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CAPITAL DEVELOPMENT BOARD

NOTICE OF EMERGENCY RULES

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT  
AND PROPERTY MANAGEMENT  
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES  
CHAPTER XII: CAPITAL DEVELOPMENT BOARD

PART 930  
CAPITAL DEVELOPMENT BOARD PROCUREMENT PRACTICES  
FOR THE QUINCY VETERANS' HOME

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AUTHORITY: Implementing and authorized by Section 5 of the Quincy Veterans' Home Rehabilitation and Rebuilding Act [330 ILCS 21/5] and authorized by Section 1-35 of the Illinois Procurement Code [30 ILCS 500/1-35].

SOURCE: Emergency Rules adopted at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for maximum of 150 days; amended at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

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**Section 930.100 Purpose and Scope**  
**EMERGENCY**

- a) This Part is established to implement procedures for the solicitation and award of contracts pursuant to the Quincy Veterans' Home Rehabilitation and Rebuilding Act [330 ILCS 21] and for the application of the Illinois Procurement Code [30 ILCS 500/1-35] to contracts subject to the Act.
- b) This Part applies to contracts for construction and construction-related services directly related to the renovation, restoration, rehabilitation, or rebuilding of the Quincy Veterans' Home solicited and awarded after the effective date of the Act.

**Section 930.110 Definitions**  
**EMERGENCY**

The following definitions shall apply to this Part:

“Act” – The Quincy Veterans' Home Rehabilitation and Rebuilding Act [330 ILCS 21].

“Architect/Engineer” or "A/E" - An architectural or engineering firm that is in the business of offering the practice of furnishing architectural services, engineering services, or land surveying services, as those services are defined in the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535/15].

"Bid" - An offer made by a bidder in response to a contract item advertised in an invitation for bids.

“Board” – The seven-member Board of the Capital Development Board.

"CDB" - Capital Development Board, the agency.

"Change Order" - A formal, written directive or 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, increases or decreases in quantities or time; additions or alterations to plans, special provisions or specifications; and adjustments or alterations specifically provided for in the contract. Change orders to A/E contracts may be referred to as "modifications".

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“Chief Procurement Officer” or “CPO” – The Executive Director of the Capital Development Board, who shall review and approve procurements subject to the Act to confirm compliance with this Part and Section 1-35 of the Code [30 ILCS 500/1-35].

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

“Construction” – Services directly related to renovation, restoration, rehabilitation, rebuilding, or demolition at the Quincy Veterans’ Home. Construction does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

"Construction Manager" or “CM” - Any individual, sole proprietorship, firm, partnership, corporation, or other legal entity providing construction management services for CDB.

“Construction-Related Services” – Services concerning construction or potential construction at the Quincy Veterans’ Home, including construction design, layout, inspection, support, feasibility or location study, research, development, planning, or other investigative study.

"Contract" - A written agreement between CDB and a vendor comprised of such documents as set forth in each individual agreement, including change orders, and setting forth the obligations of the parties for the performance of the contract.

“Design-bid-build” – *The traditional delivery system used on public projects in this State that incorporates the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act and the principles of competitive selection in the Illinois Procurement Code, subject to the provisions of Section 1-35 of the Code.* [330 ILCS 21/10].

“Design-Build” – *A delivery system that provides responsibility within a single contract for the furnishing of architecture, engineering, land surveying and related services as required, and the labor, materials, equipment, and other construction services for the project.* [330 ILCS 21/10].

“Executive Director” – The Director of the Capital Development Board.

"Germane" - In relationship to the modification, alteration or amendment of the

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terms of a contract by change order, the term "germane" means a change that is related to the original terms of the contract and that is not so substantial a departure from the original as to constitute a new contract.

“IDVA” – The Illinois Department of Veterans’ Affairs.

“Prequalification” – The status granted by CDB to responsible vendors that permits them to make submittals, offers, or bids on CDB projects; or be awarded a CDB contract.

"Responsible" - The capability, integrity and reliability of a vendor, in all respects that will assure good faith performance, to undertake and complete fully the requirements of a contract.

“Single Prime” – The design-bid-build procurement delivery method for a construction project procuring two or more subdivisions of work under a single contract.

“Single Trade” - The design-bid-build procurement delivery method for a construction project procuring one subdivision of work under a single contract.

"Specifications" - The contractual body of directions, provisions, and requirements for performance of prescribed work. Specifications may include the Standard Documents for Construction for general application and repetitive use, as well as specifications applicable to a specific project.

“Statement of Qualifications” – The information supplied by an A/E or construction manager that cites the specific experience and expertise that may qualify the A/E or construction manager to provide the services requested.

“Subcontract” – A contract between a subcontractor and a vendor who has a contract subject to the Act, pursuant to which the subcontractor assumes obligation for performing specific work under the contract. For purposes of this Part, a subcontract does not include purchases of goods, materials, or supplies that are necessary for the performance of a contract by a vendor who has a contract subject to the Act.

“Subcontractor” – A person or entity that enters into a contractual agreement with a total value of \$50,000 or more with a vendor who has a contract subject to the Act pursuant to which the person or entity agrees to perform specific work under

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the contract. For purposes of this Part, a person or entity is not a subcontractor if that person or entity only provides goods, materials, or supplies that are necessary for the performance of a contract by a vendor who has a contract subject to the Act.

**Section 930.120 Procurement Authority  
EMERGENCY**

The Executive Director is established as the Chief Procurement Officer for procurements of construction and construction-related services listed in Subpart B of this Part, subject to the Act and Section 1-35 of the Code [30 ILCS 500/1-35], and committed by law to the jurisdiction or responsibility of CDB. The Executive Director may appoint a designee to carry out any or all of the procurement functions.

**Section 930.130 Procurement Code  
EMERGENCY**

- a) The Procurement Code shall not apply to procurements subject to the Act, except substantial compliance with the following sections of the Procurement Code is required:
- 1) Section 20-160: Business Entities; Certification; Registration with the State Board of Elections.
  - 2) Section 25-60: Prevailing Wage Requirements.
  - 3) Section 30-22: Construction Contracts; Responsible Bidder Requirements.
  - 4) Section 50-5: Bribery.
  - 5) Section 50-10: Felons.
  - 6) Section 50-10.5: Prohibited Bidders and Contractors.
  - 7) Section 50-12: Collection and Remittance of Illinois Use Tax.
  - 8) Section 50-13: Conflicts of Interest.
  - 9) Section 50-15: Negotiations.

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- 10) Section 50-20: Exemptions.
  - 11) Section 50-21: Bond Issuances.
  - 12) Section 50-35: Financial Disclosure and Potential Conflicts of Interest. Substantial compliance with this section shall only apply to contracts and subcontracts over \$100,000.
  - 13) Section 50-36: Disclosure of Business in Iran.
  - 14) Section 50-37: Prohibition of Political Contributions.
  - 15) Section 50-38: Lobbying Restrictions.
  - 16) Section 50-50: Insider Information.
- b) The CPO shall determine substantial compliance with the Code sections listed in paragraph a) above.
  - c) General conditions for procurements shall be set forth in in this Part and in CDB's contract documents, which include the Standard Documents for Construction if applicable as determined by CDB.

SUBPART B: PROCUREMENT METHODS AND PROCEDURES  
FOR CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES CONTRACTS

**Section 930.200 Procurement Methods  
EMERGENCY**

CDB shall procure construction and construction-related services for contracts subject to the Act using the selection method determined by the CPO to be the most appropriate to the circumstances, as follows:

- a) Design-Build Contracts.
- b) Competitive Contracts.
- c) Design Services Contracts.
- d) Construction Management Services Contracts.

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- e) Emergency Contracts.
- f) Small Purchase Contracts.
- g) Sole Source and Limited Source Contracts.
- h) Professional Services Contracts.
- i) Contracts with Illinois Correctional Industries.
- j) Other procurement delivery methods determined by the CPO to be in the best interest of the State.

**Section 930.205 Procurement Procedures for Design-Build Contracts  
EMERGENCY**

Procurement of construction and construction-related services pursuant to the design-build delivery method shall be in accordance with the Act [330 ILCS 21] and CDB's Rules on the Selection of Design-Build Entities (44 Ill. Adm. Code 1030), with the following amendments to CDB's Rules on the Selection of Design-Build Entities:

- a) For purposes of this Part, Section 1030.160(b)(2) regarding public members on the selection committee shall not be followed. Instead, public members on the selection committee shall be comprised of one public member that is a resident of the Quincy Veterans' Home and one public member that is a resident of the City of Quincy.
- b) For purposes of this Part, references to the "Act" in CDB's Rules on the Selection of Design-Build Entities shall refer to the Quincy Veterans' Home Rehabilitation and Rebuilding Act.

**Section 930.210 Procurement Procedures for Competitive Bid Contracts  
EMERGENCY**

- a) Procurement of construction and construction-related services pursuant to the design-bid-build procurement method shall be limited to single prime or single trade contracts. Competitive bid contracts may also include direct purchase contracts. Solicitations for bids shall be in conformance with the rules of CDB and with accepted business practices. Contracts shall be awarded in accordance

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with those authorities and with the guidelines set forth in Standard Documents for Construction unless otherwise specified in the advertisement for bids published in the Procurement Bulletin, the project specifications, or as authorized by law.

- b) For single prime contracts, the following procedures shall apply:
  - 1) the bid of the successful low bidder shall identify the name of the subcontractor, if any, and the bid proposal costs for each of the subdivisions of work set forth in the project specifications;
  - 2) the contract entered into with the successful bidder shall provide that no identified subcontractor may be terminated without the written consent of the CDB; and
  - 3) the contract shall comply with the disadvantaged business practices of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act [30 ILCS 575] and the equal employment practices of Section 2-105 of the Illinois Human Rights Act [775 ILCS 5/2-105].
- c) For purposes of this Part, a direct purchase contract is a contract between CDB and a supplier or manufacturer for materials or equipment necessary for a CDB project at the Quincy Veterans' Home.

**Section 930.215 Procurement Procedures for Design Services Contracts  
EMERGENCY**

Solicitation for procurement of services of architects/engineers, or related professionals, shall be in accordance with the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and CDB's Rules on the Selection of Architects/Engineers (44 Ill. Adm. Code 1000) with the following amendment to CDB's Rules on the Selection of Architects/Engineers:

For purposes of this Part, Section 1000.160 regarding interviews shall not apply. Instead, the following shall apply: CDB requires the selection committee to conduct interviews when the estimated value of the basic services fee exceeds \$300,000. The Executive Director may choose to conduct interviews for smaller projects under special circumstances. A minimum of three firms will be interviewed, unless fewer than three qualified firms submit statements of qualifications for a specific project. The Executive Director may exempt any contract from requiring interviews.

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**Section 930.220 Procurement Procedures for Construction Management Services  
Contracts  
EMERGENCY**

- a) Construction management services may include, but are not limited to, the following:
  - 1) services provided in the planning and pre-construction phases of a construction project including, but not limited to, consulting with, advising, assisting, and making recommendations to CDB and the architect, engineer, or licensed land surveyor on all aspects of planning for project construction; reviewing all plans and specifications as they are being developed and making recommendations with respect to construction feasibility, availability of material and labor, time requirements for procurement and construction, and projected costs; making, reviewing, and refining budget estimates based on CDB's program and other available information; soliciting the interest of capable contractors and analyzing the bids received; and preparing and maintaining a progress schedule during the design phase of the project and preparation of a proposed construction schedule; and
  - 2) services provided in the construction phase of the project including, but not limited to, maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the contractors on the project; directing the work as it is being performed for general conformance with working drawings and specifications; establishing procedures for coordinating among CDB, the A/E, contractors, and the construction manager with respect to all aspects of the project and implementing those procedures; maintaining job site records and making appropriate progress reports; implementing labor policy in conformance with the requirements of the public owner; reviewing the safety and equal opportunity programs of each contractor for conformance with the public owner's policy and making recommendations; reviewing and processing all applications for payment by involved contractors and material suppliers in accordance with the terms of the contract; making recommendations and processing requests for changes in the work and maintaining records of change orders; scheduling and conducting job meetings to ensure orderly progress of the work; developing and monitoring a project progress schedule, coordinating and expediting the work of all contractors and providing periodic status reports to the owner and the A/E; and

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establishing and maintaining a cost control system and conducting meetings to review costs.

- b) Public notice. Whenever a project requiring construction management services is proposed for IDVA, CDB shall provide no less than a 14 calendar day advance notice published in a request for qualifications setting forth the projects and a description of the services to be procured, unless a different timeframe for providing advance notice is otherwise specified by CDB. Notice shall be published in CDB's Procurement Bulletin. The request for qualifications shall include a description of each project and shall also include the statement of qualifications form to be completed for each project. The public notice shall state the time and place for interested firms to submit a statement of qualifications. When CDB establishes additional criteria for a special project under 44 Ill. Adm. Code 990.140 (Prequalification of Construction Managers), the notice shall be published at least 30 calendar days before the date the special prequalification application or the statement of qualifications is due.
- c) Submittal requirements. The statement of qualifications submittal shall include the names of persons who will perform the services, including their project assignment or duties, as well as a resume of the experience and expertise that qualifies them to perform the assignment.
- d) Selection Committee. The Executive Director shall appoint an agency employee to serve as chair of a selection committee. The selection committee chairman shall appoint a committee to recommend to the Executive Director and the Board a list of CMs qualified to perform the required services. This committee may be established for each selection and may be composed of standing members and rotating members from CDB staff. In addition to the CDB staff members, a representative from IDVA and one or more public members may be requested to be members of the committee.
- e) Preliminary evaluations. CDB may appoint staff members to perform a preliminary evaluation (prescreening) to provide a preliminary ranking of the CMs for the committee's consideration. This prescreening shall consider, among others, the relevant project experience of the prospective CMs and the expertise and experience of the firm and its staff to be assigned to the project if the firm is selected.
- f) Evaluation procedure.

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- 1) The selection committee shall evaluate the CMs submitting statements of qualifications, and the selection committee may consider, but shall not be limited to, the following: ability of personnel; past record and experience; performance data on file, determined by review of the CM Performance Evaluations on previous CM projects, Performance Evaluations of the CM firm on projects in which it participated as an A/E or contractor, and any other related material; willingness to meet time requirements; location of the project relative to the firm's place of business; the results of preliminary evaluations performed by CDB staff; current workload of the CM and their prior selections by CDB; references; interviews conducted with the CMs; minority, women, and veteran participation; and any other qualifications-based factors as CDB may determine in writing are applicable. The selection committee may conduct discussions with and require presentations by CMs deemed to be the most qualified regarding their qualifications, approach to the project, and ability to furnish the required services.
  - 2) Before beginning review of the CM's statements of qualifications, the committee shall prepare a table of the factors the CMs will be rated on and the weight to be assigned to each factor. The table of factors, and the scores of each reviewed submittal, will be kept on file for no less than two years from the date of the selection.
  - 3) In no case shall the Board, CDB, or the selection committee, prior to selecting a CM for negotiation, seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.
- g) Interviews. CDB requires the selection committee to conduct interviews when the estimated value of the CM's basic services fee exceeds \$300,000. The Executive Director may choose to conduct interviews for smaller projects under special circumstances. A minimum of three firms will be interviewed, unless fewer than three qualified CMs submit statements of qualifications for a specific project. The Executive Director may exempt any contract from requiring interviews.
- h) Selection Procedure. On the basis of evaluations, discussions, and any presentations, the selection committee shall select no less than 3 firms it determines to be qualified to provide services for the project and rank them in order of qualifications to provide services regarding the specific project. If fewer

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than 3 firms submit statements of qualifications and the selection committee determines that one or both of those firms are so qualified, the CDB may proceed with the selection process. Board approval of these CMs shall be final and binding.

- i) Contract Negotiation.
  - 1) The CDB shall prepare a written description of the scope of the proposed services to be used as a basis for negotiations and shall negotiate a contract with the highest ranked construction management firm at compensation that CDB determines in writing to be fair and reasonable. In making this decision, CDB shall take into account the estimated value, scope, complexity, and nature of the services to be rendered. In no case may CDB establish a payment formula designed to eliminate firms from contention or restrict competition or negotiation of fees.
  - 2) If CDB is unable to negotiate a satisfactory contract with the firm that is highest ranked, negotiations with that firm shall be terminated. CDB shall then begin negotiations with the firm that is next highest ranked. If CDB is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be terminated. CDB shall then begin negotiations with the firm that is next highest ranked.
  - 3) If CDB is unable to negotiate a satisfactory contract with any of the selected firms, CDB shall re-evaluate the construction management services requested, including the estimated value, scope, complexity, and fee requirements. The selection committee shall then compile a list of not less than 3 prequalified firms, if available, and proceed in accordance with the provisions of this Part.
- j) Prohibited conduct. No construction management services contract may be awarded by the Board on a negotiated basis as provided in this Part if the CM or an entity that controls, is controlled by, or shares common ownership or control with the CM (i) guarantees, warrants, or otherwise assumes financial responsibility for the work of others on the project; (ii) provides CDB with a guaranteed maximum price for the work of others on the project; or (iii) furnishes or guarantees a performance or payment bond for other contractors on the project. In any such case, the contract for construction management services must be let by competitive bidding as in the case of contracts for construction work.

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- k) Procurement limitations.
  - 1) A CM cannot participate in a selection process if it or a substantially affiliated firm is under contract or in the process of contracting with CDB for other goods or services required for the project and the CM's duties will involve or relate to those goods or services.
  - 2) A CM selected to provide construction management services, or a substantially affiliated firm, may not bid on or otherwise be awarded a construction contract for the project.
  - 3) Notwithstanding the above, when it is determined in writing by the Executive Director to be in the State's best interest, the CM may provide or perform, directly or through unrelated contractors, basic services for which reimbursement is provided in the general conditions of the CM contract, or any other goods or services that do not conflict with or give the appearance of conflicting with the CM's duties.
  - 4) A firm is substantially affiliated if any one or more of the individuals with more than 5% ownership interest and/or any officer or director of the CM firm and/or any individual authorized to sign bids, proposals or contracts for the CM firm owns or controls more than 5% of the affiliated firm and/or holds any of the above positions with the affiliated firm, or the affiliated firm shares more than 5% common ownership with the CM.
- l) Publication of award. The names of selected firms and the respective projects shall be published in CDB's Procurement Bulletin within 30 calendar days after the selection and award.

**Section 930.225 Procurement Procedures for Emergency Contracts**  
**EMERGENCY**

- a) A contract may be procured without the use of any other method of procurement prescribed in this Part when there exists a threat to public health or safety; when an immediate contract is needed to repair State property in order to prevent or minimize loss or damage to State property; to prevent or minimize serious disruption in State services, including but not limited to, completion of a defaulted contract; or to ensure the integrity of State records.
- b) For purposes of determining whether an emergency exists to prevent or minimize

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serious disruption in State services, State services include, but are not limited to, all activities committed by law to the jurisdiction or responsibility of CDB and IDVA, whether provided directly or indirectly by means of contract or intergovernmental agreement.

- c) CDB will employ such competition as is practical under the emergency circumstances to abate the emergency situation. The use of existing contracts is allowed.
- d) A written description of the basis for the emergency and reasons for the selection of the particular vendor shall be included in the contract file. CDB shall file a statement with the Auditor General within 10 calendar days after the procurement setting forth the amount expended, the name of the contractor involved, and the conditions and circumstances requiring the emergency procurement. When only an estimate of the cost is available within 10 calendar days after the procurement, the actual cost shall be reported immediately after it is determined. CDB shall post the statement in the CDB Procurement Bulletin.

**Section 930.230 Procurement Procedures for Small Purchase Contracts  
EMERGENCY**

- a) Individual contracts not exceeding the following thresholds may be made without notice, competition or use of other method of procurement prescribed in this Part:
  - 1) construction contracts not exceeding \$100,000;
  - 2) design services contracts with an estimated basic professional services fee of less than \$25,000;
  - 3) construction management services contracts with an estimated basic professional services fee of less than \$100,000; and
  - 4) any other contract determined by the CPO to be related to the renovation, restoration, rehabilitation, or rebuilding of the Quincy Veterans' Home, not exceeding \$100,000.
- b) Estimated needs shall not be artificially divided to constitute a small purchase.

**Section 930.235 Procurement Procedures for Sole Source and Limited Source Contracts  
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- a) A contract may be procured from a single source contractor without competition or use of any other method of procurement prescribed in this Part when the single source contract is the only economically feasible source capable of providing the services, material or product to be supplied or if determined by the Chief Procurement Officer to be in the best interest of the State.
- b) Examples of circumstances that could necessitate sole source procurement 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 resale;
  - 4) when utility services are to be procured;
  - 5) when the surety providing a performance bond tenders a completion contractor, acceptable to the CDB, to complete a defaulted contract;
  - 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;
  - 7) when a utility or other private property is to be relocated or otherwise adjusted by the owner to accommodate a CDB project; and
  - 8) when determined by the CPO to be in the best interest of the State to expedite procurement.
- c) Change Orders. Change orders to existing contracts germane to the original contract that are necessary or desirable to complete the project, and that can be best accomplished by the contract holder, may be procured under this Section.
- d) Bulletin. CDB shall publish notice of intent to contract on a sole source basis in the CDB Procurement Bulletin at least 5 business days prior to execution of the contract.

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**Section 930.240 Procurement Procedures for Professional Services Contracts  
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- a) Application. The provisions of this Section apply to the procurement of professional services not otherwise referenced in this Part necessary to support CDB projects at the Quincy Veterans' Home. When such procurement does not lend itself to the request for proposal selection process outlined in this Section, the CPO may grant a waiver and direct CDB with the selection process to follow.
- b) Public notice. Whenever a project requiring professional services is proposed, CDB shall provide no less than 14 calendar days' advance notice published in a request for proposals setting forth a description of the services to be procured, unless a different timeframe for providing advance notice is otherwise specified by CDB. The request for proposals shall include the type of services required, a description of the work involved, an estimate of when and for how long the services will be required, a date by which proposals for the performance of the services shall be submitted, a statement of the minimum information that the proposal shall contain, price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package), the factors to be used in the evaluation and selection process and their relative importance, and a plan for post-performance review to be conducted by CDB after completion of services and before final payment and made part of the procurement file.
- c) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the request for proposals. Price will not be evaluated until ranking of all proposals and identification of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:
  - 1) the plan for performing the required services;
  - 2) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
  - 3) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting;  
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- 4) a record of past performance of similar work.
- d) Handling of Proposals.
- 1) Proposals and modifications shall be submitted to CDB and shall be opened publicly at the time, date and place designated in the request for proposals.
  - 2) Opening shall be witnessed by a State witness or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.
  - 3) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only State personnel and contractual agents authorized by CDB may review the proposals prior to award.
- e) Discussions.
- 1) Discussions Permissible. CDB may conduct discussions with any offeror to:
    - A) determine in greater detail the offeror's qualifications; and
    - B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach. The CPO may allow changes to the proposal based on those discussions.
  - 2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the CDB staff conducting the procurement shall not disclose any information contained in any proposals outside of contractual agents, State agency personnel or others specifically authorized by the CPO until after the award of the proposed contract has been posted to CDB's Procurement Bulletin.

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- f) Selection of the Best Qualified Offerors. After conclusion of validation of qualifications, evaluation and discussion, CDB shall rank the acceptable offerors in the order of their respective qualifications.
- g) Evaluation of Pricing Data. Pricing submitted for all acceptable proposals timely submitted shall be opened and ranked.
  - 1) If the low price is submitted by the most qualified vendor, the CPO may award to that vendor.
  - 2) If the price of the most qualified vendor is not low and if it does not exceed \$25,000, the CPO may award to that vendor.
  - 3) If the price of the best qualified vendor exceeds \$25,000, the CPO must state why a vendor other than the low priced vendor was selected and that determination shall be published in CDB's Procurement Bulletin.
- h) Negotiation and Award of Contract.
  - 1) General. CDB shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. CDB, in consultation with the CPO, may, in the interest of efficiency, negotiate with the next highest ranked vendor, while negotiating with the best qualified vendor.
  - 2) Elements of Negotiation. At a minimum, contract negotiations shall be directed toward:
    - A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
    - B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
    - C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity, and nature of those services.

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- 3) Successful Negotiation of Contract with Best Qualified Offeror.
  - A) If compensation, contract requirements and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled.
  - B) Compensation must be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be determined by CDB, in consultation with the CPO, based on the circumstances of the particular procurement, including but not limited to the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement, other available pricing information and CDB's identified budget.
  - C) Contracts entered into under this Section shall provide:
    - i) the duration of the contract, with a schedule for delivery when applicable;
    - ii) the method for charging and measuring cost (hourly, per day, etc.);
    - iii) the rate of remuneration; and
    - iv) the maximum price.
- 4) Failure to Successfully Negotiate Contract with Best Qualified Offeror.
  - A) If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons shall be placed in the file. CDB, in consultation with the CPO, shall advise such offeror of the termination of negotiations.
  - B) Upon failure to successfully negotiate a contract with the best qualified offeror, CDB, in consultation with the CPO, may enter into negotiations with the next most qualified offeror.

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- i) Multiple Awards. CDB, in consultation with the CPO, may enter into negotiations with the next most qualified vendor or vendors when CDB has a need that requires multiple vendors under contract.
- j) Publication of Award. The names of the selected vendors and the respective projects shall be published in CDB's Procurement Bulletin within 30 calendar days after the selection and award.

**Section 930.245 Procurement Procedures for Contracts with Illinois Correctional Industries  
EMERGENCY**

Procurements from Illinois Correctional Industries may utilize an annual master contract with agreed-upon unit prices for construction services, against which sub-orders may be placed for specific CDB projects. Specifications that require a vendor to obtain materials or services from another source shall identify at least three sources for the material or services, unless the CPO approves a specification with only one or two sources.

**Section 930.250 Procurement Procedures for Other Procurement Delivery Methods  
EMERGENCY**

In addition to the procurement delivery methods provided in this Part, CDB may explore and implement other procurement delivery methods recognized by the construction industry for CDB projects at the Quincy Veterans' Home, subject to CPO approval, and when determined by the CPO to be in the best interest of the State.

SUBPART C: GENERAL PROVISIONS APPLICABLE TO CONSTRUCTION  
AND CONSTRUCTION-RELATED SERVICES PROCUREMENTS

**Section 930.300 Procurement Bulletin  
EMERGENCY**

CDB is responsible for publishing a volume of the Illinois Procurement Bulletin. CDB's bulletin is available electronically via the Internet ([www.illinois.gov/cdb](http://www.illinois.gov/cdb)) and may be available in print. CDB's Procurement Bulletin may include one part entitled "Bid Information Newsletter" for construction contracts and another part entitled "Professional Services Bulletin" for architect/engineer and construction management services.

**Section 930.310 Agreement to Terms**

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**EMERGENCY**

By submitting a bid, offer, statement of qualifications, or any other response for the purpose of entering into a contract with CDB, the vendor agrees to all terms and conditions of CDB's Standard Documents for Construction, if applicable as determined by CDB, and all other contract documents as identified by CDB. Accordingly, submittal of conditions or qualifying statements on contract documents is unacceptable and cause for rejection of the vendor.

**Section 930.320 Minority, Women, and Veteran Participation**

**EMERGENCY**

CDB may establish goals for minority, women, and veteran work force participation and minority and women business enterprise participation as permitted by law. In addition, CDB may establish set-aside goals for qualified veteran-owned small businesses. CDB may establish goals pursuant to this Section on projects determined by CDB to be appropriate. Compliance with this Section shall be in accordance with CDB's Standard Documents for Construction.

**Section 930.330 Prequalification**

**EMERGENCY**

All vendors on projects pursuant to this Part, including identified subcontractors in projects utilizing the single prime design-bid-build procurement method, shall be prequalified in accordance with CDB's rules unless the CPO determines, in writing, that a vendor without prequalification should be awarded a contract if it is in the best interests of the State.

**Section 930.340 Protests**

**EMERGENCY**

The procedures of this Section govern the resolution of protests received by CDB from an interested party concerning a contract solicitation.

- a) Interested Party  
In order to be considered an interested party, the protester must be or have been an actual bidder or offeror who demonstrates compliance in all respects with this Part and the terms of the subject invitation for bids, request for proposals, or request for qualifications.
- b) Subject of the Protest
  - 1) A protest may be filed regarding any phase of the solicitation process for a

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particular contract.

- 2) The subject of the protest shall concern fraud, corruption or illegal acts undermining the objectives and integrity of the procurement process.
- 3) Protest procedures of this Section do not apply to issues of prequalification, suspension or debarment.

c) Filing of a Protest

- 1) All protests shall be in writing and filed with the Chief Procurement Officer within 7 calendar days after the protester knows or should have known of the facts giving rise to the protest. Protests filed after the 7 calendar day period will not be considered. In addition, protests that raise issues of fraud, corruption or illegal acts affecting specifications, special provisions, supplemental specifications and plans must be received by the CPO no later than 14 calendar days before the date set for opening of bids.
- 2) The protest shall be contained in an envelope clearly labeled "Protest." The written protest shall include as a minimum the following requirements:
  - A) The name, address, and telephone number of the protester.
  - B) The identification of the procurement or solicitation that is the subject of the protest.
  - C) All information establishing that the protester is an interested party.
  - D) A detailed statement of the factual and legal grounds of the protest, including all relevant documents and exhibits that demonstrate fraud, corruption or illegal acts having the effect of undermining the integrity of the procurement process.
  - E) All information establishing the timeliness of the protest.
  - F) The signature of the protester.

d) Stay of Action during Protest

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When a protest has been timely filed and before an award has been made, CDB shall make no award of the contract until the protest has been resolved, unless the award of the contract without delay is necessary to protect the interests of the State. When a protest has been filed after an award has been made, the protest shall be denied.

- e) Decision
  - 1) A decision on a protest will be made as expeditiously as possible after receiving all relevant information.
  - 2) The protest will be sustained only if it is determined by the CPO that the protest was filed by an interested party and conclusively demonstrates by the preponderance of relevant information submitted that fraud, corruption or illegal acts have occurred that undermine the integrity of the procurement process.
  - 3) If the protest is sustained, CDB reserves the right to cancel or revise the solicitation, readvertise the solicitation, or award to the next low bidder.
  - 4) The decision of the Chief Procurement Officer is final and conclusive.

**Section 930.350 Contract Files  
EMERGENCY**

- a) All written determinations required under this Part shall be placed in the contract file maintained by the CPO.
- b) Whenever a contract liability exceeding \$20,000 is incurred by CDB for projects pursuant to the Act, a copy of the contract or purchase order shall be filed with the Comptroller within 30 calendar days thereafter. When a contract or purchase order has not been filed within 30 calendar days of execution, CDB must file with the Comptroller the contract or purchase order and an affidavit, signed by the CPO, setting forth an explanation of why the contract liability was not filed within 30 calendar days of execution. A copy of this affidavit shall be filed with the Auditor General.
- c) No voucher shall be submitted to the Comptroller for a warrant to be drawn for the payment of money from the State treasury or from other funds held by the State Treasurer on account of any contract unless the contract is reduced to

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writing before the services are performed and filed with the Comptroller. The CPO may request an exception to this subsection by submitting a written statement to the Comptroller and Treasurer setting forth the circumstances and reasons why the contract could not be reduced to writing before the supplies were received or services were performed. This Section shall not apply to emergency purchases if notice of the emergency purchase is published in CDB's Procurement Bulletin.

**Section 930.360 Change Orders or Modifications  
EMERGENCY**

- a) The Board has set staff approval levels for construction change orders or modifications with Board approval required for amounts deemed significant enough to be appropriate for Board-level approval of change orders or modifications, when the CPO determines in writing that a change is germane to the original contract.
- b) Only work that is germane to the original contract shall be added by change order or modification. Proposed change orders or modifications that are determined by the CPO to not be germane to the original contract shall be procured in accordance with CDB Rules and this Part.
- c) All change orders and modifications shall be in writing and shall otherwise conform to the requirements of the Standard Documents for Construction. Prior to the execution of the actual change order or modification, changed work may proceed if authorized in writing according to the approval levels authorized by the Board, when so provided contractually.
- d) For purposes of determining the scope of the change order and the value thereof that is subject to the requirements of this Section, the Board 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.
- e) Notice of approved change orders and modifications shall be reported in CDB's Procurement Bulletin.

**Section 930.370 Performance Evaluation  
EMERGENCY**

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CDB shall evaluate the performance of each vendor upon completion of a contract, unless the CPO determines an evaluation is not required. CDB reserves the right to evaluate a vendor during a project, if determined to be warranted by CDB. Evaluations shall be made available to the vendor and the vendor may submit a written response, with the evaluation and response retained solely by CDB. The evaluation and response shall not be made available to any other person or firm unless authorized by law. The evaluation shall be based on the terms identified in the vendor's contract.

**Section 930.380 Substantial Compliance with the Illinois Procurement Code  
EMERGENCY**

This Section provides additional requirements for the substantial compliance with the sections of the Illinois Procurement Code listed in Section 930.130. This Section supplements the requirements found in the Code and does not excuse substantial compliance with any of the Code requirements.

- a) Substantial Compliance with Code Section 20-160 (Business Entities; Certification; Registration with the State Board of Elections) and Section 50-37 (Prohibition of Political Contributions).
  - 1) These requirements generally apply to a vendor whose existing State contracts have an aggregate value in excess of \$50,000, whose aggregate value of bids/proposals for State contracts exceeds \$50,000, or whose aggregate value of State contracts and bids/proposals exceeds \$50,000, calculated on a calendar-year basis.
  - 2) On a calendar-year basis, each vendor or potential vendor must keep track of the value of contracts and bids/proposals. Vendors must register with the State Board of Elections when the vendor determines that the value of the contracts and bids/proposals meets the threshold for registration.
  - 3) Documentation of vendor compliance must be in the procurement file in relation to any contract for which a vendor is required to register as set forth in this subsection, unless the vendor certifies it is not required to register.
    - A) For contract renewals and extensions, if the value of the renewal or extension by itself, or in combination with the contract being renewed/extended and other contracts and bids/proposals, exceeds \$50,000, the vendor must provide documentation of vendor

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compliance upon request and make the appropriate contract certification, if it has not already done so. The Registration Certificate or other evidence of vendor compliance may be provided by reference to and incorporation of the vendor's prequalification by the CPO.

- B) CDB shall identify in the solicitation whether the contract is estimated to exceed \$50,000 annually. Vendors submitting bids or offers for master contracts estimated to exceed \$50,000 annually regardless of consumption are required to register with State Board of Elections.
- C) For indefinite quantity/estimated value contracts that are not estimated to exceed \$50,000 annually, a vendor who is otherwise not required to register shall register with the State Board of Elections when the maximum value of orders that may be placed pursuant to an indefinite/estimated value contract, plus all other contracts and bids/proposals, exceeds \$50,000 annually. The vendor shall register with the State Board of Elections within 10 business days after orders exceed \$50,000.
- D) For contract amendments, if the value of the amendment, by itself or in combination with the contract being renewed plus other contracts and bids/proposals exceeds \$50,000 annually, the vendor must provide the Registration Certificate or other evidence of compliance upon request and make the appropriate contract certification, if it has not already done so.
- E) Any contracts mistakenly executed in violation of this Section must be amended to include the contract certifications, and the vendor must supply the Registration Certificate or other evidence of compliance upon request. If any violation by the vendor is not cured within 5 business days after receipt of notification of the violation, the contract is voidable by the State without penalty.
- F) Certification of the requirement to register with the State Board of Elections, required by 30 ILCS 20-160(a), shall be included in or added to each contract that must be filed with the State Comptroller pursuant to Section 20-80 of the Code and those written two-party contracts that need not be filed with the

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Comptroller. CDB may require written confirmation of the certification at any time.

- b) Substantial Compliance with Code Section 50-13 (Conflicts of Interest).
- 1) These conflicts apply to the direct interests of specified State employees or officeholders.
  - 2) Office or Employment. *It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person, to have or acquire any contract, or any direct pecuniary interest in the contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority. [30 ILCS 500/50-13(a)].*
  - 3) Financial Interests. *It is unlawful for any firm, partnership, association, or corporation, in which any person as described in subsection (a)(1) is entitled to receive more than 7½% of the total distributable income or an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein. [30 ILCS 500/50-13(b)].*
  - 4) Combined Financial Interests. *It is unlawful for any firm, partnership, association or corporation, in which any person listed in subsection (a)(1) together with his or her spouse or minor children is entitled to receive more than 15%, in the aggregate, of the total distributable income or an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein. [30 ILCS 500/50-13(c)].*
  - 5) For the purpose of this Part, an individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise received a direct financial benefit in conjunction with performance of a contract,

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including finder's fees and commission payments.

- 6) For the purpose of this Part, "distributable income" means the income of a company after payment of all expenses, including employee salary and bonuses, and retained earnings, which is distributed to those entitled to receive a share of the income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income the entitlement shall be determined at the end of the company's most recent fiscal year.
  - 7) This Section applies to those elected or appointed to an office of Illinois State government. This Section does not apply to those elected to local government offices, including school districts, nor does it apply to those elected to Federal offices in this State.
- c) Substantial Compliance with Code Section 50-15 (Negotiations).
- 1) *It is unlawful for any person employed in or on a continual contractual relationship with any of the offices or agencies of State government to participate in contract negotiations on behalf of that office or agency with any vendor, partnership, association or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment. [30 ILCS 500/50-15(a)].*
  - 2) An individual who performs services pursuant to a contract and who meets the requirements of an "employee" as opposed to an "independent contractor" is in a "continual contractual relationship" from the effective date of the contract until such time as the contract is terminated.
  - 3) An individual who performs services pursuant to a contract and who meets the requirements of an "independent contractor" as opposed to an "employee" is in a "continual contractual relationship" if the contract term is indefinite, is automatically renewed, is renewable at the individual's option, is renewable unless the State must act to terminate, or has a definite term of at least three months.
- d) Substantial Compliance with Code Section 50-20 (Exemptions).

If an individual finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, he or she shall forward to the CPO the name of the vendor and a description of the proposed contract and of

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the potential conflict, and shall state why an exemption should be granted. The CPO shall decide whether to disapprove the contract or request an exemption from the Executive Ethics Commission in accordance with Section 50-20 of the Code.

- e) Substantial Compliance with Code Section 50-35 (Financial Disclosure and Potential Conflicts of Interest).
  - 1) In circumstances in which the vendor refuses or is unable to provide disclosures, the CPO may authorize CDB to move forward with the transaction. In granting that authorization, CDB must provide documentation of efforts to obtain compliance.
  - 2) New disclosures are required on contract renewals. New disclosures are not required for contract amendments.
  - 3) For purposes of:
    - A) Section 50-35(b) of the Code, "parent entity" means an entity that owns 100% of the bidding or offering entity.
    - B) Section 50-35(b) of the Code, "distributive income" means the income of a company after payment of all expenses, including employee salaries and bonuses, and retained earnings that is distributed to those entitled to receive a share of that income. In the case of a for-profit corporation, distributable income means dividends. When calculating entitlement to distributable income, the entitlement shall be calculated at the end of the company's most recent fiscal year or when distributed.
    - C) Section 50-35(b) of the Code, "subject to federal 10K reporting" means subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. "10K disclosure" means a report required under section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].
    - D) Section 50-35(b)(1) of the Code, "contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, that is by and between the State and the named individual.

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- 4) 10K Disclosures
  - A) Any vendor subject to federal 10K reporting requirements may submit its 10K to CDB in satisfaction of the disclosure requirement of Section 50-35(b) of the Code. The vendor may be required to identify the specific sections or parts in the 10K disclosure containing information, if any, pertaining to those who have an ownership interest or an interest in the distributive income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the State is not in the 10K, or in a document that may be submitted to the SEC in conjunction with, or in lieu of, the 10K, then that additional documentation shall be provided.
  - B) 10K disclosures are available for public review. Any potential conflict of interest identified by the public and brought to the attention of CDB, or the CPO, shall be investigated.
  - C) In circumstances in which a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements of the Code, the CPO may consider information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure in determining whether a potential conflict of interest exists.
- 5) When an alleged conflict of interest or violation of the Code is identified, it shall be reviewed by the CPO, who must determine whether the contract, subcontract, bid, offer or proposal should be awarded. Prior to making a final determination, the potential conflict shall be submitted to PPB for review in accordance with Section 50-35(d) of the Code. If PPB recommends to allow the contract or subcontract, the CPO may award the contract. If the PPB recommends the contract, bid or offer be voided, then the CPO may determine to award the contract, considering whether the best interest of the State of Illinois will be served. Upon such determination, the EEC shall hold a public hearing. After the public hearing, the CPO may award the contract. The CPO may, at any juncture, determine to void the contract or award if to do so is determined to be in

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the best interest of the State. All written determinations and any documents relied upon or made part of any public hearing shall become a publicly available part of the procurement file.

f) Substantial Compliance with Code Section 50-36 (Disclosure of Business in Iran).

A period not to exceed 5 business days may be granted by the CPO to cure a failure to provide the disclosures required under this section.

g) Voidable Contracts

- 1) If any contract or amendment thereto is entered into or purchase or expenditure of funds is made at any time in violation of this Part or any law, the contract or amendment thereto may be declared void by the CPO or may be ratified and affirmed, provided the CPO determines that ratification is in the best interests of the State. If the contract is ratified and affirmed, it shall be without prejudice to the State's rights to any appropriate damages.
- 2) If, during the term of a contract, the CPO determines that the contractor is in violation of Section 50-10.5 of the Code [30 ILCS 500/50-10.5], the CPO shall declare the contract void.
- 3) If, during the term of a contract, CDB determines that the contractor no longer qualifies to enter into State contracts by reason of Sections 50-5, 50-10, 50-12, or 50-37 of the Code [30 ILCS 500/50-5, 50-10, 50-12, 50-37], the CPO may declare the contract void if it determines that voiding the contract is in the best interests of the State.
- 4) If, during the term of a contract, the CPO determines that a subcontractor no longer qualifies to enter into State contract by reason of Sections 50-5, 50-10, 50-10.5, or 50-12 of the Code [30 ILCS 500/50-5, 50-10, 50-10.5, 50-12], the CPO may declare the related contract void if it determines that voiding the contract is in the best interests of the State. However, the related contract shall not be declared void unless the contractor refuses to terminate the subcontract upon CDB's request after a finding that the subcontractor no longer qualifies to enter into State contracts by reason of one of the Sections listed in this subsection.