

	STATE OF ILLINOIS CHIEF PROCUREMENT OFFICER - HIGHER EDUCATION	
	Topic: Conflict of Interest Officers and Employees Performing Procurement Activities	Procurement Notice Number: 2013-1
	Effective Date: January 10, 2013	Approved by: Chief Procurement Officer 
	New ☒ Revises ☐ Replaces ☐ Supplements ☐	
	Statute Cite: 30 ILCS 500/50-13, 50-20, 50-35	Rule Cite: 44 Ill. Adm. Code 4. 5013, 5020, 5023 and 5035

This policy supplements any conflict of interest review, approval or waiver requirements set forth in sections 50-13, 50-20 and 50-35 of the Illinois Procurement Code and the associated sections of the Higher Education Procurement Rules.

The Office of CPO takes the position that:

It is a presumed conflict for any university officer or employee who is employed in a procurement office or who performs procurement activities to have a contract with the employing university, or for a company in which that officer or employee (or spouse) has a financial interest to have a contract with that university.

Procurement activities include preparing or approving solicitation documents; evaluating bids/proposals; recommending or approving awards; approving or executing contracts, including amendments of any type; and approving payment.

As a matter of general policy, the Office of CPO will not recommend that the Executive Ethics Commission (for conflicts arising under section 50-13 of the Procurement Code) or the Procurement Policy Board (for conflicts arising under section 50-35 of the Procurement Code) waive conflicts or otherwise approve contracting in the conflict situation relating to the officers and employees described above.

Exceptions to this general policy may arise in, for example, the following situations:

- **Emergency.** Due to the nature of emergencies, the university may need to use a vendor with a known conflict. However, if the emergency does not require immediate action, use of a vendor with a known conflict is discouraged and another source should be sought. Justification for using the vendor with a known conflict must be in the procurement file and published with the Emergency Notice.
- **Sole Source.** The university must show there is no other source that can meet the need.
- **Sole Economically Feasible Source.** The university must show there is no other source that can meet the need considering the relative costs of using other providers. The cost differential must be significant.
- **Limited Competition.** The university must show that a competitive solicitation resulted in three or fewer responses when sources of supply are extremely limited; the vendor with the conflict submits the low price or is the only one that meets requirements; and rebidding is not practical.
- **Minor Procurement or Intermediate Administrative Function.** The university must show that a person performs only minor procurement activities or intermediate administrative functions that a reasonable person would conclude no improper activity took place in relation to the procurement or resulting contract. Minor procurement activities are those where no substantial discretion is exercised (e.g., scanning and filing; obtaining documentation pursuant to instruction such as insurance certificates or lien waivers; and closing a file using an approved checklist). An intermediate administrative function would include a recommendation or approval that is required by virtue of the established chain of processing. The person who makes the initial recommendation or approval; and the person who has final decision-making responsibility (and any other person delegated this person's authority) regarding the recommendation or approval is not within this exception.

- Existing Contract / Follow-on Procurement. The university must show that because of the nature of an existing contract, continuing to contract with the person with a known conflict is the only practical method of meeting the need for additional work.
- Publicly Traded Companies. If the conflict involves an officer or employee who discloses ownership of stock in a publicly traded company, but whose interest does not trigger any statutory disclosure or prohibition.
- Alternate Purchasing Office. If the university recommended and the CPO approved a different purchasing office to conduct the procurement. Depending on the situation, the different purchasing office may be within the university or outside the jurisdiction of the university. In some situations, staff may be drawn from other sources, including those independent of the university, to administer, control and make recommendations and decisions regarding specification, evaluation, award, contracting, payment and other procurement-related activities.

Submission to EEC or PPB

The Office of CPO will process university requests to award or contract in a potential conflict situation to the Executive Ethics Commission or the Procurement Policy Board, as appropriate. The transmittal may or may not include a recommendation.

All requests must be in the form and include the content required by the CPO, the Commission and the Board. The university's request for favorable consideration shall include a detailed explanation showing that the benefit to the university and state in contracting with the conflicted individual or company outweighs the general policy against contracting in a conflict situation.

University's Internal Conflict Policy

Any request to process a conflict must show compliance by the university with its internal policy for reviewing and approving conflicts. The university must also show that the conflicted individual was removed from procurement activities related to the procurement at issue. The CPO may monitor compliance which may include, but is not limited to attending meetings and reviewing documents related to the matter.

Small Purchases

Small purchases are subject to this policy. The lack of required notice and competition suggests that small contract conflicts deserve at least the same scrutiny as large contracts.

Awards and Contracts

The university shall not make an award or enter into a contract until the CPO notifies the university regarding favorable resolution of the conflict matter.

Procurement File

The procurement file shall include documentation of the conflict and the resolution.