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CHIEF PROCUREMENT OFFICER FOR  
THE DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, GRANTMAKING,  
PROCUREMENT AND PROPERTY MANAGEMENT  
SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS  
CHAPTER III: CHIEF PROCUREMENT OFFICER FOR  
THE DEPARTMENT OF TRANSPORTATION

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THE DEPARTMENT OF TRANSPORTATION – CONTRACT PROCUREMENT

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**AUTHORITY:** Implementing the Illinois Procurement Code [30 ILCS 500], Governmental Joint Purchasing Act [30 ILCS 525], Section 2705-600 of the Department of Transportation Law [20 ILCS 2705], and the Public Private Agreements for the Illiana Expressway Act [605 ILCS 130] and authorized by Section 5-25 of the Illinois Procurement Code [30 ILCS 500], Section 2 of the Governmental Joint Purchasing Act [30 ILCS 525], Section 2705-600(7) of the Department of Transportation Law [20 ILCS 2705], Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175], and Section 15(a) of the Public Private Agreements for the Illiana Expressway Act [605 ILCS 130].

**SOURCE:** Adopted by emergency rulemaking at 22 Ill. Reg. 11602, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 21060, effective November 25, 1998; emergency amendment at 29 Ill. Reg. 7832, effective May 12, 2005, for a maximum of 150 days; emergency expired October 8, 2005; amended at 29 Ill. Reg. 18147, effective October 19, 2005; recodified, pursuant to PA 96-795, from Department of Transportation, 44 Ill. Adm. Code 660, to Chief Procurement Officer for Department of Transportation, 44 Ill. Adm. Code 6, at 35 Ill. Reg. 10158; amended at 35 Ill. Reg. 16518, effective September 30, 2011; amended at 36 Ill. Reg. 230, effective December 21, 2011; expedited correction at 36 Ill. Reg. 14883, effective December 21, 2011; amended at 37 Ill. Reg. 5764, effective April 19, 2013; amended at 37 Ill. Reg. 15878, effective September 27, 2013; amended at 37 Ill. Reg. 19098, effective November 15, 2013; recodified Title of the Part at 39 Ill. Reg. 5903; amended at 40 Ill. Reg. 6693, effective April 7, 2016; amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL

**Section 6.10 Authority**

- a) The Chief Procurement Officer (CPO) is established in the Illinois Procurement

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Code (Code) [30 ILCS 500] as the person appointed by the Secretary of Transportation with the consent of the majority of the members of the Executive Ethics Commission for all construction, ~~all~~ construction-related and construction support services, operation of any facility, and the provision of any construction or construction-related service or activity committed by law to the jurisdiction of the Illinois Department of Transportation (Department), including the direct or reimbursable expenditure of all federal funds for which the Department is responsible or accountable for the use thereof in accordance with federal law, regulations or procedure. The CPO has the authority to appoint State Purchasing Officers (SPOs) to carry out the responsibility established in the Code. (See Sections 1-15.15 and 10-10 of the Code.)

- b) With respect to construction, ~~and~~ construction-related, and construction support services, the Department is charged by law with the responsibility for the construction, improvement, maintenance and operation of the State Highway System; the rehabilitation, improvement and construction of rail facilities; and the construction, improvement and maintenance of air navigation facilities either on behalf of the State or as agent for units of local government empowered to operate air navigation facilities. In addition, the Department may let contracts for highway construction on highway systems under the jurisdiction of local highway authorities as a condition of the receipt of federal-aid funds or as otherwise provided by law.
- c) Procurements undertaken by the Department, as a construction agency and purchasing agency, and subject to the Code will be accomplished in accordance with this Part or the standard procurement rules adopted by the Chief Procurement Officer for General Services (CPO-GS) (see 44 Ill. Adm. Code 1) as indicated in the notice of the relevant procurement. All other procurements subject to the Code and committed to the authority of other Chief Procurement Officers will be conducted in accordance with the rules adopted by those Chief Procurement Officers. Procurements subject to the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535] will be conducted, in all aspects and procedures, including but not limited to prequalification, publication, evaluation, selection, contract formation and amendment, and performance evaluation, in accordance with the Department's rules promulgated at 44 Ill. Adm. Code 625.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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**Section 6.20 Policy and Application**

- a) Policy  
All Department contract procurements will be accomplished in the most economic and expeditious manner consistent with the principles and practices established in the Code. It is the policy of the CPO for the Department that all activities of the appointed SPOs and other designees related to the procurement process maximize the value of the expenditure of public funds in procuring contracts, and that those appointed and designated act in a manner that maintains public trust in the integrity of the process.
- b) Application  
This Part does not apply to intergovernmental agreements and contracts; grants; purchase of care agreements; collective bargaining agreements; purchase of real estate; contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations; and utility and railroad cost reimbursement agreements. (See Section 1-10(b) of the Code.)

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.40 Definitions**

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

"Act" – The Illinois Governmental Joint Purchasing Act [30 ILCS 525].

"Amendment" – A written agreement signed by both parties, including a change order, which alters the terms of an existing contract.

"Bid" – An offer made by a bidder in response to a contract item advertised in an Invitation for Bids.

"Bidder" – Any person or entity that in fact submits a bid.

"Change Order" – A change in a contract term, other than as specifically provided for in the contract, which authorizes or necessitates any increase or

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decrease in the cost of the contract or the time for completion for procurements subject to the jurisdiction of the Chief Procurement Officers appointed pursuant to Section 10-20. (Section 1-15.12 of the Code)~~"Change Order"—A formal, written directive issued to a contractor or an agreement that amends a contract in order to address contingencies affecting the performance and completion of the contract, including but not limited to such matters as extra work, design changes or alterations to plans, or special provisions or specifications for which no provision is included in the original contract.~~

"Chief Procurement Officer" or "CPO" – The person appointed under Section 1-15.15(2) of the Code.

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

"Construction Agency" – The Illinois Department of Transportation for construction or maintenance of roads, highways, bridges and airports as an agency that enters into construction contracts as authorized by law or by delegation from the CPO. (See Section 1-15.25 of the Code.)

"Construction-related Services" – Those services including design, layout, inspection, support, feasibility or location study, research, development, planning, or other investigative study undertaken by a construction agency concerning construction or potential construction. (Section 1-15.20 of the Code)

"Construction Support" – All equipment, supplies, and services that are necessary to the operation of a construction agency's construction program. Construction Support does not include construction-related services. (Section 1-15.20 of the Code)

"Contract" – In addition to the definition of contract set forth in Section 1-15.30 of the Code, a contract is the written agreement entered into at the discretion of the SPO between the Department and the contractor comprising such documents as set forth in each individual agreement, including change orders, contract adjustments, and renewals, and setting forth the obligations of the parties for the performance of the contract.

"Contract Adjustment" – A written price adjustment that adds to or deducts from a contract in accordance with provisions included in the original contract, including but not limited to increases or decreases in quantities, incentives,



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changed conditions and the addition of missing pay items called for in the specifications.

"Contractor" – ~~Any~~ means any person, firm, corporation, organization, partnership or association, however organized, and its affiliates, including its owners, directors, officers, partners, managers, key employees and others engaged in primary managerial or supervisory positions.

"Day" – A calendar day.

"Department" – The Illinois Department of Transportation.

*"Electronic Procurement" – Conducting all or some of the procurement function over the internet. (Section 1-15.40 of the Code)*

"Emergency ~~Statement~~ Affidavit" – The ~~statement~~ affidavit filed by the CPO with the Procurement Policy Board and the Auditor General setting forth the actual or estimated amount expended, the name of the contractor involved, and the conditions and circumstances requiring the emergency procurement. (See Section 20-30(c) of the Code.)

"Emergency Contract" – The initial written agreement for an emergency procurement.

"Germane" – In relationship to the modification, alteration or amendment of the terms of a contract by change order, the term "germane" means a change that is related to the original terms of the contract but that is not so substantial a departure from the original as to constitute a new contract.

*"Governmental Unit" – The State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code, officers of the State of Illinois, any public authority that has the power to tax, or any other public entity created by statute. (Section 1-15.47 of the Act)*

*"Master Contract" – A definite or indefinite quantity or requirements contract awarded in accordance with the Procurement Code, against which subsequent orders may be placed to meet the needs of the Department. A master contract may be for use by the Department or for multiple State purchasing entities and other entities as authorized under the Governmental Joint Purchasing Act.*

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(Section 1-15.47 of the Code)

"Multiple Award" – An award that is made to 2 or more bidders or offerors for similar supplies, services, or construction-related services. (Section 1-15.48 of the Code)

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

"No-cost Contract" – A contract in which the State of Illinois does not make a payment to, or receive a payment from, the vendor, but the vendor has the contractual authority to charge an entity other than the State of Illinois for supplies or services at the State's contracted rate to fulfill the State's mandated requirements. (Section 1-15.49 of the Code)

"Offerors" – For purposes of this Part, ~~the term "offerors"~~ includes only persons or entities submitting proposals that are acceptable or potentially acceptable. The term does not include persons or entities who submitted unacceptable proposals.

"Participant Procuring Entity" – Any entity, including any state, that actively contributes to the procurement, such as assisting in the development of specifications, being a member of the evaluation committee, being a required approver of the proposed award, or engaging in other similar activities that assist with a procurement.

"Piggyback Contract" – A form of cooperative purchasing through which the Department is extended the pricing and terms of a contract entered into by another state, another state agency or public department of this or any other state, the federal government, or a group purchasing organization.

"PPB" – The Procurement Policy Board created by Section 5-5 of the Code.

"Procurement Compliance Monitor" or "PCM" – ~~The~~ the person appointed under Section 10-15 of the Code.

"Proposal" – A response to a Request for Proposals.

*"Purchasing Agency" – A State agency that enters into a contract at the direction of a State purchasing officer or a chief procurement officer. (See Section 1-15.70)*

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of the Code.)

"Renewal" – An agreement between the parties to a contract to authorize an additional contract period under the terms and conditions of the renewal provision in the original contract.

"Responsible" – The capability, integrity and reliability of a bidder, offeror or contractor that, in all respects, will assure good faith performance to undertake and complete fully the requirements of a contract.

"Responsive" – In the context of bidding procedures, the compliance in all meaningful, material respects with the Invitation for Bids.

["Request for Information" or "RFI" – The process of requesting information from interested parties to aid the State in decision making. An RFI is not a procurement method and does not result directly in the award of a contract.](#)

"Satisfactory Evidence of Compliance" – A bidder's certification or other assurance of compliance in the contract bid proposal will constitute satisfactory evidence of compliance and will allow a bidder to be considered a responsible bidder on a construction contract under Section 30-22 of the Code.

["Solicitation" – The document \(e.g., IFB or RFP\) posted to the Bulletin requesting interested contractors or vendors to submit a bid, offer, or proposal for evaluation by the State. An RFI is not considered a solicitation.](#)

"Special Provisions" – Additions and revisions to the Standard Specifications for Road and Bridge Construction and the Supplemental Specifications and Recurring Special Provisions (see the Department's website at <http://www.idot.illinois.gov/home/resources/Manuals/Manuals-and-Guides>) ~~<http://www.idot.illinois.gov/home/resource/Manuals/Manuals-and-Guides>~~ applicable to an individual contract.

"Specifications" – The body of directions, provisions, and requirements for performance of prescribed work. Specifications ~~include~~ ~~includes~~ and may be referred to as the Standard Specifications, which is a Department publication of specifications approved for general application and repetitive use.

"State Purchasing Officer" or "SPO" – The person appointed under Section 10-10

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of the Code.

"Subcontract" – A contractual agreement between a person or entity and a person or entity who has a contract subject to the Code and this Part, pursuant to which the subcontractor assumes obligation for performing specified work. (See Section 1-15.107 of the Code.)

"Subcontractor" – A person or entity that enters into a contractual agreement with a total ~~annual~~ value of \$50,000 or more with a contractor who has a contract subject to the Code. (See Section 1-15.108 of the Code.)

"Supplemental Specifications" – Additions and revisions to the Department's Standard Specifications.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART B: PUBLICATION OF PROCUREMENT INFORMATION

**Section 6.50 Transportation Procurement Bulletin**

- a) The CPO, in consultation with the Department, possesses the rights to, and is the authority responsible for, publishing the Department's volume of the Illinois Procurement Bulletin. The ~~Department's~~ ~~Department~~ volume is entitled the "Transportation Procurement Bulletin" (Bulletin). (See Section 15-1 of the Code.)
- b) The Bulletin is the published source for all Department procurement actions, notices and other information relevant to Department procurement activities undertaken pursuant to this Part, including but not limited to contracts offered in the Invitation for Bids, [Requests for Proposals, other methods of source selection](#), contracts awarded, change orders, emergency purchases and sole source procurements.
- c) The Bulletin may be published in subparts designed to enhance and focus the ability of users to find information relevant to the user's interest.
- d) The Bulletin or any subpart thereof will be published or updated at least once each month but may be updated more frequently. (See Section 15-15 of the Code.)

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- e) Notice of all awarded contracts, including renegotiated contracts and change orders, will be posted on the Department's website the next business day. Notice will be posted and published in the Bulletin and will include the following:
  - 1) the name of the successful responsible bidder or offeror;
  - 2) the contract price;
  - 3) the number of unsuccessful responsive bidders; and
  - 4) any other disclosures, such as emergency purchase disclosures or any disclosure required under the Code.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.55 Required Notices**

- a) Notice of all awarded contracts entered into by the Department pursuant to Subpart D will be published in the Bulletin.
- b) Notice of [all solicitations](#)~~Invitations for Bids~~ are published in the Bulletin pursuant to Subpart D.
- c) Notice of contracts let are published in the Bulletin pursuant to Subpart D.
- d) Notice of contract renewals and change orders are published in the Bulletin pursuant to Subpart F.
- e) The CPO or SPO will provide notice of emergency contracts and any hearings to extend any emergency contract in the Bulletin pursuant to Subpart C.
- f) The CPO will provide a written description of the intent to enter into a sole source contract, along with a description of the item to be procured and the intended sole source contractor, in the Bulletin prior to entering into the sole source contract. The notice will be posted at least 14 days prior to the sole source hearing pursuant to Subpart C.
- g) [Notice of exempt contracts as required by Section 1-10 of the Code.](#)

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(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART C: METHODS OF PROCUREMENT

**Section 6.80 Competitive Sealed Bids**

Except for those circumstances and methods described in Sections 6.90, 6.100, 6.110, ~~and~~ 6.120, [and 6.122](#), all Department contracts will be procured by competitive sealed bidding in accordance with Section 20-10 of the Code and this Part. (See Section 20-5 of the Code.)

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.90 Competitive Sealed Proposals**

- a) Department contracts may be procured by competitive sealed proposals when the Department determines that competitive sealed bidding is either not practicable or not advantageous to the State. (See Section 20-15(a) of the Code.)
- b) The determination to use competitive sealed proposals will be made in writing [and provided to the CPO](#) on either a contract-by-contract or a category of contracts basis.
  - 1) "Practicable" Distinguished From "Advantageous." As used in this Subpart, the term "practicable" means that which may be accomplished or put into practical application, and "advantageous" means an 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 Department will determine in writing that competitive sealed bidding is either not practicable or not advantageous to the State.
  - 2) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals may be used. The competitive sealed proposal method differs from competitive sealed bidding in two principal ways. First, it permits discussions with competing offerors and changes in their proposals, including price. Second, it allows comparative evaluations to be made when selecting among acceptable proposals for award of the contract. Where evaluation factors involve the relative

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abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing values other than price alone, or where prior procurement experience indicates that competitive sealed proposals may result in more beneficial contracts for the State, use of competitive sealed proposals is the appropriate procurement method.

- c) Contracts for professional and artistic services are subject to and governed by the applicable Competitive Selection Procedures (44 Ill. Adm. Code ~~1.2035~~<sup>2035</sup>) adopted by the CPO-GS with the applicable oversight by the CPO-DOT.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.100 Small Purchases~~Contracts~~**

- a) The following procurements, when they do not exceed \$100,000, may be made without notice, competition, or use of any other method of procurement prescribed in the Code or this Part:~~Individual purchases for supplies or services from any one source that do not exceed \$80,000 may be made without notice, competition or use of any other method of procurement prescribed in the Code or this Part. (See Section 20-20(a) of the Code.) Contracts for professional and artistic services that do not exceed \$20,000 for a nonrenewable term of not more than one year will be procured in accordance with this Section.~~
- 1) Construction purchases;
  - 2) Individual purchases for supplies or services from any one source;
  - 3) Professional and artistic services for a nonrenewable term of not more than one year. (See Section 20-20(a) of the Code.)
- b) ~~Construction purchases, construction supply contracts, and construction related service contracts that do not exceed \$100,000 may be procured without notice, competition or use of any other method of procurement prescribed in the Code or this Part. (See Section 20-20 of the Code.)~~
- be) Estimated needs shall not be divided in any manner to avoid the use of an established method of procurement. (See Section 20-20(a) of the Code.)

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- cd) Determination of Small Purchase Status
- 1) In determining whether a contract is under the small purchase limit, the stated value of the supplies or services, plus any optional supplies and services, determined in good faith, shall be utilized. When the value is calculated month-to-month or in a similar fashion, the amount shall be calculated for a 12-month period.
  - 2) If only a unit price or hourly rate is known, the contract shall be considered small and shall have a not-to-exceed limit applicable to the type of procurement (see subsection (a)).
  - 3) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount, and the SPO determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the agency's needs or other circumstances, the SPO must follow the procedures for sole source or emergency procurement, whichever is applicable, to complete the contract.
- de) The CPO may establish policies and procedures regarding the use of the small purchase method of source selection to ensure compliance with policies, including promotion of small business, diversity and transparency.
- ef) Each April, the CPO will determine the CPI adjustment to the small purchase thresholds applicable to the next fiscal year. If the CPI is greater than zero, the thresholds identified in Section 20-20(a) of the Code will be reduced in the amount that, with the CPI increase, would result in the small purchase thresholds remaining as stated in Section 20-20(a) of the Code. The CPO and the Procurement Policy Board will review the small purchase thresholds to determine if a modification to the thresholds is needed, and will do so within five years starting July 1, 2019. This review may occur sooner at the call of the CPO or the Procurement Policy Board.~~Each July 1, the small purchase maximum shall be adjusted for inflation as determined by the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor and rounded to the nearest \$100 by the CPO. (See Section 20-20(c) of the Code.)~~



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- f) This Section does not apply to construction-related professional services contracts awarded in accordance with the provisions of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.110 Sole Source and Sole Economically Feasible Source Procurement ~~Contracts~~**

- a) Application  
A contract may be procured from a single source without competition or use of any other method of procurement prescribed in the Code or this Part when the single source is the only economically feasible source capable of providing the services, including professional and artistic services, contemplated or the material or product to be supplied. (See Section 20-25 of the Code.)
- b) Conditions for Use of Sole Source and Sole Economically Feasible Source Procurement Method  
Sole source procurement is permissible when a requirement is available from only a single supplier. Sole economically feasible source is permissible 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 ~~vendor is potential bidder or offeror~~ authorized to provide that item. The following are examples ~~Examples~~ of circumstances that ~~may~~ ~~could~~ necessitate sole source and sole economically feasible source procurement, but are not exhaustive; include but are not limited to:
- 1) when the compatibility of equipment, accessories, replacement parts, or service is a primary consideration;
  - 2) when trial use, testing or the development of new technology is the object of the procurement;
  - 3) when a sole supplier's item is to be procured for commercial resale;
  - 4) when utility services are to be procured;
  - 5) when the surety providing a performance bond tenders a completion contractor, acceptable to the Department, to complete a defaulted contract;

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- 6) when the item is copyrighted or patented and the item is not available except from the holder of the copyright or patent or service area licensee.
- c) As soon as a need is identified by the Department, the SPO must be contacted to determine the appropriate procurement method. The final determination as to whether a procurement shall be made as a sole source or sole economically feasible source procurement shall be made by the SPO, based on a request made by the Department. The request shall be in writing on a form prescribed by the PPB and shall include the basis for the sole source or sole economically feasible source determination. Prior to authorizing the Department to enter into a contract based on the sole source or sole economically feasible source request, the CPO shall offer to conduct a public hearing and make a final determination as required by Section 20-25(a) of the Code. Any request for hearing must be made at least 5 calendar days prior to the date of the scheduled hearing. If no request for hearing is made, the hearing will be cancelled. No sole source or sole economically feasible source procurement may proceed without final approval by the CPO.
  - d) When an interested party submits a written request for a public hearing, the CPO will provide notice of intent to contract on a sole source basis to the PPB and publish the notice in the Bulletin at least 14 days prior to the public hearing required in Section 20-25(a) of the Code. The notice will include the sole source procurement justification form prescribed by the PPB, a description of the item to be procured, the intended sole source contractor, and the date, time and location of the public hearing. (See Section 20-25 of the Code.)
  - ed) The CPO may hold a public hearing in accordance with Section 20-25(a) of the Code.
    - 1) Prior to the execution of a sole source contract, the CPO may hold a public hearing and provide written justification for the sole source contract. The Department will also provide written justification for the sole source contract.
    - 2) Any interested party may present testimony at the public hearing.
    - 3) A sole source contract, when a public hearing was requested by an interested party, may be awarded, after the public hearing is conducted, with the approval of the CPO. Approval of the CPO will be granted in accordance with the Code and this Part.

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- 4) A copy of all procurement documents provided at the hearing will be included in the ~~subsequent~~ Bulletin, along with the decision of the CPO to award or not award the sole source contract.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.120 Emergency Purchases~~Contracts~~**

- a) A contract may be procured without the use of any other method of procurement prescribed in the Code or this Part when there exists a threat to public health or safety, or when an immediate contract is needed to repair State property in order to prevent or minimize further loss or damage to State property, or to prevent or minimize serious disruption in critical State services that affect health, safety or collection of substantial State revenues, including but not limited to completion of a defaulted contract, or to ensure the integrity of State records. (See Section 20-30(a) of the Code.)
- b) The term of an initial emergency contract will not exceed 90 days as the time reasonably needed for a competitive procurement. For the initial emergency contract:
  - 1) The emergency contract will provide a written description of the basis for the emergency and reasons for the selection of the particular contractor to be included in the contract file. (See ~~Section~~Sections 20-30(a) and (c) of the Code.)
  - 2) Notice of the emergency contract will be provided to the PPB and published in the Bulletin no later than 5 calendar days after the contract is awarded. For purposes of this Section, "contract is awarded" means that the contractor has received notification to proceed, which may be oral, and has started the work.
  - 3) Within 10 days after the procurement, the emergency ~~statement~~affidavit will also be posted to the Bulletin and filed with both the PPB and the Auditor General. (See Section 20-30(c) of the Code.) For purposes of this Section, "procurement" means that the contractor has received notification to proceed, which may be oral, and has started the work.

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- c) An emergency contract may be extended beyond 90 days if the CPO determines additional time is necessary and that the contract scope and duration are limited to the emergency. The CPO will hold a public hearing in accordance with Section 20-30(a) of the Code.
- 1) Prior to the execution of an extension past 90 days, the CPO will hold a public hearing and provide written justification for the emergency contract. The Department may also provide written justification for the emergency contract.
  - 2) Notice of the hearing will be posted at least 14 calendar days prior to the emergency contract extension hearing date and prior to the expiration of the 90-day term of the initial emergency contract. The notice will include a description of the need for the emergency contract extension, the contractor, and the date, time and location of the public hearing.
  - 3) The PPB and members of the public may present testimony at the public hearing.
  - 4) A copy of the notice and documents provided at the hearing will be included in the ~~subsequent~~ Bulletin, along with the decision of the CPO to extend or not extend the emergency contract.
- d) For purposes of this Section, State property includes all property both real and personal. State records include all records regardless of the form of storage. State services include, but are not limited to, all activities committed by law to the jurisdiction or responsibility of the Department, whether provided directly or indirectly by means of contract or intergovernmental agreement.
- e) The Department will employ such competition as is practicable under the emergency circumstances to abate the emergency situation, including the use of existing contracts.
- f) Emergency contracts are exempt from the requirements of Section 20-80(d) of the Code as long as notice is filed with the PPB and published in the Bulletin, as required.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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**Section 6.122 Requests for Information**

- a) When the Department does not have sufficient information, including, but not limited to, available supplies, products, or services, to issue a solicitation, the Department, in consultation with the SPO, may issue a request for information (RFI). Public notice of the RFI shall be published in the Bulletin at least 14 days before the date set for the receipt of information. The submission of information by a vendor in response to an RFI is not a prerequisite for that vendor to respond to a subsequent solicitation for which information was solicited, and the issuance of an RFI does not commit the Department to make any procurement of any kind.
- b) RFI responses are subject to the Illinois Freedom of Information Act (FOIA) [5 ILCS 140]. Responses that contain confidential information or trade secrets may be exempted from disclosure under FOIA. (See Section 7(1)(g) of FOIA.) The Department may assert this exemption provided the respondent furnishes the Department with both a redacted and unredacted copy of his/her response.
- c) An RFI is to be used for information gathering only and is not a vehicle for procuring supplies or services.

(Source: Added at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.124 Joint Purchasing**

- a) The CPO may authorize the Department to jointly purchase supplies and services with:
  - 1) a governmental unit of this State;
  - 2) a governmental entity of another state;
  - 3) a consortium of governmental entities of one or more states; or
  - 4) any not-for-profit agency that qualifies under Section 45-35 of the Code and that either:
    - A) acts pursuant to a board established by or controlled by a unit of local government; or

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- B) receives grant funds from the State or from a unit of local government.
- b) If the State is the lead state, all joint purchases shall be conducted in accordance with the Code and this Part. Multiple awards are allowed.
- c) If the State is a participant procuring entity, all joint purchases shall be conducted in accordance with the procurement laws of the lead state.
- d) All joint procurements shall be by competitive solicitation except when the CPO determines:
- 1) there is only one economically feasible source for the item; or
  - 2) that a threat exists to the public health or safety or that immediate expenditure is necessary to prevent or minimize serious disruption in critical State services.
- e) All awards shall be published in the Bulletin in accordance with the Code.
- f) The CPO may designate contracts made through a joint purchase as available to other governmental units in Illinois.
- g) If any contract or amendment to a contract is entered into or purchase or expenditure of funds is made at any time in violation of the Act or any other law, the contract or amendment may be declared void by the CPO or may be ratified and affirmed if the CPO determines ratification to be in the best interest of the Department.

(Source: Added at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.125 Small Business Set-Asides (Renumbered)**

(Source: Section 6.125 renumbered to Section 6.801 at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.126 Piggyback Contracts**

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- a) The CPO may authorize the purchase or lease of supplies and services that have been procured through a competitive process by:
  - 1) a federal agency;
  - 2) a consortium of governmental, educational, medical, research, or similar entities; or
  - 3) a group purchasing organization of which the CPO or Department is a member or affiliate.
  
- b) Contracting Requirements
  - 1) To piggyback a contract from another entity, the underlying contract must include language allowing other governmental units to utilize the contract.
  - 2) The original contracting entity shall be contacted and advised of the intended piggyback contract and, if necessary, discussions shall be held as to concerns about any potential for diminution of supply or lack of vendor capacity to provide supplies or services.
  - 3) The Department shall obtain from the original contracting entity, and include as part of its procurement file, the following:
    - A) Solicitation;
    - B) Bid tabulation or evaluation with the reason for award;
    - C) Copy of the winning bid or proposal; and
    - D) Copy of the contract.
  
- c) Prior to utilization, all piggyback contracts shall be submitted to the CPO for review and approval and notice of the award shall be published in the Bulletin.
  
- d) The Department is not required to participate in the procurement activity prior to an award.

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- e) The CPO may authorize purchases and contracts that have been procured by other methods of procurement if, upon recommendation of the Department, the CPO determines it is in the best interests of the State.
- f) If any contract or amendment to a contract is entered into, or purchase or expenditure of funds is made, at any time in violation of the Act or any other law, the contract or amendment may be declared void by the CPO or may be ratified and affirmed if the CPO determines ratification to be in the best interest of the Department.

(Source: Added at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART D: COMPETITIVE SEALED BID PROCEDURES

**Section 6.160 Preparation of Bids**

- a) Bidders shall follow all instructions included in the Invitation for Bids and bid forms for submission of bids on the contract item for which bids are sought.
- b) Bidders shall submit their bids in the manner required by the Invitation for Bids.
- c) Unless otherwise provided, all prices shall be given in dollars and cents. Separate prices shall be entered for all pricing items indicated in the bid form. When alternate bids are sought for a particular contract item, the alternates will be identified in the bid form. A bid on every alternate is not required unless otherwise specifically provided. When required by the Invitation for Bids, the bidder shall indicate a unit price for each of the separate price items called for in the bid form. The bidder may be required to show the products of the respective quantities and unit prices in a space provided for that purpose, and a gross sum shown in the place indicated in the bid form as the summation of those products. All writing shall be in a permanent, noneraseable form, except the signature of the bidder, which shall be written in permanent, noneraseable ink. Electronic signatures will be accepted for electronically submitted bids in accordance with the security standards established by the Department of Central Management Services. ~~(See 5 ILCS 175/25-101(c) and 14 Ill. Adm. Code 105.300.)~~
- d) When required by the Invitation for Bids, each bid shall be accompanied by a bid bond in the form provided by the Department with the bid form package. The bid bond shall be made and tendered by a surety acceptable to the CPO in the amount



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stated in the Invitation for Bids. The Department will accept a bank cashier's check or a certified check in lieu of a surety bid bond.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.210 Public Opening of Bids**

- a) Bids ~~shall~~**will** be opened publicly or through an electronic procurement system ~~and made public~~ at the time and place specified in the Invitation for Bids. (See Section 20-10(d) of the Code.)
- b) The name of each bidder and the price term of each bid will be read aloud and/or recorded in a tabulation of bids for each contract item advertised.
- c) After execution of the contract, the tabulation of bids in the total amount and unit price items, if applicable, of all bidders will be available for public inspection.
- d) The Department or CPO may postpone a bid opening if unforeseen circumstances arise (e.g., severe weather, natural disaster, power or network outage).

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.220 Consideration of Bids**

- a) After the bids are opened and recorded, the bids will be reviewed for responsiveness to the Invitation for Bids, conformity with all requirements prescribed in this Part, and satisfactory evidence of compliance. If unit prices are required, the bids will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices.
- b) The right is reserved by the Department to reject any or all bids, to waive minor informalities or technicalities, to advertise for new bids, or to request confirmation or clarification from any bidder regarding information contained in a bid.
- c) Reasons for rejection of all bids include but are not limited to:
  - 1) The object of the contract being procured is no longer required.

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- 2) The contract provisions require amendment.
  - 3) The solicitation did not provide for consideration of all factors of significance to the Department.
  - 4) The bid prices exceed available funds or the bid prices exceed the anticipated estimate of costs to the extent that, in the judgment of the Department, prices are unreasonable.
  - 5) Evidence of collusion among bidders.
  - 6) Actions or events beyond the control of the Department, such as strikes, acts of God, material shortages, acts of the public enemy or litigation, would have an adverse effect on the completion of the anticipated contract.
- d) Reasons for rejection of any individual bids include but are not limited to:
- 1) More than one bid for the same contract item from a bidder under the same or different names.
  - 2) Evidence of collusion among bidders.
  - 3) Unbalanced bids in which the bid prices for some items are, in the judgment of the Department, out of proportion to the bid prices for other items.
  - 4) If the bid does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items or lump sum pay items.
  - 5) If the bid form is other than that furnished or authorized by the Department, or if the form is altered or any part of the form is detached.
  - 6) If there are omissions, erasures, alterations, unauthorized additions, conditional or alternate bids, or irregularities of any kind that may tend, in the judgment of the Department, to make the bid incomplete, indefinite, or ambiguous as to its meaning.
  - 7) If the bidder adds any provisions reserving the right to accept or reject an

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award, or to enter into a contract pursuant to an award.

- 8) If the bid is not accompanied by the proper bid bond or substitute guaranty.
- 9) If the bid is prepared in any manner other than as indicated in this Part or the Invitation for Bids making the bid not responsive.
- 10) If the bidder failed to incorporate relevant addenda or revisions.
- 11) [Failure to submit a Disadvantaged Business Enterprise \(DBE\) utilization plan in accordance with any special provisions, special notices, or bid documents.](#)

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.230 Mistakes**

- a) If a bidder claims a mistake in its bid, the bid may be withdrawn in accordance with this Section without payment of damages to the Department as provided in the terms of a bid bond or other bid security, provided the bidder claiming the mistake demonstrates to the CPO with competent and reliable evidence:
  - 1) that the claimed mistake is related to a material feature of the contract;
  - 2) that the mistake would have serious, material consequences to the bidder such that enforcement of a contract would be unconscionable;
  - 3) that the mistake occurred notwithstanding the exercise of reasonable care by the bidder; and
  - 4) that the bidder has raised the claim of a mistake without delay in order to prevent the CPO from altering its position in such a manner that loss to the State would occur.
- b) The CPO reserves the right to correct obvious, apparent errors in bids. A bid may not be withdrawn if a mistake is apparent and the intended correct bid is clearly evident on the face of the bid. Examples of mistakes that may be clearly evident on the face of the bid include but are not limited to typographical errors, errors in

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extending unit prices, transposition errors, and ~~arithmetic~~ ~~arithmetical~~ errors.

- c) Mistakes claimed after execution of the contract will not be corrected.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.300 Execution of ~~Contracts~~ ~~Contract~~**

- a) No contract subject to this Subpart D will be executed until the ~~1430~~-day PPB notice period has expired or the Department has received a waiver of the ~~1430~~-day notice period from the PPB. (See Section 5-30 of the Code.)
- b) The bid form submitted by the bidders may be in such a form that the signature of the bidder on the form is also the signature of the bidder for purposes of contract execution. In such circumstances, the Department will, after acceptance and approval of the bid for contracting purposes, execute the contract and return a copy to the bidder.
- c) If the contract as bid requires additional execution by the bidder, the contract shall be executed by the successful bidder and returned, together with any required contract bond, within 15 days after the contract has been mailed to the bidder. Failure of the successful bidder to execute the contract and file acceptable bonds within 15 days after the contract has been mailed to the bidder is cause for the cancellation of the award and the forfeiture of the proposal guaranty. If the contract is not executed by the Department within 30 days following receipt from the bidder of the properly executed contract and bond, the bidder shall have the right to withdraw the bid without penalty.
- d) The CPO or the SPO will execute the contract to demonstrate approval of the procurement process.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART E: COMPETITIVE SEALED PROPOSAL PROCEDURES

**Section 6.320 General Conditions for Use**

The procedures set forth in this Subpart E will be used for all contracts procured by the CPO by competitive sealed proposals supported by a written determination provided to the CPO that

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competitive sealed bidding is not practicable or not advantageous. (See Section 20-15(a) of the Code.)

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.340 Delivery of Proposals**

- a) Proposals shall be sealed and submitted in the manner specified or allowed by the Request for Proposals. When sent by mail, the sealed proposal shall be addressed to the official mailing address specified in the request. All proposals shall be delivered and received by the Department prior to the time and at the official address specified in the Request for Proposals. Proposals received after the time specified will be returned to the offeror unopened. The date and time of receipt will be recorded. Proposals will be held in a secure place until the established due date. After the date and time established for receipt of proposals, a register of proposals will be prepared that will include for all proposals the name of each offeror and a description sufficient to identify the supply or service item offered. The register of proposals is open to public inspection after award of the contract. Proposals will be maintained in a confidential manner during the period prior to execution of a contract. (See Section 20-15(f) of the Code.)
- b) Proposals will be opened publicly [or via an electronic procurement system](#) in the presence of at least one witness at the time and place indicated, but contents of individual proposals will not be disclosed.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.380 Execution of Contracts**

No contract subject to this Subpart E will be executed until the ~~1430~~-day PPB notice period has expired or the Department has received a waiver of the ~~1430~~-day notice period from the PPB.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART F: CONTRACT ADMINISTRATION

**Section 6.385 Expenditure in Excess of Contract Price**

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- a) No funds in excess of the contract price may be obligated or expended by change order or contract adjustment unless the additional work to be performed or materials to be furnished are germane to the original contract.
- b) A construction contract change order may cause the obligation or expenditure of funds in excess of the original contract amount provided the subject of the change order is germane to the original contract and the Department determines the additional expenditure is approved in accordance with Section 30-35 of the Code. The Department will approve construction contract change orders without supplemental procurement procedures in accordance with the following requirements and thresholds.
  - 1) A construction contract change order that is germane and that causes the obligation or expenditure in excess of the amounts in Section 30-35(b) of the Code ~~or of more than \$30,000 in excess of the contract price, whichever is less,~~ will not be authorized without supplemental procurement procedures unless the scope of the change order is approved as provided in Section 30-35 of the Code.
  - 2) Determination of germaneness and the amount of additional expenditure or obligation thresholds will be determined in accordance with this Part and Section 30-35 of the Code.
  - 3) Prior written approval or disapproval will be made by the Department in accordance with the threshold amounts established in Section 30-35 of the Code, and in all cases if the contemplated construction contract change order will cause an expenditure or obligation of funds of more than ~~\$100,000~~~~\$30,000~~ in excess of the contract price even though the threshold levels provided in Section 30-35 of the Code do not require such action. The written approval will state the reasons for the additional obligation or expenditure and the basis for the germaneness determination.
  - 4) For purposes of determining the scope of the change order and the value thereof that is subject to the requirements of this Section, the Department will consider the total net value of all added and deducted work functions related to the object of the change order and the work of the contract to be affected.

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- 5) Notice of approved construction contract change orders in excess of ~~\$100,000~~\$30,000 will be published in the Bulletin.
- c) A construction contract adjustment is germane to the original contract. If a contract adjustment requires additional obligation or expenditure in excess of \$30,000, the Department will record the provisions of the original contract in the contract payment file as authority for the addition.
- d) Contract change orders and contract adjustments will be processed on a form prescribed by the Department. ~~Form BC22, Authorization of Contract Change.~~

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.388 Continuing Disclosure~~Multi-year Contracts~~**

- a) Every person that has entered into a contract for more than one year in duration for the initial term or for any renewal term shall certify, by January 1 of each fiscal year covered by the contract, after the initial fiscal year, to the Chief Procurement Officer any changes that affect its ability to satisfy the requirements of Article 50 of the Code. (Section 50-2 of the Code)~~Every contractor with a multi-year contract and every subcontractor with a multi-year subcontract shall certify by July 1 of each fiscal year covered by the contract, after the initial fiscal year, to the CPO whether it continues to satisfy the requirements of Article 50 of the Code. (Section 50-2 of the Code) This obligation may require that the contractor or subcontractor submit a new financial disclosure form.~~
- b) If a contractor or subcontractor continues to meet all requirements of Article 50 of the Code, or if the contract has been substantially completed before the contract expiration and the contract has not yet expired, the certification under subsection (a) is not required.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART J: MISCELLANEOUS

**Section 6.700 Procurement File**

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- a) The procurement file will contain all written documentation, forms, and any information generated by the Department or received from a proposer, bidder, or contractor for the procurement.
- b) The Department's procurement file will not include trade secrets or other competitively sensitive, confidential, or proprietary information.
- c) Multiple procurement file locations may exist, but must be readily available for review or disclosure under the Freedom of Information Act (FOIA). ~~The Department's procurement file will not include trade secrets or other competitively sensitive, confidential or proprietary information.~~

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART K: TARGET MARKET PROGRAM

**Section 6.800 Purpose and Objective (Repealed)**

- a) **Purpose**  
~~It is the responsibility of the CPO to implement, in collaboration with the Department, appropriate administrative procedures to determine the need for the establishment of a target market program, as required by Section 2705-600 of the Department of Transportation Law [20 ILCS 2705/2705-600], and to establish appropriate administrative procedures governing the scope and implementation of any target market action. The statutory purpose of this Subpart is to authorize the CPO, in consultation with the Department, to implement a target market program applicable to transportation construction project contract procurement, as necessary, to remedy particular incidents and patterns of egregious race or gender discrimination.~~
- b) **Objective**  
~~Coordinated action is required between the CPO and the Department to implement this Subpart, deemed necessary by the CPO, to establish and administer a target market program applicable to contracts entered into by the Department. Adoption of appropriate administrative procedures by rule to implement a target market program requires the CPO and the Department to address the evidentiary tests established by Section 2705-600 of the Law and the courts that govern race-based and gender-based governmental actions and policies. Generally, race-based and gender-based government actions, including~~



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~~contract procurement, have been subject to high levels of judicial scrutiny to ensure that the governmental action addresses a compelling interest in remedying discrimination shown by a strong basis in evidence, and employing remedies that are narrowly tailored to the evidence. It is the objective of this Subpart to ensure that any action to establish and implement a target market program applicable to Department contracts meets the evidentiary tests and that target market remedies utilized are narrowly tailored.~~

(Source: Repealed at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section ~~6.8016.125~~ 6.8016.125 Small Business Set-Asides**

- a) The CPO, in consultation with the Department, may determine categories of construction, supply, and service procurements that will be set aside for small businesses. The set-aside designation may be made for current and future procurements for a fair proportion of a specific construction, supply, or service, or for a class of like construction, supplies or services. A fair proportion of construction contracts means no less than 25% nor more than 40% of the annual total contracts for construction. A set-aside designation may last indefinitely or for a stated period of time, as determined by the Department. (See Section 45-45(a) and (c) of the Code.)
- b) A business that meets the State (under Section 45-45(b) of the Code) or federal definition of a small business or small business concern on the day of bid or proposal opening will be considered a small business for the duration of the contract. The definition will be stated in the contract proposal.
- c) If the Department wishes to make a procurement covered by a small business set-aside designation, the solicitation will note that responses are limited to those from responsible small businesses. Bids or proposals received from businesses other than small businesses will be rejected as nonresponsive. (See Section 45-45(a) of the Code.)
- d) If the Department determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Department will 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 will be published in the Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement will be conducted in

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accordance with the limitations of the Code and this Part. (See Section 45-45(d) of the Code.)

- e) Unless the Department provides a definition for a particular procurement that reflects industrial characteristics or uses a federal standard, a small business is one:
- 1) Independently owned and operated.
  - 2) Not dominant in its field of operations, which 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 will 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) \$13,000,000 for wholesale business;
    - B) \$14,000,000 for construction business; or
    - C) \$8,000,000 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.

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- 5) If the business is any combination of retailer, wholesaler or construction business, 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 wholesaler may not have total sales exceeding \$21,000,000; the retail component may not exceed \$8,000,000; and the wholesale component may not exceed \$13,000,000. 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).
- 6) When computing the size of a business, the number of employees and annual sales and receipts, as applicable, of the business and all affiliates will be considered. 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 controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration will be given to all appropriate factors, including the use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship will not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure. (See Section 45-45(b) of the Code.)

f) [Small Business Specialist](#)

- 1) [The CPO shall designate one or more individuals to serve as its small business specialist, who shall have the duties set forth in Sections 45-45 and 45-90 of the Code, and who shall also act as coordinator of small business. The designated small business specialist shall compile statistics provided by the Department needed to make the small business annual report to the General Assembly required by Section 45-45\(f\) of the Code.](#)
- 2) [The small business specialist shall provide written instruction to any business registered as a small business pursuant to Section 45-45 of the Code on how to register for the Bulletin. Notice shall be provided within 30 days after the small business certification as required in Section 15-25 of the Code.](#)

g) [Small Business Contracts](#)

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1) Goal

- A) It is the goal of the State of Illinois to award not less than 10% of the total dollar amount of State contracts to small businesses.
- B) Small businesses are defined as those businesses meeting the criteria established in Section 45-45 of the Code and subsection (e) of this Section.

2) Goal Measurement

- A) The goal shall be measured on a full fiscal year basis.
- B) The Department's expenditures, whether against contracts established by the Department or against contracts established on behalf of the Department, shall be included in the Department's goal attainment statistics.
- C) The Department may satisfy its goal, in whole or in part, by counting expenditures made by State vendors to subcontractors that are small businesses.

3) Department Compliance Plan

- A) The Department shall submit an annual compliance plan of how it intends to reach its goal, and a timetable for reaching its goal, as required by Section 45-90(c) of the Code. The CPO will establish the format and timetable for submission of the compliance plan. The CPO will approve the plan if it meets the requirements of the Act and this Part.
- B) The Department shall submit an annual utilization report of small business contracts during the preceding fiscal year, including lapse period spending and a mid-fiscal year utilization report. The CPO will establish the format and timetable for submission of the utilization plan and will provide a copy of the utilization report to the PPB.

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- C) The CPO or small business specialist appointed under Section 45-45 of the Code may recommend ways in which the Department may reach its goal. Upon a finding by the CPO that the Department's compliance plan is insufficient to reach the Department's goal, the CPO will recommend ways in which the Department can reach its goal.
- D) If the compliance plans or utilization reports indicate the Department goal will not be reached, the CPO may request the Department to explain the Department's noncompliance. If the CPO determines the Department is not making a serious effort to reach the goal, the CPO will prepare a report for submission to the Governor and General Assembly with recommendations for remedial action.

- h) Contractors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses or small business concerns shall submit information verifying that the contractor qualifies as a small business. The Department may establish procedures for verifying such information.

(Source: Section 6.801 renumbered from Section 6.125 and amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.803 Disadvantaged Business Enterprise Program**

- a) In accordance with 49 CFR 26, the Department must implement a DBE program, approved by the U.S. Department of Transportation, to remove barriers to the participation of DBEs in DOT-assisted contracts, as well as other similar objectives.
- b) The Department shall review contracts to ensure compliance with its DBE program as required by 49 CFR 26.

(Source: Added at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.805 Veterans**

- a) It is the goal of the State to promote and encourage the continued economic development of small businesses owned and controlled by qualified veterans and

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*that qualified service-disabled veteran-owned small businesses and veteran-owned small businesses participate in the State's procurement process as both prime contractors and subcontractors. [30 ILCS 500/45-57]*

- b) The Department of Central Management Services has delegated to the Department the authority to determine the goal for each individual construction and construction-related services contract. (See 44 Ill. Adm. Code 20.100.)
- c) Contracts that are subject to federal reimbursement are exempt from veteran-owned small business goals. (See 44 Ill. Adm. Code 20.120.)

(Source: Added at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.810 Definitions (Repealed)**

~~As used throughout this Subpart, each term listed in this Section has the meaning set forth as follows unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.~~

~~"Act" means the Business Enterprises for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575].~~

~~"Chief Procurement Officer" or "CPO" means the official appointed and empowered to procure contracts for the Department in accordance with Section 10-20 of the Illinois Procurement Code [30 ILCS 500/10-20].~~

~~"Construction Industry Markets" or "Construction Markets" means the universe (e.g., State, county, district or township, or combinations thereof, and road construction/resurfacing, bridge construction/replacement, airport runway construction/resurfacing, and transportation material supply) of public works construction and maintenance in which contractor and subcontractor availability and expenditures are studied for purposes of evaluating evidence of discrimination related to transportation construction project participation.~~

~~"Department" means the Illinois Department of Transportation.~~

~~"Disadvantaged Business Enterprise" or "DBE" means a business certified in accordance with 49 CFR 26 as eligible to participate in USDOT financial assistance programs and in contracts funded exclusively with State funds pursuant~~

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~~to Section 6(d) of the Act.~~

~~"Egregious Race or Gender Discrimination" means flagrant race or gender discrimination documented in specific instances within the geographic market area served by the Department or construction market in which the Department operates. (See also 49 CFR 26.43(b).)~~

~~"Female Owned Business" means, for purposes of contracts funded exclusively with State funds, the same as defined in Section 2(a)(4) of the Act and, for purposes of federal assistance contracts, a Disadvantaged Business Enterprise.~~

~~"Geographic Market Area" means the geographic area (e.g., State, county, district or township, or combination thereof) in which contractor and subcontractor availability (see the Illinois Unified Certification Program Disadvantaged Business Enterprises Directory (IL UCP DBE Directory) at [www.dot.il.gov/ucp/ucp.html](http://www.dot.il.gov/ucp/ucp.html)) and expenditures are studied for purposes of evaluating evidence of discrimination related to transportation construction project participation.~~

~~"Goal Oriented Remedial Programs" means participation programs (e.g., the Department's current DBE Program and Small Business Initiative Program) implemented by the Department pursuant to the Act and, for purposes of federal assistance contracts, the DBE program adopted in accordance with 49 CFR 26.~~

~~"Law" means the Department of Transportation Law [20 ILCS 2705/2705-600].~~

~~"Minority Owned Business" means, for purposes of contracts funded exclusively with State funds, the same meaning as defined in Section 2(A)(3) of the Act and, for purposes of federal assistance contracts, a Disadvantaged Business Enterprise.~~

~~"Strong Basis in Evidence" means the level of specific qualitative and quantitative evidence determined by the Department and CPO to support a prima facie case of clearly identified egregious race or gender discrimination or patterns of deliberate exclusion, public or private, related to transportation construction.~~

~~"Transportation Construction Projects" means the complete scope of services and work related to the construction and maintenance of highway, air and rail transportation facilities and infrastructure undertaken by the Department.~~

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(Source: Repealed at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.820 Implementation Procedures (Repealed)**

a) ~~Evidentiary Findings~~

~~The Department is required to review any and all evidence of egregious race or gender discrimination related to all contracts awarded to complete the transportation construction projects undertaken during the course of each fiscal year. It is the delegated responsibility of the Department to evaluate any and all evidence of racial or gender discrimination that may have occurred during the performance of its transportation construction projects to determine whether the required factual predicate exists to support the establishment of a target market program by the CPO. Furthermore, the Department is mandated to determine and define a compelling interest in remedying the identified discrimination by making a record of the evidence disclosed by the review. The evidence to be reviewed by the Department includes, but is not limited to:~~

- ~~1) Utilization of Disadvantaged Business Enterprises, minority-owned businesses and female-owned businesses in Department contracts and subcontracts (e.g., disparity and related utilization studies).~~
- ~~2) Availability of qualified, willing and able Disadvantaged Business Enterprises, minority-owned businesses and female-owned businesses in the Department's geographic market areas and specific construction industry markets. (See the Illinois Unified Certification Program Disadvantaged Business Enterprises Directory (IL UCP DBE Directory) at [www.dot.il.gov/ucp/ucp.html](http://www.dot.il.gov/ucp/ucp.html).)~~
- ~~3) Disparities among the utilization of Disadvantaged Business Enterprises, minority-owned businesses and female-owned businesses in the Department's geographic market areas and the utilization of those firms participating on the Department's contracts and subcontracts in those markets (e.g., disparity and related utilization studies and the FHWA Uniform Report of DBE Awards or Commitments and Payments).~~
- ~~4) Disparities among the utilization of Disadvantaged Business Enterprises, minority-owned businesses and female-owned businesses in the construction industry markets in which the Department operates and the utilization of those firms in the transportation construction economies in~~



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~~which the Department operates:~~

- ~~5) Rates of business formation of certified DBEs in the geographic and construction markets and the dollars earned by those businesses (e.g., disparity and related utilization studies).~~
  - ~~6) Quantitative and qualitative anecdotal evidence of discrimination (e.g., letters to the Department, surveys or comments made during a public hearing) related to transportation construction projects.~~
  - ~~7) Documented incidents evidencing discrimination related to transportation construction projects.~~
  - ~~8) Documented and reported results of established goal-oriented remedial programs affecting the geographic market areas or construction markets.~~
- b) ~~After evaluation of all evidence considered, the Department may issue findings that there is a strong basis in the evidence that there is a compelling interest present to remedy the egregious discrimination identified in the findings against a specific group, race or gender, and that the only remedy for the discrimination is a narrowly tailored target market remedial action. The findings will be provided to the CPO for review in order to determine whether the CPO concurs in the findings. In the event that the Department issues no findings of a compelling interest, the CPO will be informed in writing that the evidentiary review was concluded without findings.~~
- e) **Public Hearing**  
The Department will conduct a public hearing if the CPO concurs in the findings that the Department has a strong basis in evidence that there is:
- ~~1) a compelling interest in remedying the identified race or gender discrimination;~~
  - ~~2) insufficient race or gender neutral means available to remedy the egregious discrimination;~~
  - ~~3) insufficient existing goal-oriented remedial programs available to remedy the egregious discrimination; and~~

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- ~~4) that the only remedy for the race or gender discrimination is a narrowly tailored target market remedial action.~~
- ~~d) The Department will set a time and place for the hearing. Minority, female and general contractors, contracting organizations, community organizations and other interested parties shall have the opportunity to provide comments before, during and for a period of time determined by the Department, after the hearing. After concurrence by the CPO, the hearing will take place within 30 days. A written record of the public hearing will be made and kept by the CPO. (See Section 2705-600(0.5) of the Law.)~~
- ~~e) **Implementation**  
Within 14 calendar days following the public hearing, and after consideration of the comments provided by the public, the CPO, in consultation with the Department, will make a written determination either to implement a narrowly tailored target market remedial action or to discontinue further action. The written determination will identify the type of target market remedial action to be implemented and any race or gender limitations applicable to the action. The written determination will be publicly available on the Department's website at [www.dot.il.gov](http://www.dot.il.gov).~~

(Source: Repealed at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.830 Target Market Remedial Actions (Repealed)**

- ~~a) **Narrow Tailoring** (See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007))  
The procurement of contracts by the CPO to complete transportation construction projects undertaken by the Department is adversely affected by the presence of discrimination. In addition to goal-oriented remedial programs, target market remedial actions will be implemented to eliminate the effects of discrimination in the performance of transportation construction projects. The target market remedial measures selected to remedy egregious discrimination will be narrowly tailored to the evidence relied on to support the action. The selection will specify whether, and to what extent, the remedial measure is subject to geographic market areas and/or construction market areas based on the evidence. In addition, the selection will establish specific, definite duration limitations based on the evidence. Target market remedial measures may include, but are not limited to, the following actions selected on the basis of the evidence as the most narrowly~~

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~~appropriate to remedy the identified discrimination:~~

1) ~~Contract Formation Actions~~

A) ~~The Department, in consultation with the CPO, may designate specific contract work as reserved for performance solely by minority-owned businesses, female-owned businesses or Disadvantaged Business Enterprises, as determined by the funding sources for the contract. This action removes some or all discretion from the bidding contractors or consultants as to the work to be performed by eligible minority, female or disadvantaged participants in the context of existing goal-oriented remedial programs. The contract and procurement documents will be drafted and advertised to require the contractor or consultant to make a good faith effort (see, e.g., 49 CFR 26.53) to have the identified reserved work performed by eligible minority, female or disadvantaged business participants.~~

B) ~~The Department, in consultation with the CPO, may implement contract formation and bidding procedures designed to encourage and facilitate bidding and offers by minority-owned, female-owned and disadvantaged businesses. This action includes, but is not limited to, dividing procurements into units conducive to eligible business participation, scheduling contract lettings at alternative locations conducive to eligible business participation, providing for bidding documentation and submission procedures conducive to eligible business participation and removal of bid bond requirements to induce eligible business participation. (See Section 2705-600(2) of the Law.)~~

2) ~~Contract Goal Actions~~

~~The Department, in consultation with the CPO, may advertise contracts for award or selection with separate minority-owned and female-owned business participation goals in the context of existing goal-oriented remedial programs. This action may provide for either minority-owned or female-owned business utilization goals, or both, applicable to a particular contract or contracts.~~

3) ~~Contract Incentive Actions~~

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~~The Department, in consultation with the CPO, may establish incentives for achievement of minority-owned, female-owned or Disadvantaged Business Enterprises goals advertised in contracts for award in the context of existing goal-oriented remedial programs. This action may provide for an incentive advertised as applicable to eligible bidders making the highest commitment to eligible business participation that would reduce the price bid for purposes of price comparison and determination of the lowest bid price for purposes of award.~~

- 4) ~~Contract Set Aside Actions~~  
~~The Department, in consultation with the CPO, may advertise contracts for award or selection set aside for minority-owned, female-owned or disadvantaged business enterprises exclusively. This action establishes a sheltered procurement process open only to eligible businesses determined to be responsible contractors in accordance with this Part.~~

- b) ~~Minimum Participation Availability~~  
~~No contract will be eligible for inclusion in any target market action unless the Department, in consultation with the CPO, determines that there are at least 3 eligible businesses interested in participating in the contract. The determination will be based on the DBE certifications and other attendant factors. (See Section 2705-600(3) of the Law.)~~

(Source: Repealed at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.840 Participation Eligibility (Repealed)**

- a) ~~Participation of eligible businesses in the target market program will be limited to minority-owned and female-owned businesses certified as disadvantaged businesses in accordance with the provisions of Section 6(d) of the Act (see Section 2705-600(4) of the Law) and the federal Disadvantaged Business Enterprise program certification requirements promulgated at 49 CFR 26 and incorporated by reference as that part was in effect as of October 1, 2010. No later amendments or editions are incorporated. Copies of the appropriate material are available from the Chief Procurement Officer, Illinois Department of Transportation, 2300 S. Dirksen Parkway, Room 200, Springfield, Illinois 62764 or by calling 217/558-5434.~~
- b) ~~Joint ventures comprised solely of minority-owned businesses and female-owned~~

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~~businesses as venture partners are eligible to participate in the target market program.~~

(Source: Repealed at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.850 Limitations Applicable to Participation (Repealed)**

- a) ~~Market Domination Prevention~~  
~~In order to prevent domination of the target market program by a small number of businesses, no eligible business shall participate in more than 3 target market contracts during any calendar year. Businesses participating in the target market program shall remain eligible to participate in contracts not designated as target market contracts.~~
- b) ~~Training and Audits~~  
~~Businesses eligible for participation in the target market program shall cooperate with the Department by completing any training courses provided by the Department as a condition of eligibility. Participating eligible businesses shall make all books and records related to the performance of target market contracts available for audit by the Department or the CPO.~~
- e) ~~Exclusion~~  
~~A business may be excluded from participation in the target market program for failure to cooperate in any audit or for failure to complete training courses required for participation.~~

(Source: Repealed at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 6.860 Severability (Repealed)**

~~Invalidation of any portion of this Subpart by a court of competent jurisdiction will not operate to invalidate the entire Part, which will remain in full force and effect. (See Section 2705-600(7) of the Law.)~~

(Source: Repealed at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)