

PUBLIC POLICY ALERT

NEW ILLINOIS PAY-TO-PLAY RULES

Two significant events have taken place in the last few weeks in Illinois. First, Governor Rod Blagojevich of Illinois signed an Executive Order that, for the first time, establishes pay-to-play rules for state contractors. The Executive Order (EO) came on the heels of Governor Blagojevich's veto of House Bill 0824 (HB0824) passed by the Illinois General Assembly in May 2008. Second, the Illinois General Assembly reconvened and passed a new pay-to-play statute overriding the governor's veto (Public Act 095-0971). The two actions vary and it is unclear whether they will be harmonized or if the governor will withdraw the EO.

Summarized below are the main components of the EO and the Public Act 095-0971.

EXECUTIVE ORDER

The EO issued after the governor's veto enacts broader pay-to-play restrictions than the legislative bill would have done. The EO prohibits *covered donors* from making or soliciting contributions to *covered recipients* from the date that a request for proposal (RFP) is issued until two years after the contract ends and also prohibits contributions made through intermediaries.

A *covered donor* means—

- a contracting entity and any subsidiary or parent of the contracting entity
- a sister entity which shares a common parent
- executive employees of the contracting entity or affiliated entity and spouses and minor children of executive employees of the contracting entity or affiliated entity
- any section 501(c) organization or political action committee (PAC) established or controlled by any of the above.

A *covered recipient* under the executive order includes—

- governor
- lieutenant governor
- attorney general
- secretary of state
- comptroller
- treasurer
- declared candidates for any of these offices
- members of, and declared candidates for, the General Assembly
- any committee of a political party represented by one of the above.

A contractor is required to provide a written certification that it is in compliance with the EO. Additionally, violations of the EO can void an existing contract and can preclude a contractor

from being considered for bids and proposals. If a contribution in violation of the EO is made, and subsequently if a request for a refund is made and received within 30 days, then the violation will be “cured.” However, this “cure” provision is not available for any contributions made within 60 days of a gubernatorial primary or general election and any such contributions will be considered an incurable violation of the EO.

The effective date of the EO is January 1, 2009.

GENERAL ASSEMBLY BILL (PUBLIC ACT 095-0971)

Public Act 095-0971 (“statute”) passed last week overrides the governor’s veto of HB0824. There are significant differences between the two as highlighted below.

Covered donors are prohibited from making contributions to *covered recipients* during specific times. For contractors with existing contracts totaling more than \$50,000, the ban is in effect for either the term of office of the incumbent officeholder that awarded the contract or two years after the contract ends—whichever is longer. For contractors who have state bids and proposals pending that total more than \$50,000, the ban is in effect on the date that an RFP is issued and continues until the day after the contract is awarded.

Similar to the EO, a *covered donor* is a contracting entity, affiliates of the contracting entity, executive employees of the contracting entity and their spouses and children, and any PAC or section 501(c) organization established by the contracting entity. *Executive employees* are defined as the president, chairman, chief executive officer, any employee with executive decision-making authority over the long-term affairs of the contracting entity and any employee whose compensation is determined, in whole or part, by the award or payment of contracts to the contractor. The statute does not include affiliated entities' executive employees, their spouses and minor children.

Unlike the EO, the statute limits the definition of a *covered recipient* to the governor, lieutenant governor, attorney general, secretary of state, comptroller, treasurer and declared candidates for those offices and does not include members of, and candidates for, the Illinois General Assembly.

The statute requires that contractors electronically register with the State Board of Elections and disclose the names and addresses of all entities and persons who are *covered donors*. Those contractors with existing contracts are required to register within 30 days of the law’s effective date. For others, registration is required prior to the submission of a bid or proposal that exceeds \$50,000. Any changes to the registration by contractors with existing contracts and no pending bids or proposals must be made within 10 days. For those with pending bids or proposals, changes must be made within two days. Failure to update a registration can result in a \$1,000 per business day civil penalty. All registrations will be publicly available on the Web site of the State Board of Elections.

Any penalties for violation of the statute are similar to those under the EO but additional penalties may apply for registration violations.

The effective date of the statute is also January 1, 2009.

While it is unclear how the differences between the EO and statute will be reconciled, those entities contracting with the state of Illinois should take steps to implement procedures and policies to comply with the new pay-to-play rules.

CONTACT INFORMATION

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