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Comptroller  
State of Illinois

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TO: Chief Fiscal Officers of All State Agencies  
DATE: October 13, 1989  
SUBJECT: Changes to the Bid-Rigging/Bid Rotating Law

Public Act 86-150, effective August 11, 1989, amended the Article on Public Contracts previously added to the Criminal Code of 1961 by Public Act 85-1295, January 1, 1989. The changes that directly affect the execution and filing of State contracts are as follows:

New Definitions

"Public contract" means any contract for goods, services or construction let to any person with or without bid by any unit of State or local government.

"Person" means any individual, firm, partnership, corporation, joint venture or other entity, but does not include a unit of State or local government.

Taken together, these new definitions exclude grants and all contracts with other government entities from certain requirements regarding certifications and determinations in connection with contract changes.

New Penalties

The new penalty for being convicted of bid-rigging or bid rotating is to be permanently barred from contracting with the State. The previous penalty was to be barred from bidding on any contract offered for bid by the State. As a result of this change, a person convicted of bid-rigging or bid rotating may not enter into any contractual arrangement with the State, irrespective of whether such contractual arrangement is characterized as a "public contract" or a grant.

Change Orders

As amended, Section 33E-9 of the Criminal Code of 1961 provides as follows:

§33E-9. Change orders. Any person employed by any unit of State or local government who is authorized by such unit of State or local government to approve a change to any public contract who knowingly grants such approval without first obtaining a determination in writing by the unit of State or local government on whose behalf the contract was signed or by a designee authorized by such unit of

State or local government to make such determination, that the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed, were not within the contemplation of the contract as signed or are in the best interest of the unit of State or local government and authorized by law commits a Class 4 felony. Such written determination shall be preserved in such contract's permanent file which shall be open to the public for inspection. This Section shall only apply to change orders which authorize or necessitate an increase or decrease in either the cost of a public contract by \$10,000 or more or the time of completion by 30 days or more.

The new wording of Section 33E-9 means that:

1. The written determinations required by Section 33E-9 are only required for changes to public contracts. Therefore, they are not required for grants or for contracts with other government entities.
2. The written determinations must be preserved in the contract's permanent file which shall be open to the public for inspection. Therefore, agencies should no longer send these written determinations to the Comptroller but instead must retain them in a permanent contract file.

#### New Certification Requirements

As amended, Section 33E-11 of the Criminal Code of 1961 provides as follows:

§33E-11. (a) Every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the prime contractor that the prime contractor is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of this Article. The State and units of local government shall provide the appropriate forms for such certification.

(b) A contractor who makes a false statement, material to the certification, commits a Class 3 felony.

The certification required by Section 33E-11 is now only required for public contracts that were let for bid. It doesn't matter that a contract was not required by law to be bid; if it was let for bid it must contain the certification.

Since the certification is only required for public contracts, it is not required for grants or for contracts with other government entities.

The new wording of Section 33E-11 means new wording for the certification is required. The new certification, or words of similar import, should be as follows:

The contractor certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961.

The above certification must be included as a provision of the contract, attested to by the contractor by signing the contract. It may not be stamped or otherwise affixed on the contract after execution.

For purposes of issuing purchase orders executed pursuant to bids for purchases that do not require two-party signed agreements, the certification, or words of similar import, should be as follows:

By acceptance of this Order, the contractor certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961.

Bribery Clause Certification

Public Act 86-150 adds Section 10.2 to "The Illinois Purchasing Act", which reads as follows:

§10.2. Every bid submitted to and contract executed by the State shall contain a certification by the contractor that the contractor is not barred from being awarded a contract or subcontract under Section 10.1. A contractor who makes a false statement, material to the certification, commits a Class 3 felony.

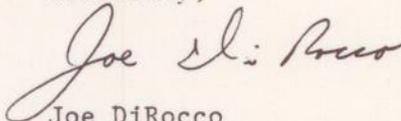
Pursuant to the above provision, a "Bribery Clause Certification" is now required by law to be contained in all bids and in every contract (including grants) executed by the State.

Each state agency should obtain a copy of P.A. 86-150 as it contains other provisions which affect the State's contracting process.

This office will monitor for compliance with the new statutory provisions. Contracts not in compliance are subject to return.

If you have any questions concerning this matter, please call me at 782-3608.

Sincerely,



Joe DiRocco  
Manager, Contract/Voucher Division