



Chairman: David Vaught

Members: Ed Bedore, Ricardo Morales, Larry Ivory, Bill Black

Minutes – April 5, 2012 Meeting

Present in Chicago: David Vaught

Present in Springfield: Ed Bedore
Larry Ivory
Bill Black

Absent: Rick Morales

The Board started the meeting by confirming attendance at 1:05 p.m.

Chairman Vaught introduced the newest member of the Board, Mr. Bill Black.

First on the agenda was the approval of the minutes from the March 8, 2012 Board meeting and the March 21, 2012 Emergency Meeting. Member Bedore made a motion to accept the minutes as presented and was seconded by Member Ivory. The motion was unanimously approved.

Next on the agenda was CMS Facilities. In attendance was Deputy Director of Property Management at CMS, Nick Kanellopoulos. Mr. Kanellopoulos stated that since Governor Quinn took office the total cost reduction from consolidating, re-bidding and renewing leases stands at \$4.68 million, which is an annualized number. CMS has eliminated 1.97 million square feet of space the State formerly leased. Mr. Kanellopoulos stated that in FY11 CMS spent \$712,000 on snow removal in the State of Illinois. The FY12 was only \$222,000 just to show how the weather plays in the variability of certain costs in facility management.

Member Bedore wanted it to be on record that in the special meeting that took place on March 21, 2012, the Board discussed the Lawrence building in Chicago and he wanted the record to show that the original RFI that went out did come back with a much lower rate, but it was rejected by the new director. Even though CMS went out for a re-bid the first bid was lower and contrary to what the Board was told at the last meeting the first time around was a lower bid. Mr. Kanellopoulos replied that he was not sure what material had been provided, but the bid that CMS accepted the second time around was lower than the low bid the first time. Member Bedore wanted it on record that CMS was willing to go with the first bid, but bowed down to an agency director rather than what was good for the State. Mr. Kanellopoulos replied that he respectfully disagrees. Chairman Vaught stated that Member Bedore's comments would be on record.

Next was the DHS Lease #4731 at 2605 Woodlawn Road in Sterling. Director Aaron Carter stated that this lease is for 7,200 square feet with a headcount of 13 staff members including a budgeted headcount of 11 with two partners. This is a lease renewal and Board members were concerned about the overall square foot per person being 398. Director Carter stated that Mr. Kanellopoulos could go into more details on the lease. Mr. Kanellopoulos stated that this lease is up for renewal. The State has five leases in Sterling. There are two DHS leases, a DES lease, a DCFS lease and a DNR lease. All of the leases are with the same landlord, but different locations. The State had been working for several years to attempt to consolidate these leases into a project that the city of Rock Falls was working on across the river. It was to be a building owned by the City of Rock Falls, and through an intergovernmental agreement, would consolidate leases that are in Sterling into that facility. A couple of things happened around that time. One, that deal fell through and

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when the final price tag of the intergovernmental agreement came to us we saw that it would just not work for the State. At the same time the landlord for all five of the Sterling leases found out that the State was attempting to consolidate those leases. The landlord came to CMS and said that she would reduce the rent at all five leased facilities for five years if CMS would stay at those locations. CMS was able to negotiate a 20% reduction for all of the leases for five years and also for a couple of the leases the landlord took on the janitorial cost from the State. Mr. Kanellopoulos replied that since the consolidation fell apart CMS thought it would be in the best interest of the State to take the reduction on all of the leases. Mr. Kanellopoulos stated that he understands the Board's concern about the square footage at this facility is a little high, however, he believes it was in the State's best interest to get the 20% reduction on all of the leases and capture those savings for five years. With the base rent at \$7.87 for the next five years it is a great rate and it is in the best interest of the State to go forward with this lease even though the square footage per employee is high.

Member Bedore wanted to know what happened to the consolidation plan. Mr. Kanellopoulos replied that a couple of things happened. At the time of the negotiations, CMS was looking at a burned out warehouse. There were going to be a lot of improvement costs going into this facility. At the end of the day it would have been more expensive to consolidate these five leases than what is currently in place. Mr. Kanellopoulos replied it was determined that it was not in the best interest of the State to move forward with that project. Member Bedore wanted to know if it is true in the last year of the lease that the rate goes up to \$10.24. Mr. Kanellopoulos replied that that is correct because the 20% reduction goes back five years back when it was agreed to starting in October and at the end of that five years it will go back to the schedule that was in the renewal and that year of the lease was \$10.24. However, after September 30, 2013 CMS can terminate the lease at any time. Member Bedore wanted to go back to Mr. Kanellopoulos' comment about the square footage being a little high. Member Bedore is not sure what his definition of little is, but 396 square feet per employee is a lot higher and he doesn't know how this can be approved in good conscience. Member Bedore asked if there are supposed to be some standards and some rules and asked Mr. Kanellopoulos if he can justify it. Mr. Kanellopoulos replied that he justifies it because CMS was able to obtain a very large reduction in cost on five leases and that saved CMS almost \$90,000 in the first year over what these leases would have cost with no changes. Member Bedore asked how much would they be saving if CMS was able to get it down to 200-250 square feet per person. Member Bedore stated that what good are the rules when the Board is approving leases that are double the amount. Mr. Kanellopoulos replied again that it was in the best interest of the State to capture the cost reduction.

Chairman Vaught asked if he could give an estimate of what it would cost if the square footage was reduced. Mr. Kanellopoulos replied that it is unknown because CMS was not able to bid this lease or any of the other leases out. It is unknown what the market is in Sterling/Rock Falls and what the cost would be. Mr. Kanellopoulos replied that \$7.87 a square foot is an extremely low rate and he would be surprised if CMS has many leases in the State of Illinois where the rent was lower than that. Member Bedore replied that there is no question that it is a very good rate. His question is on the square footage. Member Bedore wanted to know how it is in the best interest of the State if you don't know what could have been done with 200 square feet per employee. Mr. Kanellopoulos replied that CMS had an opportunity when the consolidation fell apart to amend these leases and get the 20% reduction and CMS felt that this opportunity would go away once it became public that CMS would not be consolidating these leases. Member Bedore stated that instead of trying to consolidate all of these leases why not move another agency into this building and get the square footage down. Mr. Kanellopoulos replied that the reduction was offered with the requirement that all five leases were amended at the same time. Member Bedore disagrees that this is not in the best interest of the State. He also asked to see their rules and regulations at the next meeting and see what their recommendation is. Mr. Kanellopoulos replied that CMS has provided draft rules to Director Carter and they have also been provided to CPO Brown so they can be discussed before filing.

Todd Turner, the Board legal counsel, stated that since this is just a renewal it does not need the Board approval to renew unless there is an affirmative objection from the Board. A motion was made by Member Bedore to object the renewal of lease 4731 and was seconded by Member Black. With a 2-2 vote the motion did not pass.

Next on the agenda was DHS lease # 5663 at 201 N. Mississippi in Pittsfield. Director Carter stated that this is a 364-day short term lease. The square footage is 4,714 and total headcount is 7. There is Board concern that this lease would be ripe for possible consolidation and that the 364-day lease may not be appropriate. Mr. Kanellopoulos stated this lease is on a list to consolidate and move to the DHS office in Quincy. The issue here is that the consolidation cannot be completed before the current lease expires. The lease expires on April 9, 2012 and therefore CMS has a 364-day lease posted to simply bridge the gap between the time the current lease expires and the time to consolidate that lease into Quincy. This lease can be terminated at any time with 30 days' notice. CMS believes that they can get the consolidation done within the next three months. This is the reason that this lease was put in place. No further questions or comments were made.

Next on the agenda was an update on the State Police Headquarters/AIG Building. Mr. Kanellopoulos stated that at the last meeting that the last step in determining if the Attorney General's office would be moving in was the air quality testing. According to the Department of Labor who came in to take the samples, it would still be another three weeks before getting those results. Mr. Kanellopoulos stated if that is the case then at next month's meeting he should be able to tell the Board if the Attorney General's office is moving in and when they are moving. If they don't move in, CMS will provide the Board a list of what they are doing to further consolidate leases into the building.

Next was the report on Printer/Electronic Consolidation. In attendance was Will Walker with CMS. Mr. Walker stated he wanted to bring the Board up-to-date on the digital imaging and what is being done. Currently they are working with the Prisoner Review Board (PRB). So far they have sent 23 boxes or approximately 1,031 closed and inactive files to "Gone for Good". This is a State Use Vendor that hires disabled individuals here in Springfield and is using them to go through the files to clean them up at a cost of \$13.35 a box. Most of the work has been done by the PRB staff on the weekends, who are working overtime to try to get this done. Mr. Walker stated that in order to expedite this CMS is going to hire a 75-day contract employee. One hundred and twelve boxes of files previously prepped by the PRB staff have been taken to the Secretary of State as of March 18, 2012 for microfilming. Additionally, a high volume scanner with the associated image capture software was delivered on March 27, 2012 and is awaiting installation by the vendor.

DHS continues to march forward. The three forms they put online have started to escalate and more and more of their agencies are using them and more people are getting used to it and have started to pass what they originally thought they would save. They are now looking at savings close to \$1 million a year just by putting a few files online and getting people used to the practice of not inputting data and then printing it off and putting it in a file. All of this will save paper, time, energy and space. There are also 57 more files that are being looked at to put online at the DHS office and the savings there will be huge when it is all done.

On March 27, 2012 the Bureau of Benefits had a high speed scanner with associated image capture software delivered and installed and a 75-day contract employee will soon start working on this and he will give an update to the Board in the near future.

At the last meeting the Board asked about some dates and data and where they were going to go and how to quantify IDOT. Mr. Walker stated that in his conversations with IDOT they formalized the electronic records initiative by forming an electronic records information management steering committee. The steering committee is tasked with the development of policies and procedures for the management of electronic records and information to ensure compliance with the State Records Act. Over the next two weeks they are going to start to define some metrics quantitatively, metrically and qualitatively so they can figure what they are up against and just how much money will be saved.

Mr. Walker stated that another area is the Illinois Interstate Compact Unit. They work under the DOC, which is a small sub-agency that has gone paperless and might be able to steal some of their ideas going forward and how we can relate those ideas directly to the Department of Corrections and perhaps PRB going forward.

In telecom savings there is another \$6,000 in savings, which brings the phone reduction to about \$500,000 a year. Print reduction savings are moving forward rapidly and are at about 7,400 fewer devices and the

savings estimate is close to \$3.8 million. They are continuing to work with the DOC and Illinois Student Assistant Commission and are now going to start tackling DCEO. The I-Cycle program continues to be a great program with more interest from agencies. So far about 4 million pounds of paper have been recycled and about 2,700 pounds of plastic. So far this year \$83,000 has been generated in income. One more area that is being focused on is that they are going to install a second baler in Springfield so they can double their efforts. The only way to make money is by having it baled. The current rate is about \$300 a ton.

So far CMS has disposed of 94,000 monitors, computers, printers and fax machines and has prevented 470 tons of electronics from entering Illinois landfills and the savings to the State is a little over \$4 million.

Next on the agenda was the Chief Procurement Office for General Services Rules. In attendance was CPO Matt Brown. Director Carter stated that before the Board is the analysis conducted for both General Services CPO Rules as well as Higher Education Rules. The Board's staff and the CPO's staff have had open dialog to some of the points, but further clarification is needed. After the open dialog the Board's attorney reviewed the Rules as well. Today most points were agreed upon with a few outstanding. Staff recommendation would be that the Board supplies any points that are left with any sort of disagreements and supply those to JCAR as part of their first notice comments along with any additional comments the Board might have today.

CPO Brown stated that he can say that they have concluded the three public hearings during the first notice period on the General Services Rules. They received a varying degree of participation and comments from each of those hearings and have taken those comments under consideration. The CPO's office has also received specific comments from the Procurement Policy Board staff and comment received independent of those public hearings all of which have been under consideration and will be advanced to the staff at JCAR. Under their review of these documents there will be discussions on any outstanding points that need to be refined to bring the broadest applicable interpretations to these rules as they can and seek JCAR's concurrence and second notice filing and ultimately a JCAR meeting. The General Services Rules are in a position to be filed for second notice now. That ability was made available to them on March 26, 2012 when the first notice period expired. Their expectation is to continue to coordinate with the efforts of CPO Ben Bagby as the Rules for Higher Education greatly compare to the Rules of General Services and where every extent practical would like them to match.

Member Bedore asked if the Board was going to go over the points for clarification the PPB staff had with the Rules. Director Carter asked if the Board just wanted to discuss the points that the PPB staff didn't agree with. The Board agreed. Director Carter stated that on the General Services Rules page 3 item 78 section 1-2030(f)(2), staff comment was to address the method of filing with the PPB and the Auditor General. Director Carter stated that the CPO's response was that the Code does not describe the method of filing. The preferred method of filing may differ among stakeholders and their preferences may change. It would be more appropriate not to restrict the rule unnecessarily. Staff responded that they believe the purpose of the rules would be to describe a method for filing and legal counsel for the Board tends to agree with that comment.

CPO Brown stated that this is an area that they have dealt with in a number of instances thus far. Where they have the greatest disparity in their work product is, at least in General Services, working with 60 different agencies and trying to get them to comport. If this is a matter of simply signing a form or a page and the requirements of the section don't ultimately require 10 separate things to be included in the form, they would simply be prescribing a form with a header and addressed to the appropriate parties. One of the things that the CPO's office has done repeatedly was to ask for agencies to revise such filings so that they are more understandable, but at its origin the nature of the agency filings is the most difficult thing to bring into continuity. CPO Brown stated they have deferred to the PPB, for example, in some other form templates that are not statutorily prescribed and they choose to do that for reasons of uniformity. He stated that they would choose to do something like that, but that it is a different function than establishing in rule the consistency of a form that might need to change. Changing a single form document as part of an administrative package could be very complex. The CPO's office will continue to work towards an agreement here.

Director Carter stated that the next one was number 79 1-2030(h). After the hearing the CPO's determination should be published and a new affidavit filed. Staff consideration is that the notice of the hearing could extend as an established rule, but the posting of the results of the hearing are not addressed in rule. In addition, the original emergency affidavit only covered the original 90-day emergency, particularly the cost and term justification. If an extension of an emergency is granted an updated affidavit should be filed with the PPB and the Auditor General. CPO Brown stated that one of the things that they are challenged with is how to provide the most up-to-date information that can be provided about a procurement-particularly an exceptional procurement. If they have an exceptional procurement that requires additional reporting requirements they would like to be able to provide updates in an appropriate manner. One of the things that they have in this regard is a statute that is silent. It doesn't say continue to file new affidavits for every subsequent change. The filing of an affidavit is a significantly procedural event. CPO Brown stated that one of the things that they would like to do is create as much efficiency as possible to supplement those affidavits. The affidavits, again, are at a point of origin while the responsibility of the CPO's office is to vet and again are the point of origin at the agencies. If they file subsequent affidavits for each and every change there will be a separate series of affidavits to deal with. One of the things that they proposed going forward with these rules is to be able to have the addendum and the updating of a single original affidavit. It will make a single document representative of the transaction. CPO Brown stated that he doesn't think that they have any disagreements with the idea that the latest and the most up-to-date information is necessary and is required by law. It is just that they don't want to take a document of origin and continue to re-create that. Particularly in an emergency environment that could change a number of times during the emergency. CPO Brown stated that he would like to have a practical outcome to this and could come to that conclusion, but is concerned with filing a new document of origin every time an original form is updated. It might be a little confusing. Member Bedore asked what the Board does if they object to something that CPO Brown just said. Director Carter replied that since his arrival the only thing that they have done for Rules is grant a no objection to the Rules. Director Carter stated that with the expansiveness of these Rules the Board is to provide the Board's comments to JCAR without a no objection to the Rules or an objection if it is the will of the Board. Todd Turner the Board's legal counsel stated that when the Board doesn't agree with the CPO that we make note of it and then direct staff on whether they want the PPB staff to comment to JCAR about disagreement to the Rule or whether the Board is satisfied and don't need to provide a comment to JCAR. CPO Brown replied that he would offer an invitation for any disagreements that would remain after discussions continue to be registered with the people at JCAR. One, it will make it a matter of public record before the body who needs to approve the Rules to be adopted. Second, it gives them a forum by which to continue to refine these. The Rules making process is a very specific and deliberative process and want to find the best and most efficient process that can be put into Rules that is appropriately at Rules level. CPO Brown stated that is it as effective or is it more effective to use an original affidavit document every time or is it as effective or more effective to amend the original document and keep a single live document in the context of a procurement file.

Director Carter stated that the next one is noted under 127 1-2060(e)(1). Member Bedore wanted to address page 24 about the Procurement Compliance Monitor's (PCM). Member Bedore stated that when he looks at the Illinois Procurement Code it says that the monitor serves, but shall report to the appropriate procurement officer. Member Bedore stated that he is confused and wanted to know who the PCM's should report to. The EEC has no Rules out there and don't know what they are doing. They don't have any Rules in place. These people were appointed by the Governor and what are they doing? They don't have any Rules and we don't know what they do. There are all kinds of problems with interference. You can talk to any agency and all they do is slow things down and according to the Procurement Code they should report to the CPO. Member Bedore is confused on what the PCM's do. CPO Brown replied that at this point there are no proposed Rules by the Ethics Commission to guide the PCM's. He does know that the Ethics Commission has taken the position that the PCM's should, from a structural stand point, report to the Commission for the aspect of the organizational tree and are clearly part of the procurement organization as the Code indicates, but have been separated from the Chief Procurement Officers. Member Bedore wanted to know how they separate when it says "shall report to the CPO". CPO Brown replied that he understands his concern. Member Bedore stated that by internal rules the EEC has decided that the PCM's should report to someplace else. The Code says "shall report to the appropriate CPO" it doesn't say "may" or "should" it says "shall". It is the Legislature that passed the law and it says "shall" and then the EEC comes up and says that they should report to someone else. Chairman Vaught stated that there was a suggestion by the PPB

staff to define this role as review and report. In the re-draft that came back the CPO has changed it to oversee and review. Chairman Vaught said it seems to him to have a very different meaning than to review and report. He is curious as to why the oversee language is being suggested. CPO Brown replied that one of their challenges is and has been for some time now the identity of what reporting means and the choice of overseeing and reviewing. He thinks that they used to generally speak to the idea that Procurement Compliance Monitors are recognized in statute to have a broad field of vision here. The question of reporting ultimately is a statutory question and he thinks that there are a lot of people who would still like to see that addressed. Their efforts in the Rules was not to carry that same concern down to the Rules, but can appreciate the Board's concerns for the responsibilities of the PCM's. Chairman Vaught stated that is his concern, which maybe he is not perceiving it as a concern. Chairman Vaught stated that it seems that there is a statutory intent. If there is a statutory intent to view these newly created officials one way and then the regulation somehow treats them differently. It seems to him that you changed the statutory intent. He reads that it is the statutory intent that it is the CPO who is the oversight person in the procurement process and not the PCM. When you change the idea of reviewing and reporting to overseeing it is creating confusion about what the relative roles are. CPO Brown replied that he does understand what the Chairman is saying and would offer that the language that was offered originally to which the Board's staff commented on did not include this language and did not include the further interpretation. The original proposal existed to say PCM's have rules and responsibilities established in section 10-15 of this Code. This includes monitoring procurement activity of State agencies, having access to records and systems and attending any procurement meetings. CPO Brown stated that they spoke to the function in the Rules originally that the monitors did. Their original proposal did not speak to anything in an organizational structure. It may well be as easy to revert back to and not have the organizational structure in the Rules. Member Bedore stated that somewhere along the line this Board has to address this issue. There is a legislative intent here that is being totally ignored and he believes that this Board has a role here to speak about this in a future meeting.

Director Carter stated the next one is on page 125. Director Carter stated that the Code does not offer exceptions for software licenses and licensing to exceed 10 years. Staff's considerations are that Section 20-60 of the Code sets the maximum duration of a contract to 10 years and it does not make any exceptions for software license's even if payment is paid in full in the first 10 years. Director Carter stated that the CPO response was that these are effectively an outright purchase of a license. This reflects the reality of the market and this rule has been in place since the effective date of the Procurement Code. Director Carter stated that legal counsel for the Board commented that the Code does not allow this exemption and the CPO cannot add exemptions that are not specifically allowed by the Code.

CPO Brown stated that one of the things that the State encounters in its business practices within the procurement life cycle is not just how they procure it, but what we do with it while we own it and how we properly dispose of it and potentially procure it again. There are a number of items that the State of Illinois purchases that have a working life that exists beyond 10 years. Often times these are in areas of technology like TV and computers. The State has aircraft and watercraft that are complex pieces of equipment that clearly have a life expectancy beyond 10 years and is typical in some industries to engage by the way of contract on-going relationships so that the useful expectation and life of a piece of equipment can be fully realized. While we may have fully completed and satisfied a procurement and related payments the use of contractual agreements continue to bind the two parties so that the relationship between manufacturer and owner of the asset can be established for the useful life of the equipment. It is not that the procurement officer would intend to bind the State to on-going obligation or to bind the State to subsequent procurements, but it is very much in the State's interest to be able to maintain its contractual obligations for assets that have a long life expectancy. CPO Brown stated that if we are not able to maintain those contractual obligations then the vendor/market place which supports that has the ability to withdraw from a level of support that they would commit to for any other asset that might last 10-30 years. It is really in the State's interest to be able to craft an agreement that doesn't bind procurements and bind future expense, but it does maintain the commitment and relationship on those long term assets.

Member Bedore wanted legal counsel to repeat his comment. Mr. Turner replied that he said that the duration of contracts Section 20-60 of the Code limits the duration of contracts to 10 years and what this rule is doing is, in the case of software, is creating an exception that a contract can go past 10 years. Mr. Turner stated that he doesn't disagree with CPO Brown's logic, but what he is talking about would require a

statutory change and he doesn't see how in the Rule-making process can make an exception to a statutory section that has no room for exceptions at this point. Member Bedore wanted to clarify that statutorily we cannot do this. Member Bedore stated that legal counsel's suggestion is that we follow the statutes, just like we should be following the statutes on the PCM's. Member Bedore stated that he agrees with CPO Brown regarding the value of this, but doesn't know how we could be in favor of a contract beyond 10 years if it is in the statute that prohibits that. He believes that would be an objection. Chairman Vaught replied that he agrees with Member Bedore.

Director Carter stated that the next one was on page 127, which adds that renewals are subject to Section 5-30 of the Code. Staff consideration is that while it is understood that renewals, whether above or below \$249,999, are subject to PPB review, further clarification in this section of the Rules would enforce that position. CPO Brown replied that in this particular section there is no disagreement that renewals as part of the definition of contract in the Code are subject to the review of the Procurement Policy Board. CPO Brown stated that they specifically reference the threshold at \$249,999 because the Code further expresses a structure and function for doing so. Their theory was that the definition of contract being inclusive of renewals covered that term. If there was something more express about how the Board chose how to review renewals it may be more appropriately placed in the Board's Rules since it isn't a statutory function generally as compared to the \$249,999 express responsibilities to which they have to take particular action on. CPO Brown stated that he is more than interested in having further discussions so that they can clarify that and thinks that it is a minor concern.

Director Carter stated that the next one is on page 173 section 1-5035(a). The PPB resolution dated October 5, 2010 requires disclosures for small purchases that exceed \$25,000 including sole source and emergency. Staff consideration is that the Rules specifically say that for sole source and emergencies that exceed \$25,000 a disclosure shall be obtained in whole or in part when practical, which does not comply with the recommended policies of the Board. CPO Brown replied that we have concurrence with the threshold of \$25,000 and reflect upon the Board's resolution. As stated in the response they are considering making an appropriate change, but are not sure what that appropriate change is. There are a number of functional considerations on how the disclosure forms are used and to be able to reflect \$25,000 level of disclosure which is different from a statutory perspective then the Board could authorize a small purchase level creating a differential between the mandated financial disclosures and the Board approved small purchase threshold and just need to work through those nuances.

Director Carter stated that the next one is on pages 181 and 182. He said that it was the same issue at hand. It stated while the Code allows for the creation of a prequalified list it expressly mandates that the State Board of Elections registration certificate be submitted with each bid. Staff considerations are that the CPO does not have the authority to alter the provisions of the Procurement Code through Rule. PPB legal counsel comments that while the exception makes sense the statute makes no exception currently. Chairman Vaught asked if the same comment applied to both page 181 and 182. Director Carter replied affirmatively. CPO Brown replied that one of the things that they have struggled with greatly is having good and effective procurement in the State of Illinois is the rate by which we continue to lose vendors either by statutory disqualifications or their unwillingness or lack of desire to participate in such a complex procurement process and certainly not to mention any concerns that vendors have always brought before the public bodies about their ability to get paid in a timely manner. All of those things have been in procurement administration for some time. In this area particularly they have made an effort to try to provide relief by establishing that if a vendor were able to put such a registration on file and suggest that the registration on file is to be accompanying their bid proposal and it is their intent that the on file document accompany their bid proposal and have been inclined to accept that. We know that it runs to the edge of what the statutory requirements are to file this document with the bid. But if they know they have it in hand and know that the vendor is certifying that is the document that they intend to attach to their filing they have seen fit to propose it in Rule if that is acceptable.

Director Carter stated that the PPB identified one section in the Higher Education Rules that they have not already addressed with CPO Brown. Director Carter asked the Board if they wanted to go over all the points the Higher Education Rules, which has already been discussed, or just discuss the one which has not been addressed yet. Chairman Vaught asked if CPO Bagby has any other comments he wanted to add on the

points which have already been discussed. CPO Bagby replied he might have two points he would like to touch on. CPO Bagby stated that on the method of filing with the Auditor General and the PPB the emergency affidavit is the only concern he has was that if they told an agency how to file and it turned out that the Auditor General or the PPB wanted something different later on it is at least a 90-day process to change a Rule. It seems like it would be more effective to do that as a matter of practice outside the Rule. Again, he does not believe that it is in their role to tell the Auditor General how they are going to receive an emergency affidavit nor would they want to tell the Board how they are going to receive it from Higher Education. The Auditor General takes it in written form through the mail and the PPB takes it electronically. CPO Bagby said that he thinks that they need to respect the ones who are requiring these and their methodology rather than tell an agency this is the way you will do it and be contrary to our colleagues desires. CPO Bagby said that he wanted to go over to 4-2060(a), which has to do with the perpetual license. He thinks that it is possible that the problem is of his making since he wrote that language back in 1998 and thinks that it might be something that needs to be re-written. The essence of this is that a perpetual license is really a one-time outright purchase of a license just like when you buy a desk, you buy it outright. That desk can last you 10, 20, 30 years or in the case of filing cabinets 40 years. A license is good forever. If you want an update you will have to pay for it, but you can use that existing license today, tomorrow or 20 years from now for that one time license fee that was paid. It can be written to reflect that a perpetual license is actually a onetime purchase instead of having it read as though it is going on forever contract. CPO Bagby believes that it is a reasonable thing to do. He can see the concern and he would have no problem changing it to reflect what is really happening here, but there has to be the ability to have a perpetual license otherwise you would not be able to provide those written comments to use because of the system that allows them to do it was a perpetual license. Member Bedore clarified that CPO Bagby is going to work on that. CPO Bagby replied affirmatively.

Director Carter stated that the other one in question for Higher Ed from the PPB is on page 176 section 4-2030(f)(3). The Code requires that at least an estimate of the cost be published and when an estimate is published and once the actual cost is determined the actual cost must also be published before the 10th day of the next month. CPO Bagby replied that they are in agreement with that, but didn't know what the concern was. CPO Bagby stated that the answer that they gave was that he was going to go back to each of the Universities in the appropriate manner and talk about this particular point that was raised. He has worked with the Universities for about two and a half months on revising the initial draft of the Rules. CPO Bagby stated that there are 9 separate Universities/Campuses which do not have a single control, such as State Agencies do and try to work out something that works out for every one of them at once. This is something that he does want to work out and will go back and work out something that is a little more in keeping with this if it works.

Member Black wanted to follow up with CPO Bagby about the estimated cost and the actual cost. Obviously that is only when tax money is involved, correct? CPO Bagby replied that there are several situations with the Universities, where the law talks in term of State funds, which has been interpreted for as long as I know and the Universities tell him that means funds appropriated by the General Assembly and then there are locally held funds raised through tuition fees and other things that are not always treated exactly the same as the appropriated funds and it is different. You have to look at each one of these where it says a requirement and see what was actually said about whether it is State funds or however it was defined.

Member Black stated that it has been an argument in the General Assembly for some time and always thought it was somewhat suspicious that it does not include funds raised by private donors administered by the division of intercollegiate athletics, correct? CPO Bagby replied that the Procurement Code itself applies regardless of the source of funds. Now some of the activity is within the Procurement Code it might be different depending on the source of funds. An example is in the BEP Act. It covers State funds as being defined as appropriated funds. Those are the ones under the BEP program the Universities have to report and have the goal against. Now they do on the other ones to a degree anyway voluntarily, but that is a situation where the non-appropriated funds are treated differently by law. In terms of how the Universities expend funds that come into the athletic department may depend on how they come in. A donation can be restrictive and if that donation says that it is for payment of ABC person only and pays for more than half of the payment for that person you are allowed by the Procurement Code to comply with that and there is no bidding requirements associated with it. Member Black said that when he sits for an hour and a half and it

gets real serious he gets a little itchy and thought we should make the hiring of coaches part of the procurement process and then it would really be fun. CPO Bagby stated that the hiring of employees is exempt from the Code. Member Black replied that he takes all of fun out of it. Chairman Vaught stated that Director Carter is going to share this discussion with JCAR. Director Carter replied that he is going to discuss with the CPO on the items the Board has asked to talk about and also supply the Board comment to JCAR and part of the Rules process. No further questions or comments were made.

Next on the agenda was Potential Conflict of Interest for BLDD Architects – University of Illinois Champaign/Urbana. In attendance for the University of Illinois Champaign/Urbana (UIUC) was Joe Vitosky. Director Carter stated that this is a contract with the University of Illinois Champaign/Urbana. It is a contract for BLDD Architects and to clear confusion this is not related to the prior contract in reference to the Assembly Hall that the Board has heard previously and voted to void the contract for. This is an amendment to the original contract of which there was an original disagreement and thought the Board should see these. The Board did not see the original contract for this and are now seeing the amendment where there is a potential conflict of interest that would have come forward initially. The Board is seeing this for the first time even though it is an on-going contract since it is an amendment and will let Joe Vitosky speak to the details of it.

Mr. Vitosky thanked the Board and stated he would like to talk about the Natural History Building and the potential conflict with BLDD. On September 8, 2010 the University advertised for services. He did state that there was an earlier study done for the Natural History Building, which the building was dedicated in 1892, and is officially on the National Register for Historic Places. Since 1986 that study found structural inadequacies, the closure of nearly half the facility and became one of the most critical priorities for the Urbana/Champaign campus. The building serves Geology, Zoology, and Integrated Biology within the College of LAS. Therefore, due to that, they advertised for architectural services. In their ad they advertised for the conceptualization phase for projected deliverables including design documents, assistance for bid and award, construction administration, outside observation and close construction support. UIUC proceeded with conceptualization phase. The initial contract was awarded in December 2010 for \$367,689. As they went through...Member Bedore asked what that was for. Mr. Vitosky replied the \$367,689 was for the conceptualization phase only. Mr. Vitosky wanted to step back because Director Carter wanted him to explain the process. Member Bedore asked if that conceptual design contract was put to bid. Mr. Vitosky replied affirmatively. Mr. Vitosky replied that is why he was going to step back a bit to explain. Mr. Vitosky stated that in their advertisement UIUC asked for all phases and these services to be delivered. They had 34 different firms, which were sent to Director Carter. Of those 34 firms that submitted, four were selected for a short list for interview purposes. From those four firms that were interviewed BLDD was selected as the top candidate. Member Bedore asked what were those four. Mr. Vitosky replied BLDD, Bauer Latoza, Holabird & Root, and HBRA. Mr. Vitosky stated that there is a selection committee and he can read those names if the Board would like. Within the University there was Tony Vidalia, Kevin Duff, Fred Hahn (not CPO Hahn), Matt Tomochiefski and Elvis Covaro. Member Bedore asked if this is a historic building. Mr. Vitosky replied affirmatively. Member Bedore asked if Holabird & Root were one of the four. Mr. Vitosky replied affirmatively. Member Bedore stated that Holabird & Root have done more historic buildings than anybody else. Did you know that they did the original Soldier Field in Chicago? Did you know that they did every historic building in Chicago? He thought he would just toss that out in case you didn't know that. The selection committee may have not known that. Mr. Vitosky stated that he would make sure that the committee does know that, but he is sure that no architects that don't understand...Member Bedore interrupted stating that if you are considering an architect to work on a historic building he couldn't think of a better one and he does not know anyone involved. Member Bedore stated that he was involved in the rehab of Soldier Field. He knows Holabird & Root and calls on them whenever help with a historic building is needed and he finds it hard that this other firm keeps coming up and keep giving them business and ignoring other firms in the State of Illinois. We have the Capitol Development Board and have issues with them and the reason they have gone to a second or third bidder is because they have said they want to spread the work around and don't want to keep giving it to the same engineering or architectural firms. But the U of I seems to have a one track mind that they only give it to this person's husband, the business. Member Bedore just wanted to get it on the record that the other firms that bid on this are known historically as one of the best firms working on historic buildings, but I guess that doesn't matter to the U of I. Member Ivory asked in the selection committee is there a criteria that you use

to determine which of the four were best suited to win the contract. Could you explain to him, did you have six selection criteria? And he is curious to see how subjective they are and is curious on how they did it. Mr. Vitosky replied that they advertised the criteria in their ad in broad categories. The program's definition asked for prior experience in selecting the appropriate problematic approaches and functional solutions for renovation projects. They also included past success in identifying search space in basing of sequencing for similar projects while building maintains comparing occupancy. Under the design criteria they asked for the quality of design work presented, instructional and research facilities, dedication to experienced staff to the project and respectful resolutions with projects that involved historically significant structures. The ability to understand the University standards. The experience with sub-consultants with building systems designed and similar facilities. Experienced design or remodeling projects receiving LEED Gold Certification. Under project management they asked for and looked for experience with institutional compliance project management process, quality control assurance measures, documents design coordination and team communication, committed extent and duration of principles involved on the project, define capabilities and integration of individual project manager team leaders, adequately explain successful cost control measures, project estimating and responsible budgeting techniques, previous project success with projects at the University of Illinois, ability to develop over a project timeline and maintain schedule. Under "chemistry" they asked for a strong cumulative composition of overall team, project team chemistry, and previous successful collaboration. Under "other" there was interview preparation, creditability, ability and clarity and presentation with specific examples of projects with similar scope, size and level of complexity. Member Ivory asked that in the scoring was it a close scoring or was it a pretty obvious that the one that was selected was head and shoulders above the rest? Mr. Vitosky replied that it was a close scoring with BLDD #1 and Bauer Letoza #2.

Member Bedore asked if the second bidder does any work with the University now. Mr. Vitosky replied off hand he could run a report and let him know, at this time he does not know. Member Bedore stated that one of the criteria is very interesting. How well do you work with the Universities? Member Bedore stated that he is sorry, but he's sure BLDD has a very good relationship with the University. They keep getting all of the work, they certainly know the University. One of the criteria is how well do you work with the University and University staff. Well they obviously work very well he has his wife there on the facilities, so he has to get a very high mark on that. Mr. Vitosky replied with all respect they could run a report and show the Board all the firms that are working at the University. BLDD has a small number of contracts with them. Member Bedore asked if they have the contract with the Assembly Hall. Mr. Vitosky replied no. Member Bedore stated that he thought they did. Mr. Vitosky replied that under the Assembly Hall they picked four firms and they were one of the four firms and what they had was a design presentation and from those four firms they had picked that was AE Firm. Mr. Vitosky stated that currently they have one open contract with BLDD for the digital computing lab remodeling for \$429,000, which was given to them in 2009 and there is \$50,000 left on the contract. Member Bedore asked what this contract is worth. Mr. Vitosky replied that this contract is worth \$4,671,289. Member Bedore stated that this was a very sizable contract. Mr. Vitosky replied affirmatively. Mr. Vitosky stated they went forward and finished the conceptual phase. They are at the point where they would like to write the amendment to proceed with the remainder of the contract and proceed with the project.

Member Black asked if the amendment meant that there was no conflict of interest. CPO Bagby replied no, the amendment would actually go to the actual design phase, the second phase of the project. What the Board is doing is looking at the potential conflict of interest and determining whether or not there is reason to raise an objection or to look at the situation and decide that the conflict is not of any note and allow this to go forward today. Member Black stated that he has some serious concern that there may in fact not be a strict actual conflict of interest. If he was with another firm or on the outside looking in and see someone's spouse who actually works on the architectural review committee of buildings like this and if it looks like a conflict of interest it might be a conflict of interest. CPO Bagby replied that it is a reaction that could be, but on the other hand it could also be that there is no conflict of interest in fact when you look at the circumstances. Member Bedore stated that CPO Bagby's and the University's argument last time was that they built a wall around Jill. She didn't have anything to do with the review. Is that correct? CPO Bagby replied affirmatively. Member Bedore stated that what Member Black and Chairman Vaught are saying is why it is limiting this to an actual conflict. If you read the minutes from the July 2011 meeting the Board raised the same question that Member Black is raising that it gives the appearance of a conflict of interest.

What you have created here is a wall around this woman whose husband is the principle of this firm and who has 8% interest in the firm, but is also the principle. Yes she is walled off from reviewing the proposals and he agrees with that, but is she walled off from drawing up the spec's and everything else. If you read back to what she does, she has the responsibility of dealing with vendors and drawing up the specs. CPO Bagby replied that when you are looking at a general job description, he will dispute that. But the situation here is that when there is a bid on which BLDD bids she is taken out of that role and her supervisor takes it over. Member Bedore replied that he agrees with that, but has a problem with it before it goes out. She is well aware of this contract that is going to be prepared and go out on the street and the person sitting next to her at the dinner table is her husband and the principle of this firm. They don't talk about it? He is sure that they don't. So he doesn't get a heads up that there is going to be a bid going out on the street about this and maybe he can get his ducks in a row? CPO Bagby replied that he thinks it is possible for professional people to understand their positions with each other's companies and the necessity for keeping their actions separate. The Procurement Code would require that and he listened to Jill Maxey and listened to her husband like everyone else in the room even the Procurement Officer did and came across as very creditable and trustworthily and thinks that you also have to look at the situation that under 50-35, the section we are dealing with, there is a potential or perception like Member Black mentioned that there could be a conflict. This gets looked at to see if it is actual and you will also notice in that same section of the Code Section 50-35 was not intended to prohibit a contract from being entered into. It is to be examined before it is entered into to determine whether or not somebody is taking advantage of the situation. Member Bedore stated that he would quote what CPO Bagby said in the July 2011 meeting, "she prepares programs that are used for facilities and the development of professional service agreements". Both of you are talking after the fact. Yes you walled her off and she is not on any review committee, but she is certainly part of the preparation of service arrangements to go out on the street and you state one of her roles is she is the supervisor of the people that are reviewing the contract. She is the supervisor and the people of the review committee and you are saying, oh she is good, she is wonderful and would never have any influence. She doesn't have to say anything to the people who work below her that she is their supervisor and this is her husband. Come on Ben this is the real world. CPO Bagby replied that he thinks in a situation like that it is more likely that the subordinates are going to be extra careful so they don't do that because there is review such as what is going on here, such as by the Auditor General and such as the internal auditors and if something like that is occurring there should be consequences, but they have not seen anything like that. Member Bedore stated that they don't have to worry about that because the Board will object to it and then you will ok it. They did it the last time and got away with a couple hundred thousand dollars well let's try for \$4 million. Ben will roll over again so don't worry about it. CPO Bagby replied that he thinks that roll over is kind of an inopportune word. CPO Bagby stated that he has looked at this for a very long time and if you look at when they started this and made the decision it took him a long time to make that decision and it wasn't done lightly. Member Bedore stated that he would not say anything more on this issue because it will not matter because CPO Bagby will take it back to the U of I and they will say let's roll on and we don't care because we are the U of I, we are above the law. CPO Bagby replied that the U of I does follow the law, is cognizant of it, and does a good job. Now the situation that we are in here is similar to when a Board meets and a contract is put before them and a Board Member has an interest in the company. That Board member has to recuse himself, but the rest of the Board can vote on that contract. You can't stop things like that otherwise the Board would never be able to function. Again, this is a situation where you would have to look at the specific circumstances. CPO Bagby stated that they are certainly willing to listen to suggestions on how to make the Board feel better, to understand better and to show that there is no situation where there is over reaching on the part of Jill Maxey, BLDD or the University. We also have to recognize the law says there is opportunity to look at the specific situation. It is not a prohibition. It is a call to review and consider.

Member Ivory commented that he made the decision after the Board gave their decision and thought that the Board considered it and looked at all the factors and stated that based on their experience of what they saw there was an apparent conflict of interest. Member Ivory stated that CPO Bagby decided to disagree with that and what is shocking to him is that when he takes a look at all of the factors and have heard his explanation in terms of they are very professional. He agrees that they probably are and may not have intended to do anything wrong, but the reality of it is when you have a person in her position and influence of power she doesn't have to say anything. Member Ivory stated that if he worked for someone who had power over him it is implied or human nature to be sensitive to that fact because frankly when she is getting

ready for the next promotion and she has some say so about it she may say that you will not get denied. Member Ivory thinks that we created an issue that never needed to be an issue and he believes that it is an issue of creditability. If you see no conflict in what the Board is looking at and the facts being looked at then he questions the judgment that CPO Bagby made here. Because no reasonable person could look at all of those factors and say it is ok because it is a quality based selection process and here is the other conflict on top of that. You have the quality based selection process a negotiated fee. It is probably likely that in the negotiation of a fee that there could be some give and take and in an environment where there is a conflict of interest you just kind of add to the piece and is sure that CPO Bagby believes what he is saying, but thinks that it was a error in judgment to go against the wishes of the information that the Board had looked at and have examined. Member Ivory stated that he is a little surprised that CPO Bagby made the call and is not sure if the Procurement Policy Board has the power to stop it. Member Bedore stated that the Board could vote to object to it and then CPO Bagby will hold a meeting and then the U of I will do what they want. CPO Bagby replied that he believes at the last meeting that Member Bedore wanted him to conduct a hearing to gather the facts and then make a decision, which is what he did.

Member Black stated that some interesting points have been raised by previous speakers and he doesn't know the Maxey's and is sure that they are upstanding people. You don't get to be a Director at the University of Illinois without having some apparent abilities. Member Black stated that he would not have any problem if she was the Director of Student Housing or Director of Student Enrollment or if she was in charge of campus material, but when someone is the Associate Director of Planning of the Facilities and Services Planning Division and Chairs the Architectural Review Committee, which interoperates the University of Illinois Champaign/Urbana guidelines and standards for professional services consultants. That is a position very close to what is being bid. He doesn't question her and is sure that she is a wonderful lady and her husband is an outstanding gentleman and a good businessman, but thinks that you can see how a normal person would look at this and say whoa that's a little strange. Member Black is not saying there is a conflict, but the position she holds with the contract in question and her husband being a principle it raises the appearance of a conflict. He is not saying there is or questioning your judgment he would just think sometimes that you take a step back and look at this concept that is before you and turn your head a little bit you might see where a person will look at it and say it sure looks like a potential conflict of interest to him. CPO Bagby replied that he cannot disagree with anything he said because that is what started this whole process because of the potential conflict.

Chairman Vaught stated that it seems to him that there is a general agreement or an admission that there is at least an appearance of a conflict of interest. In all of the definition that he has seen of conflict of interest is the appearance is virtually the same as a conflict and the Code doesn't go much further in its definitions to give us more values on that, but one thing the Code does not do seems to be the recognition of an appearance of conflict and then there seems to be this argument at the University that they agreed to some kind of Chinese wall to wall these people off, but doesn't see anything about this Chinese wall in the statute and don't see the basis of that argument whatsoever in the law. Chairman Vaught stated that he has not seen any notation to that and he doesn't see it when he looks at the statute so he doesn't think that it has any place here. One thing that is clear here is SB51, which was passed a few years ago, and this section was added to SB51 and he was at a lot of the discussions and committee hearing throughout the whole process and it was very clear that the General Assembly, given our recent history, was trying to set a higher standard. He doesn't want to see the higher standard eroded by something not in the statute like this Chinese wall concept. Chairman Vaught thinks that there is a conflict here and thinks that this contract should be voided and hope the Board does not have to hear about this contract again. Member Bedore made a motion to void the contract and send it back to bid and was seconded by Member Ivory. Chairman Vaught stated that there has been a motion made and seconded to void this contract under the appropriate provision of the Procurement Code and to take further action. With a 4-0 vote the motion was passed.

Next on the agenda was Legislation. Director Carter stated that there were a few items on legislation. Senator Garrett's bill SB329 and SB3297 were amended and passed out of the Senate and Representative Jack Franks picked those both up in the House. Currently they are both in Rules committee. They didn't take a position in committee; just testified to the content. As of this morning, SB3511 had not been changed, but we expect it to be in the Senate Omnibus Procurement Bill this year. He would expect it any day or maybe early next week and will get it to the Board as soon as the changed amendment comes out.

HB4136, the Procurement Bulletin/Vendor Portal creation bill had an amendment that squashed the objections to it as far as he knows. He thinks that everyone with the exception of one is on board now and the only outstanding entity was CDB. Lastly, HB4568 gives the CPO the ability to review documents necessary to determine what is or is not subject to the provision of the Code and also allows the PCM's to do the exact same thing. There are some concerns for different agencies underneath the Governor's office about that bill and would anticipate it will end up in the Senate Procurement Committee as well.

The next scheduled meeting for the Procurement Policy Board is set for May 10, 2012 pending Board confirmation.

Member Bedore wanted to make a motion to congratulate Board Staff member Josh Floyd on his upcoming marriage and Chairman Vaught seconded that motion.

With no further business to discuss a motion to adjourn was made by Member Bedore and was seconded by Member Ivory. The motion was unanimously approved.