



EXECUTIVE ORDER

NUMBER 3 (2008)

**EXECUTIVE ORDER FURTHER PROTECTING THE INTEGRITY OF STATE
PROCUREMENTS**

WHEREAS, the laws of this State expressly require that the State procure goods and services in a manner that maximizes the value of public expenditures for goods and services and maintains the integrity and public trust of State government (30 ILCS 500/50-1); and

WHEREAS, every State Officer has some influence upon the State procurement process, whether through the decision to award a State contract, the appropriation of monies to pay for State contracts, or the decision to release State funds in accord with the terms of a contract; and

WHEREAS, political contributions by State contractors to State Officers or to political organizations that make expenditures on behalf of such Officers contributes to public cynicism regarding the integrity of the government procurement process; and

WHEREAS, it is my intent that State Agencies avoid practices that threaten to undermine public confidence in the integrity of the State procurement processes or that create an appearance of impropriety; and

WHEREAS, the State has a compelling interest in protecting the integrity of its procurement processes by ensuring the public has confidence that the award of State contracts is based upon price, quality, service and other merit-based factors, and not on political contributions to State Officers; and

WHEREAS, as Governor, I have the authority under Article V, Section 8 and Article XIII, Section 2 of the Illinois Constitution to establish and enforce ethical standards for all State Agencies under my jurisdiction and control; and

WHEREAS, I am committed to enhancing public trust in government by promoting respect for high ethical standards in the procurement process and by implementing strong measures to enforce those standards; and

WHEREAS, this Executive Order directly advances the State's compelling interests in protecting the integrity of the procurement process, ensuring that procurement decisions are based solely on merit, and maximizing the value of public expenditures for goods and services.

THEREFORE, I, Rod R. Blagojevich, as Governor of the State of Illinois, hereby order the following:

I. Definitions

The following definitions shall apply to this Executive Order:

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- A. "Affiliated Entity" means (i) any subsidiary or parent of a Business Entity; (ii) any member of the same unitary business group (e.g., an entity sharing a common parent with a Business Entity); (iii) any entity owned or controlled by an Affiliated Person of a Business Entity; (iv) any organization recognized by the United States Internal Revenue Service as a tax-exempt organization described in Section 501(c) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law) established or controlled by a Business Entity or an Affiliated Person; or (v) any political committee established or controlled by a Business Entity or an Affiliated Person or for which a Business Entity or an Affiliated Person is the sponsor.
- B. "Affiliated Person" means (i) any person with an ownership interest or distributive share of a Business Entity or its Affiliated Entity in excess of 7.5%; (ii) any executive employee of a Business Entity or its Affiliated Entity; or (iii) the spouse or minor child of any person covered by subparts (i) or (ii) hereof. "State Procurement" means a contract to procure goods or services between a State Agency and a Business Entity.
- C. "Business Entity" means any contractor, vendor, or bidder which has or seeks to have a State Procurement with any State Agency, and includes any natural or legal person or entity doing business for profit, whether organized as a corporation, professional services corporation, partnership, sole proprietorship, limited liability company, limited partnership, or otherwise. The term "Business Entity" does not include a person or any of the foregoing entities that has or seeks to have a (i) "cost-reimbursement contract" as defined in Section 1-15.35 of the Procurement Code; (ii) "grant" as defined in Section 1-15.42 of the Procurement Code, including but not limited to grants for job training or transportation, and grants, loans, or tax credit agreements for economic development purposes; and (iii) "purchase of care" agreement as defined in Section 1-15.68 of the Procurement Code.
- D. "Contribution" means a contribution as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4).
- E. "Covered Business Entity" means a Business Entity (i) whose aggregate, annual bids and proposals on contracts with State Agencies total more than \$50,000; (ii) whose aggregate, annual bids and proposals on contracts with State Agencies, combined with aggregate, annual awarded contracts with such Agencies, total more than \$50,000; or (iii) whose aggregate, annual contracts with State Agencies total more than \$50,000.
- F. "Covered Political Organization" means any political committee of a state central committee of a political party that is represented by a State Officer or a declared candidate for State Office.
- G. "Declared Candidate" means a person who has filed a statement of candidacy and petition for nomination or election in the principal office of the State Board of Elections for a State Office.
- H. "Expenditure" means an expenditure as defined in Section 9-1.5 of the Election Code (10 ILCS 5/9-1.5).
- I. "State Agency" means any agency under the Governor pursuant to Article V, Section 8 of the Illinois Constitution. For the purposes of this Executive Order, a State Agency also means the State retirement systems, including but not limited to, the State Employees' Retirement System of Illinois, the State Universities Retirement System, and the Teachers' Retirement System of the State of Illinois.
- J. "State Office" or "State Officer" means the Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, Treasurer, or member of the General Assembly.
- K. "State Procurement" means a contract to procure goods or services between a State Agency and a Business Entity.

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II. Scope

This Executive Order applies to all State Procurement processes initiated by any State Agency, regardless of (a) which statutes, administrative rules or policies govern their procurement; (b) what method of procurement is used to procure the goods or services; or (c) any other characteristic of the procurement.

III. Restrictions on State Procurements Awarded by State Agencies

A. A Covered Business Entity (and its Affiliated Persons and Affiliated Entities) shall not solicit a Contribution on behalf of, or make a Contribution to, a State Officer, any Declared Candidate for a State Office, or any Covered Political Organization:

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- 1) during the period beginning on the date the invitation for bids or request for proposal is issued and ending on the day after the date the contract is awarded;
- 2) any time after a State Procurement is awarded but before the start of the contract;
- 3) during the term of any State Procurement; and
- 4) for a period of two years after the State Procurement.

B. Any State Procurement entered into with a Covered Business Entity shall provide that it shall be a material breach of the State Procurement if the Covered Business Entity (or any of its Affiliated Persons or Affiliated Entities): (i) makes or solicits a Contribution in violation of this Executive Order; or (ii) knowingly conceals or misrepresents a Contribution given or received; or (iii) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; or (iv) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a State Officer, any Declared Candidate for a State Office, or any Covered Political Organization; or (v) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by the Covered Business Entity itself, would subject that entity to the restrictions of this Executive Order; or (vi) funds Contributions made by third parties, including consultants, attorneys, family members, and employees, which if made or solicited by the Covered Business Entity itself, would subject that entity to the restrictions of this Executive Order; or (vii) engages in any exchange of Contributions contrary to the intent of this Executive Order.

C. The State Agency awarding the State Procurement shall require the Covered Business Entity to provide a written certification that no Contribution will be made that would violate this Executive Order. A Covered Business Entity shall have a continuing duty to report to the State agency any Contribution made by it (or its Affiliated Persons or Affiliated Entities) during the term of the State Procurement and for a period of two years after the conclusion of such State Procurement.

D. If a Covered Business Entity (or any of its Affiliated Persons or Affiliated Entities) inadvertently makes a Contribution in violation of this Order, the Covered Business Entity may request a full reimbursement from the recipient and, if such reimbursement is received within 30 days after the date on which the Contribution was made, the Covered Business Entity will no longer be in violation of this Order. It shall be presumed that Contributions made within 60 days of a gubernatorial primary or general election were not made inadvertently.

E. Nothing in this Order shall prohibit an individual from making a contribution to a political committee established to promote his or her own candidacy for State Office.

F. This Order shall not apply in circumstances when it is determined by the federal government or a court of competent jurisdiction that its application would violate federal law or regulation or otherwise prevent the State's receipt of federal funds.

IV. Enforcement and Remedies

- A. All bid documents, requests for proposals and State Procurements by a State Agency on and after the Effective Date of this Executive Order shall contain a statement that the State Procurement is voidable for failure to comply with this Executive Order.
- B. Any violation of the terms of this Executive Order shall entitle the State to terminate the State Procurement without any additional compensation due to the Business Entity.
- C. If a Covered Business Entity violates the provisions of this Executive Order three or more times within a 36-month period, then all Procurements between any State Agency and that Covered Business Entity shall be void, and no State Agency shall consider any bids or proposals from the Covered Business Entity for a period of three years from the date of the last violation. A notice of each violation and the consequences thereof shall be published in both the Procurement Bulletin and the Illinois Register.

V. Savings Clause

Nothing in this Executive Order shall be construed to contravene any state or federal law. The terms of this Executive Order shall not apply in circumstances when it is determined by the federal government or a court of competent jurisdiction that its application would violate federal law or regulation or otherwise prevent the State's receipt of federal funds.

VI. Severability

If any provision of this Executive Order or its application to any person or circumstance is found invalid by a court of competent jurisdiction, the invalidity of that provision or application does not affect the other provisions or applications that can be given effect without the invalid provision or application, and the remaining provisions and applications shall remain in full force and effect.

VII. No New Rights Created

Except as expressly provided in this Executive Order, nothing herein is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the State of Illinois, its agencies, its officers, or any person.

VIII. Effective Date

This Order shall take effect on January 1, 2009, and shall only apply to State Procurements entered into on and after January 1, 2009. This Executive Order is intended to have prospective effect only. The provisions of this Order shall supersede all prior Orders the provisions of which are inconsistent with this Order.


ROD R. BLAGOJEVICH
Governor

Issued by Governor: August 25, 2008
Filed with Secretary of State: August 26, 2008

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