


STATE OF ILLINOIS
CHIEF PROCUREMENT OFFICE



Capital Development Board CPO Notice #4

To: Capital Development Board Staff
From: Fred Hahn, Chief Procurement Officer 
Date: April 26, 2011
Subject: Timely Execution of Contracts and Start of Work

This Chief Procurement Officer (CPO) Notice is a reiteration of State Law already in force.

The following two State Statutes and Capital Development Board's (CDB) Standard Documents For Construction (March 2009) govern the timely execution of contracts and the start of work by a contractor or Architect/Engineering (A/E) firm.

The Illinois Procurement Code (30 ILCS 500/20-80) Section 20-80 Contract Files states that:

- (d) "Timely execution of contracts. 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 writing before the services are performed and filed with the Comptroller. **Vendors shall not be paid for any goods that were received or services that were rendered before the contract was reduced to writing and signed by all necessary parties.** (emphasis added) A Chief Procurement Officer 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. A waiver of this subsection must be approved by the Comptroller and Treasurer. This Section shall not apply to emergency purchases if notice of the emergency purchase is filed with the Procurement Policy Board and published in the Bulletin as required by this Code."

The Criminal Code of 1961 (720 ILCS 5/33E-9 from Ch. 38, par. 33E-9) for Change Orders, states that:

"Any change order authorized under this Section shall be made in writing. Any person employed by and authorized by any unit of State or local government to approve a change order to any public contract who knowingly grants that approval without first obtaining from the unit of State or local government on whose behalf the contract was signed, or from a designee authorized by that unit of State or local government, a determination in writing that

- (1) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed, or
 - (2) the change is germane to the original contract as signed, or
 - (3) the change order is in the best interest of the unit of State or local government and authorized by law,
- commits a Class 4 felony.

The written determination and the written change order resulting from that determination shall be preserved in the contract's file which shall be open to the public for inspection. This Section shall only apply to a change order or series of change orders which authorize or necessitate an increase or decrease in either the cost of a public contract by a total of \$10,000 or more or the time of completion by a total of 30 days or more."

Capital Development Board's (CDB) Standard Documents For Construction (March 2009), Section 01 26 00: Contract Modification Procedures, states that:

- .1 Commencement of Changed Work. The Contractor shall not proceed with any changed work until an executed written change order or proceed order signed in accordance with the established levels of authority in Paragraph 01 26 00.4. is issued. However, the Contractor must proceed with the changed work upon the receipt of such a document in accordance with Section 00 72 60.2.

A fully approved and executed contract must be completed before any work can be done under said contract. Change orders and Architect/Engineering (A/E) modifications are contracts and are subject to the above section of the Procurement Code.

An exception, as stated in the Illinois Procurement Code (30 ILCS 500/20-80) Section 20-80 Contract Files, will only be considered by the CPO's Office if:

1. The CPO's Office was made aware, prior to work being performed, of the need for work to begin before a contract is executed and
2. The CPO's Office received adequate documentation as to the circumstances and reasons the work has to begin before a contract is executed. The documentation required, but limited to, is:
 - An explanation from the A/E, as to the circumstances and reasons the work has to begin before a contract is executed,
 - An explanation from affected contractors (if applicable), as to the circumstances and reasons the work has to begin before a contract is executed,

- Supporting documentation from all parties submitting an explanation,
- Approval from the Director of Construction of the request,
- An explanation of why a contract action could not be executed timely.

CPO approval must be received in writing before work can begin without an executed contract.

Questions about this SPO Notice should be emailed to Fred Hahn at Fredrick.Hahn@Illinois.gov or William Strahle at William.Strahle@Illinois.gov.