TO: Fiscal Officers of All State Agencies

FROM: Steven L. Valasek, Director of State Accounting

DATE: June 25, 2010

SUBJECT: Changes to Required Contract Certifications

NUMBER: 159

Public Acts 96-0795 and 96-0920 amended the contract certification requirements in the Illinois Procurement Code (30 ILCS 500). The new certification requirements apply to all contracts (defined at 30 ILCS 500/1-15.30) subject to the Procurement Code for which contractors were first solicited on or after July 1, 2010. The date of first solicitation will be evidenced by the "Publication Date" on the Contract Obligation Document (C-23). For contracts that do not require solicitation, the Illinois Office of the Comptroller (IOC) will use the earliest date of the required signatures on the contract in lieu of the "Publication Date".

This bulletin describes one new contract certification and several changes to existing contract certifications. This bulletin does not address the certification requirements for "bids" and "subcontracts".

NEW CERTIFICATION

30 ILCS 500/50-10(b) Felons:

"Every bid submitted to and contract executed by the State and every subcontract subject to Section 20-120 of this Code shall contain a certification by the bidder or contractor or subcontractor, respectively, that the bidder, contractor, or subcontractor is

not barred from being awarded a contract or subcontract under this Section and acknowledges that the chief procurement officer may declare the related contract void if any of the certifications required by this Section are false."

The IOC recommends the following language:

"The contractor certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-10. Section 50-10 prohibits a contractor from entering into a contract with a State agency if the contractor has been convicted of a felony and 5 years have not passed from the completion of the sentence for that felony. The contractor further acknowledges that the chief procurement officer may declare the related contract void if this certification is false."

REVISIONS TO EXISTING CERTIFICATIONS

Public Acts 96-0795 and 96-0920 revise various sections of the Illinois Procurement Code in regards to required contract certifications. The following section shows the revised statutory language (new language is underlined and deleted language is lined through) and the IOC recommended revised certifications.

30 ILCS 500/20-65 (b) Right to audit records:
"Audit. Every contract and subcontract shall provide that all books and records required to be maintained under subsection (a) shall be available for review and audit by the Auditor General, chief procurement officer, internal auditor, and the purchasing agency. Every contract and subcontract shall require the contractor and subcontractor, as applicable, to cooperate fully with any audit."

The IOC recommends the following language:

"Contractor agrees to maintain books and records related to the performance of the contract and necessary to support amounts charged to the State under the contract for a minimum of 3 years from the last action on the contract. Contractor further agrees to cooperate fully with any audit and to make the books and records available to the Auditor General, chief procurement officer, internal auditor, and the purchasing agency."

<u>*30 ILCS 500/50-5(d) Bribery:*</u>
"Certification. Every bid submitted to and contract executed by the State <u>and every</u> <u>subcontract subject to Section 20-120 of this Code</u> shall contain a certification by the contractor <u>or the subcontractor, respectively,</u> that the contractor <u>or subcontractor</u> is not barred from being awarded a contract or subcontract under this Section <u>and</u> <u>acknowledges that the chief procurement officer may declare the related contract void</u> <u>if any certifications required by this Section are false</u>. A contractor who makes a false statement, material to the certification, commits a Class 3 felony."

The IOC recommends the following language:

"The contractor certifies that it is not barred from being awarded a contract under **_30 ILCS 500/50-5. Section 50-5 prohibits a contractor from entering into a contract_** **_with a State agency if the contractor has been convicted of bribery or attempting to_** **_bribe an officer or employee of the State of Illinois, or if the contractor has made an_** **_admission of guilt of such conduct which is a matter of record. The contractor_** **_further acknowledges that the chief procurement officer may declare the related_** **_contract void if this certification is false. "_**

<u>**_30 ILCS 500/50-10.5(b) Prohibited bidders and contractors:_**</u>
"Every bid submitted to and contract executed by the State <u>and every subcontract</u> <u>subject to Section 20-120 of this Code</u> shall contain a certification by the bidder, ~~or~~ contractor<u>, or subcontractor, respectively,</u> that the <u>bidder,</u> contractor<u>, or subcontractor</u> is not barred from being awarded a contract <u>or subcontract</u> under this Section and ~~that~~ ~~the contractor~~ acknowledges that the <u>chief procurement officer</u> ~~contracting State~~ ~~agency~~ shall declare the <u>related</u> contract void if <u>any of</u> the <u>certifications</u> ~~certification~~ completed pursuant to this subsection (b) <u>are</u> ~~is~~ false."

The IOC recommends the following language:

"The contractor certifies that it is not barred from being awarded a contract under **_30 ILCS 500/50-10.5. Section 50-10.5 prohibits a contractor from entering into a_** **_contract with a State agency if the contractor, or any officer, director, partner, or_** **_other managerial agent of contractor, has been convicted within the last 5 years of a_** **_felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under_** **_the Illinois Securities Law of 1953 or if the contractor is in violation of Subsection_**

(e). The contractor further acknowledges that the chief procurement officer shall declare the related contract void if this certification is false."

<u>**30 ILCS 500/50-11(b) Debt Delinquency:**</u>
"Every bid submitted to and contract executed by the State <u>and every subcontract subject to Section 20-120 of this Code</u> shall contain a certification by the bidder<u>,</u> ~~or~~ contractor<u>, or subcontractor, respectively,</u> that the contractor <u>or the subcontractor</u> and its affiliate is not barred from being awarded a contract <u>or subcontract</u> under this Section and ~~that the contractor~~ acknowledges that the<u> chief procurement officer</u> ~~contracting State agency~~ may declare the <u>related</u> contract void if <u>any of</u> the <u>certifications</u> ~~certification~~ completed pursuant to this subsection (b) <u>are</u> ~~is~~ false."

The IOC recommends the following language:

"The contractor certifies that it, and any affiliate, is not barred from being awarded a contract under 30 ILCS 500/50-11. Section 50-11 prohibits a contractor from entering into a contract with a State agency if the contractor knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. The contractor further acknowledges that the chief procurement officer may declare the related contract void if this certification is false."

<u>**30 ILCS 500/50-12(b) Collection and remittance of Illinois Use Tax:**</u>
"Every bid submitted and contract executed by the State <u>and every subcontract subject to Section 20-120 of this Code</u> shall contain a certification by the bidder<u>,</u> ~~or~~ contractor<u>, or subcontractor, respectively,</u> that the bidder<u>,</u> ~~or~~ contractor<u>, or subcontractor</u> is not barred from bidding for or entering into a contract under subsection (a) of this Section and ~~that the bidder or contractor~~ acknowledges that the<u> chief procurement officer</u> ~~contracting State agency~~ may declare the <u>related</u> contract void if <u>any of</u> the <u>certifications</u> ~~certification~~ completed pursuant to this subsection (b) <u>are</u> ~~is~~ false."

The IOC recommends the following language:

"The contractor certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-12. Section 50-12 prohibits a contractor from entering into a contract with a State agency if the contractor, or any affiliate, has failed to collect

and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The contractor further acknowledges that the chief procurement officer may declare the related contract void if this certification is false."

30 ILCS 500/50-14(c) Environmental Protection Act violations:
"Every bid submitted to and contract executed by the State <u>and every subcontract subject to Section 20-120 of this Code</u> shall contain a certification by the bidder<u>,</u> ~~or~~ contractor<u>, or subcontractor, respectively,</u> that the bidder<u>,</u> ~~or~~ contractor<u>, or subcontractor</u> is not barred from being awarded a contract <u>or subcontract</u> under this Section and ~~that the contractor~~ acknowledges that the contracting State agency may declare the <u>related</u> contract void if <u>any of</u> the <u>certifications</u> ~~certification~~ completed pursuant to this subsection (c) <u>are</u> ~~is~~ false."

The IOC recommends the following language:

The contractor certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-14. Section 50-14 prohibits a contractor from entering into a contract with a State agency if the contractor has been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last 5 years. The contractor further acknowledges that the contracting State agency may declare the related contract void if this certification is false."

Contracts that are subject to Public Acts 96-0795 and 96-0920 that are not in compliance with the new certification requirements will be rejected by the IOC.

If you have any questions concerning this bulletin, please contact Brett Cox at (217) 782-3686. Agencies may access this and other Accounting, Payroll and SAMS Bulletins on the Comptroller's website at www.ioc.state.il.us under Resource Library.