Notice: Undetermined
- E) Affect on small businesses, small municipalities or not for profit corporations: The rules will continue oversight for approximately 300 postsecondary institutions offering instruction in business, vocational, and allied health fields whose instruction does not result in the completion of a college degree. Instead, students earn a diploma or certificate. Oversight of these schools is transferred from the State Board of Education to the Board. Fees will increase (current rates were set in 1984) to help make the oversight function self-sustaining.
- F) Agency contact person for information:
Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
431 East Adams Street, Second Floor
Springfield, IL 62701-1404
Telephone: 217/557-7358
Email: helland@ibhe.org
Fax: 217/782-8548

BOARD OF HIGHER EDUCATION

JANUARY 2012 REGULATORY AGENDA

- G) Related rulemakings and other pertinent information: None.
- b) Part(s) (Heading and Code Citation): Grow Your Own Teacher Education Grants, 23 Ill. Adm. Code 1090
- 1) Rulemaking:
- A) Description: The Board proposes the adoption of new IBHE rules since this program was transferred from the State Board of Education to the Board on July 2, 2010. "All rules, standards, guidelines, and procedures adopted by the State Board of Education under this Act shall continue in effect as the rules, standards, guidelines, and procedures of the Board of Higher Education, until they are modified or abolished by the Board of Higher Education." (110 ILCS 48/13)
- B) Statutory Authority: Section 13 of the Grow Your Own Teacher Education Act [110 ILCS 48]
- C) Schedule meeting/hearing date: No meetings or hearings have been scheduled.
- D) Date agency anticipates First Notice: Undetermined.
- E) Effect on small businesses, small municipalities or not for profit corporations: None.
- F) Agency contact person for information:
- Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
431 East Adams Street, Second Floor
Springfield, IL 62701-1404
Telephone: 217/557-7358
Email: helland@ibhe.org
Fax: 217/782-8548
- G) Related rulemakings and other pertinent information: None.
- c) Part(s) (Heading and Code Citation): Performance Metrics for Budget Recommendations

BOARD OF HIGHER EDUCATION

JANUARY 2012 REGULATORY AGENDA

- 1) Rulemaking:
 - A) Description: The Board proposes the adoption of new IBHE rules to provide the performance metrics for the higher education budget recommendations pursuant to Public Act 97-320.
 - B) Statutory Authority: Section 8 of the Board of Higher Education Act (110 ILCS 205/8)
 - C) Schedule meeting/hearing date: No meetings or hearings have been scheduled.
 - D) Date agency anticipates First Notice: Undetermined.
 - E) Effect on small businesses, small municipalities or not for profit corporations: Private institutions of higher education may be affected by this rule-making.
 - F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
431 East Adams Street, Second Floor
Springfield, IL 62701-1404
Telephone: 217/557-7358
Email: helland@ibhe.org
Fax: 217/782-8548
 - G) Related rulemakings and other pertinent information: None.
- d) Part(s) (Heading and Code Citation): Annual Public University Performance Report
 - 1) Rulemaking:
 - A) Description: The Board may propose the adoption of new IBHE rules to implement Public Act 97-610, effective January 1, 2012. Pursuant to the Act, the Board will compile and submit an annual report with information on new programs created, existing programs that have been closed or consolidated, and programs that exhibit low performance or productivity. Rules may be used to define terms and timelines for the report.

BOARD OF HIGHER EDUCATION

JANUARY 2012 REGULATORY AGENDA

- B) Statutory Authority: Section 7 of the Board of Higher Education Act (110 ILCS 205/7)
- C) Schedule meeting/hearing date: No meetings or hearings have been scheduled.
- D) Date agency anticipates First Notice: Undetermined.
- E) Effect on small businesses, small municipalities or not for profit corporations: None.
- F) Agency contact person for information:
- Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
431 East Adams Street, Second Floor
Springfield, IL 62701-1404
Telephone: 217/557-7358
Email: helland@ibhe.org
Fax: 217/782-8548
- G) Related rulemakings and other pertinent information: None.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

JANUARY 2012 REGULATORY AGENDA

b) Part(s) (Heading and Code Citations): Pay Plan (80 Ill. Adm. Code 310)1) Rulemaking:A) Description:

Projected amendments to the Department of Central Management Services' Pay Plan include the following revisions to the following sections:

In Section 310.130 Effective Date, changes will include advancing the effective date to the new fiscal year 2013 and the Section 310.Appendix A, Negotiated Rates of Pay tables to the contracted rates effective during fiscal year 2013.

In Section 310.280 Designated Rate, changes in salaries, the addition of new positions, and deletion of positions no longer utilized as approved by the Governor.

In Section 310.Appendix A Negotiated Rates of Pay tables, changes based on bargaining unit agreements that are signed before July 1, 2012.

In Section 310.Appendix B Frozen Negotiated-Rates-of-Pay tables, changes reflect the title or pay grade updates to 310.Appendix A with rates remaining frozen.

In various sections, changes to classifications either being established, revised or removed with the approval of the Civil Service Commission.

In various sections, changes to the format of the Pay Plan to reduce duplicate information and provide easier access to information contained within the Pay Plan.

B) Statutory Authority:

Implementing and authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a].

C) Scheduled meeting/hearing dates:

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

JANUARY 2012 REGULATORY AGENDA

No meetings or hearings are scheduled. Interested persons may send specific criticisms, suggestions, and/or comments to the Department of Central Management Services in writing during the First Notice Period of the Pay Plan amendments.

D) Date agency anticipates First Notice:

Proposed amendments to Section 310.130 Effective Date and, if available, the Section 310.Appendix A Negotiated Rates of Pay tables for the new fiscal year 2013 will be filed in late February or early March 2012 for adoption by the beginning of fiscal year 2013, July 1, 2012. Otherwise, preemptory amendments based on new memoranda of understanding or other bargaining unit agreements will be filed as negotiations are completed. Proposed amendments to Section 310.Appendix B Frozen Negotiated-Rates-of-Pay tables will be periodic as changes to the Section 310. Appendix A accumulate.

Amendments to Section 310.280 Designated Rate, will be filed as the Governor approves changes.

Peremptory amendments based on new, revised, or abolished classifications represented by the bargaining units, and proposed amendments based on new, revised, or abolished classifications not represented by the bargaining units, will be filed as the classification actions are approved by the Civil Service Commission.

Amendments to sections to add clarity will be filed as the Governor approves changes.

E) Affect on small businesses, small municipalities or not for profit corporations:

These amendments to the Pay Plan pertain only to state employees subject to the Personnel Code under the Governor. They do not set out guidelines that are to be followed by local or other jurisdictional bodies within the State.

F) Agency contact person for information:

Name: Mr. Jason Doggett
Manager

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

JANUARY 2012 REGULATORY AGENDA

Address: Compensation Section
Division of Technical Services and Agency Training and
Development
Bureau of Personnel
Department of Central Management Services
504 William G. Stratton Building
Springfield IL 62706

Telephone: (217) 782-7964
Email: CMS.PayPlan@Illinois.gov
Fax: (217) 524-4570

- G) Related rulemakings and other pertinent information:
Other amendments may be necessary based on emergent issues regarding state employee salary rates and policies.

DEPARTMENT OF CORRECTIONS

JANUARY 2012 REGULATORY AGENDA

a) Part(s) (Heading and Code Citation): Records of Committed Persons, 20 Ill. Adm. Code 107.

1) Rulemaking:

A) Description: This amendment is necessary to update sentencing requirements and computations to comply with statutory amendments.

B) Statutory Authority: 730 ILCS 5/3-2-2, 3-3-2, 3-5-1, 3-5-2, 3-6-3, 3-8-1, 3-10-1, 5-4-1, 5-8-6, and 5-8-7.

C) Scheduled meeting/hearing date: The Department will accept written public comments at any time in accordance with 2 Ill. Adm. Code 850 or during the First Notice Period per instructions that will be indicated on the Notice.

D) Date agency anticipates First Notice: On or before July 1, 2012.

E) Effect on small businesses, small municipalities or not for profit corporations: None.

F) Agency contact person for information:

Echo Beekman, Rules Coordinator
Illinois Department of Corrections
1301 Concordia Court
P. O. Box 19277
Springfield, Illinois 62794-9277
(217) 558-2200, extension 6507

G) Related rulemakings and other pertinent information: None.

b) Part(s) (Heading and Code Citation): Freedom of Information, 2 Ill. Adm. Code 110.

1) Rulemaking:

A) Description: This amendment is necessary to bring DOC FOIA rulemaking into compliance with current FOIA legislation.

DEPARTMENT OF CORRECTIONS

JANUARY 2012 REGULATORY AGENDA

- B) Statutory Authority: 5 ILCS 100/5-15 and 140/1.
- C) Scheduled meeting/hearing date: The Department will accept written public comments at any time in accordance with 2 Ill. Adm. Code 850 or during the First Notice Period per instructions that will be indicated on the Notice.
- D) Date agency anticipates First Notice: On or before July 1, 2012.
- E) Effect on small businesses, small municipalities or not for profit corporations: None.
- F) Agency contact person for information:

Echo Beekman, Rules Coordinator
Illinois Department of Corrections
1301 Concordia Court
P. O. Box 19277
Springfield, Illinois 62794-9277
(217) 558-2200, extension 6507
- G) Related rulemakings and other pertinent information: None.
- c) Part(s) (Heading and Code Citation): Medical and Dental Examinations and Treatment, 20 Ill. Adm. Code 415.
- 1) Rulemaking:
- A) Description: This amendment is necessary to comply with PA 97-0323.
- B) Statutory Authority: 730 ILCS 5/3-2-2, 3-6-2, 3-7-2, 3-8-2, 3-10-2, 3-10-3, and 5-2-6.
- C) Scheduled meeting/hearing date: The Department will accept written public comments at any time in accordance with 2 Ill. Adm. Code 850 or during the First Notice Period per instructions that will be indicated on the Notice.
- D) Date agency anticipates First Notice: On or before July 1, 2012.

DEPARTMENT OF CORRECTIONS

JANUARY 2012 REGULATORY AGENDA

- E) Effect on small businesses, small municipalities or not for profit corporations: None.
- F) Agency contact person for information:
- Echo Beekman, Rules Coordinator
Illinois Department of Corrections
1301 Concordia Court
P. O. Box 19277
Springfield, Illinois 62794-9277
(217) 558-2200, extension 6507
- G) Related rulemakings and other pertinent information: None.
- d) Part(s) (Heading and Code Citation): Searches for Contraband, 20 Ill. Adm. Code 501.
- 1) Rulemaking:
- A) Description: This amendment is necessary to implement the Director's position that only persons of the same gender as the offender may perform or observe strip searches of offenders and to clarify that canine searches can not be performed on humans.
- B) Statutory Authority: 720 ILCS 5/7-1, 7-3, 7-9, and 31A-1.1; 725 ILCS 5/103-1 et seq.; and 730 ILCS 5/3-2-2, 3-4-3, 3-6-2, 3-6-4, 3-7-2, 3-7-4, 3-8-1, 3-8-7, 3-8-8, and 3-10-8.
- C) Scheduled meeting/hearing date: The Department will accept written public comments at any time in accordance with 2 Ill. Adm. Code 850 or during the First Notice Period per instructions that will be indicated on the Notice.
- D) Date agency anticipates First Notice: On or before July 1, 2012.
- E) Effect on small businesses, small municipalities or not for profit corporations: None.
- F) Agency contact person for information:

DEPARTMENT OF CORRECTIONS

JANUARY 2012 REGULATORY AGENDA

Echo Beekman, Rules Coordinator
Illinois Department of Corrections
1301 Concordia Court
P. O. Box 19277
Springfield, Illinois 62794-9277
(217) 558-2200, extension 6507

- G) Related rulemakings and other pertinent information: None.

DEPARTMENT OF HUMAN RIGHTS

JANUARY 2012 REGULATORY AGENDA

a) Part(s) (Heading and Code Citation): Procedures of the Department of Human Rights (56 Ill. Adm. Code 2520).

1) Rulemaking:

A) Description: The proposed amendments would clarify, reorganize and make technical corrections to the Department's affirmative action rules for State agencies. Further, the rules would update the Department's regulations on dismissals to state that for charges filed on or about February 2, 2010, Complainants have 90 days to file a Request for Review with the Human Rights Commission. Additionally, the amendments would clarify that for charges pursuant to Article III of the Act, the Department will issue a notice to show good cause prior to issuing a notice of default.

B) Statutory Authority: Implementing Articles 1 through 7B of the Illinois Human Rights Act [775 ILCS 5/Arts. 1 through 7B] and the Intergovernmental Cooperation Act [5 ILCS 220], and authorized by Sections 7-101(A) and 7-105(A) of the Illinois Human Rights Act [775 ILCS 5/7-101(A) and 7-105(A)].

C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated at this time.

D) Date agency anticipates First Notice: February 29, 2012.

E) Effect on small business, small municipalities or not for profit corporations: None

F) Agency contact person for information:

David T. Rothal
Staff Attorney
Illinois Department of Human Rights – Legal Division
100 W. Randolph St., Ste. 10-100
Chicago, IL 60601
(312) 814-6257 or (217) 785-5125 (TTY)

G) Related rulemaking and other pertinent information: None

DEPARTMENT OF HUMAN RIGHTS

JANUARY 2012 REGULATORY AGENDA

b) Part(s) (Heading and Code Citation): Housing Discrimination (71 Ill. Adm. Code 2300).

1) Rulemaking:

A) Description: The proposed amendment would remove the definition to “Aid, abet, compel or coerce” because the term is not used in the body of the Department’s housing regulations.

B) Statutory Authority: Implementing Articles 3, 6 and 7B of the Illinois Human Rights Act [775 ILCS 5/Arts. 3, 6 and 7B], and authorized by Section 7-101(A) of the Illinois Human Rights Act [775 ILCS 5/7-101(A)].

C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated at this time.

D) Date agency anticipates First Notice: February 29, 2012.

E) Effect on small business, small municipalities or not for profit corporations: None

F) Agency contact person for information:

David T. Rothal
Staff Attorney
Illinois Department of Human Rights – Legal Division
100 W. Randolph St., Ste. 10-100
Chicago, IL 60601
(312) 814-6257 or (312) 263-1579 (TTY)

G) Related rulemaking and other pertinent information: None

ILLINOIS RACING BOARD

JANUARY 2012 REGULATORY AGENDA

- a) Part(s) (Heading and Code Citation): Voluntary Self-Exclusion Program, 11 Ill. Adm. Code 453
- 1) Rulemaking:
- A) Description: This rulemaking authorizes problem gamblers to voluntarily request that their names be placed on a list of self-excluded persons to be maintained by the Illinois Racing Board. As a result of the entry of a person's name on such list, that person would be prohibited from wagering on horse races and entering racetracks and off-track wagering facilities licensed by the Illinois Racing Board. The proposed rulemaking establishes procedures for an individual's inclusion on, and removal from, the list of self-excluded persons. Racetracks and off-track wagering facilities are required to remove persons on the self-excluded list mailings or other forms of advertising or promotions.
- B) Statutory Authority: Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].
- C) Scheduled meeting/hearing dates: Interested persons may send specific criticisms, suggestions, and/or comments to the Illinois Racing Board in writing during the First Notice Period.
- D) Date agency anticipates First Notice: Undetermined
- E) Effect on small businesses, small municipalities or not for profit corporations: None
- F) Agency contact person for information:

Mickey Ezzo
Illinois Racing Board
100 W. Randolph Street
Suite 7-701
Chicago, IL 60601
312/814-5017
Fax: 312/814-5062
mickey.ezzo@illinois.gov

ILLINOIS RACING BOARD

JANUARY 2012 REGULATORY AGENDA

G) Related rulemakings and other pertinent information: None

b) Part(s) (Heading and Code Citation): Medication, 11 Ill. Adm. Code 603

1) Rulemaking:

A) Description: Due to recent advances in drug testing, Part 603 may periodically need updating. Update Section 603.60 as it pertains to threshold levels.

B) Statutory Authority: Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

C) Scheduled meeting/hearing dates: Interested persons may send specific criticisms, suggestions, and/or comments to the Illinois Racing Board in writing during the First Notice Period.

D) Date agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not for profit corporations: None

F) Agency contact person for information:

Mickey Ezzo
Illinois Racing Board
100 W. Randolph Street
Suite 7-701
Chicago, IL 60601
312/814-5017
Fax: 312/814-5062
mickey.ezzo@illinois.gov

G) Related rulemakings and other pertinent information: None

c) Part(s) (Heading and Code Citation): Advance Deposit Wagering, 11 Ill. Adm. Code 325

1) Rulemaking:

ILLINOIS RACING BOARD

JANUARY 2012 REGULATORY AGENDA

- A) Description: Due to the growing popularity of on-line and phone betting, Part 325 may periodically need updating.
- B) Statutory Authority: Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].
- C) Scheduled meeting/hearing dates: Interested persons may send specific criticisms, suggestions, and/or comments to the Illinois Racing Board in writing during the First Notice Period.
- D) Date agency anticipates First Notice: Undetermined
- E) Effect on small businesses, small municipalities or not for profit corporations: None
- F) Agency contact person for information:

Mickey Ezzo
Illinois Racing Board
100 W. Randolph Street
Suite 7-701
Chicago, IL 60601
312/814-5017
Fax: 312/814-5062
mickey.ezzo@illinois.gov

- G) Related rulemakings and other pertinent information: None

d) Part(s) (Heading and Code Citation): Racing Rules, 11 Ill. Adm. Code 1318

1) Rulemaking:

- A) Description: Update Section 1318.90 as it pertains to use of the standardbred whip.
- B) Statutory Authority: Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

ILLINOIS RACING BOARD

JANUARY 2012 REGULATORY AGENDA

- C) Scheduled meeting/hearing dates: Interested persons may send specific criticisms, suggestions, and/or comments to the Illinois Racing Board in writing during the First Notice Period.
- D) Date agency anticipates First Notice: Undetermined
- E) Effect on small businesses, small municipalities or not for profit corporations: None
- F) Agency contact person for information:
- Mickey Ezzo
Illinois Racing Board
100 W. Randolph Street
Suite 7-701
Chicago, IL 60601
312/814-5017
Fax: 312/814-5062
mickey.ezzo@illinois.gov
- G) Related rulemakings and other pertinent information: None

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF RECOMMENDATION
TO PROPOSED RULEMAKING

DEPARTMENT OF STATE POLICE

At its meeting on December 13, 2011, the Joint Committee on Administrative Rules considered a DFPR rulemaking titled Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004 (68 Ill. Adm. Code 1240; 35 Ill. Reg. 6687) and recommended that, if the Department of State Police believes that a photograph of a person being fingerprinted for a criminal background check is necessary, it adopt amendments to require those photographs, as allowed by Section 8A of the Illinois Uniform Conviction Information Act [20 ILCS 2635/8A].

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of December 13, 2011 through December 19, 2011 and have been scheduled for review by the Committee at its January 10, 2012 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

| <u>Second Notice Expires</u> | <u>Agency and Rule</u> | <u>Start Of First Notice</u> | <u>JCAR Meeting</u> |
|--------------------------------------|--|--------------------------------------|-------------------------|
| 1/26/12 | <u>Department of Healthcare and Family Services, Rights and Responsibilities (89 Ill. Adm. Code 102)</u> | 7/15/11 35 Ill. Reg. 11094 | 1/10/12 |
| 1/26/12 | <u>Department of Healthcare and Family Services, Application Process (89 Ill. Adm. Code 110)</u> | 7/15/11 35 Ill. Reg. 11101 | 1/10/12 |
| 1/26/12 | <u>Department of Healthcare and Family Services, Medical Assistance Programs (89 Ill. Adm. Code 120)</u> | 7/15/11 35 Ill. Reg. 11108 | 1/10/12 |
| 2/1/12 | <u>State Board of Education, Certification (23 Ill. Adm. Code 25)</u> | 10/14/11 35 Ill. Reg. 16443 | 1/10/12 |
| 2/1/12 | <u>State Board of Education, Student Records (23 Ill. Adm. Code 375)</u> | 10/14/11 35 Ill. Reg. 16473 | 1/10/12 |
| 2/1/12 | <u>State Board of Education, Voluntary Registration and Recognition of Nonpublic Schools (23 Ill. Adm. Code 425)</u> | 10/14/11 35 Ill. Reg. 16495 | 1/10/12 |
| 2/1/12 | <u>Department of Public Health, Loan Repayment Assistance for Dentists (77 Ill. Adm. Code 580)</u> | 10/14/11 35 Ill. Reg. 16381 | 1/10/12 |

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

| | | | |
|--------|---|-----------------------------------|---------|
| 2/1/12 | <u>Department of Public Health</u> , Loan Repayment Assistance for Physicians (77 Ill. Adm. Code 581) | 10/14/11 35 Ill. Reg. 16399 | 1/10/12 |
| 2/1/12 | <u>Department of Public Health</u> , Allied Health Care Professional Assistance Law (77 Ill. Adm. Code 598) | 10/14/11 35 Ill. Reg. 16413 | 1/10/12 |
| 2/1/12 | <u>Department of Public Health</u> , AIDS Drug Assistance Program (77 Ill. Adm. Code 692) | 10/7/11 35 Ill. Reg. 15976 | 1/10/12 |
| 2/1/12 | <u>Board of Higher Education</u> , Approval of Noninstructional Capital Projects (23 Ill. Adm. Code 1040) | 10/28/11 35 Ill. Reg. 17173 | 1/10/12 |
| 2/1/12 | <u>Department of Healthcare and Family Services</u> , Medical Payment (89 Ill. Adm. Code 140) | 7/29/11 35 Ill. Reg. 12600 | 1/10/12 |
| 2/1/12 | <u>Pollution Control Board</u> , Effluent Standards (35 Ill. Adm. Code 304) | 7/29/11 35 Ill. Reg. 12634 | 1/10/12 |

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION
TO PROPOSED RULEMAKING

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Heading of the Part: Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004

Code Citation: 68 Ill. Adm. Code 1240

Section Numbers: 1240.535(c)(7)

Date Originally Published in the Illinois Register: 4/22/11
35 Ill. Reg. 6687

At its meeting on 12/13/11, the Joint Committee on Administrative Rules objected to Section 1240.535(c)(7) of the above-cited rulemaking because that subsection requires fingerprint vendors to submit, as part of the fingerprint file, a photograph of the individual being fingerprinted. Statute does not allow DFPR to require photographs, but does authorize the Department of State Police to require other identifying information, which could include a photograph. The proper channel for ISP to require photos is to exercise its statutory authority to do so within its own rules. If ISP does choose to adopt such a requirement, then DFPR would be able to reflect it in its rules.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall constitute withdrawal of this proposed rulemaking. The agency's response will be placed on the JCAR agenda for further consideration.

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 35, Issue 53 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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**JOINT COMMITTEE ON
ADMINISTRATIVE RULES
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