



Chairman: David Vaught

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

Minutes – December 6, 2012 Meeting

Present in Springfield: Ed Bedore
Larry Ivory
Bill Black

Present via Telephone: Rick Morales

Absent: David Vaught

The Board started the meeting by confirming attendance at 10:10 a.m.

A motion was made by Member Black and was seconded by Member Ivory to have Member Bedore act as Acting Chairman in Chairman Vaught's absence. The motion was unanimously approved.

A motion was made by Member Ivory to allow Member Morales to participate by telephone and was seconded by Member Black. The motion was unanimously approved.

First on the agenda was the approval of the minutes from the October 17, 2012 Board meeting. Member Morales made a motion to accept the minutes as printed 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 he wanted to update the Board on CMS activities since the last meeting. Currently, the CMS total cost reduction in leasing since Governor Quinn took office stands at \$52.48 million annually and have eliminated 2.3 million square feet of leased space. Mr. Kanellopoulos asked if any of the Board Members had any housekeeping questions before moving on to the next item. Acting Chairman Bedore asked Mr. Kanellopoulos if he had any answers on the DOC halfway house that the Board brought up at the last meeting. Mr. Kanellopoulos replied that the DOC halfway house lease in Aurora did not get approved at the meeting and CMS did an emergency lease for 90 days in order to re-bid that procurement. The lease was re-bid and proposals were due this past week and are being evaluated. Mr. Kanellopoulos stated that perhaps he would be able to update the Board at the January meeting. He is not sure if a lease will be posted by the January meeting for the Board's review, but more likely for the February meeting. There is a hearing on December 12th to extend that lease for a few months to give CMS time to process the proposals that came in. No further questions or comments were made.

Next was the Policy on Employee Break Room/Vending Areas. Mr. Kanellopoulos stated that at the last meeting the Board discussed a break room at a leased DHS facility. Member Black requested some information from the AFSCME collective bargaining agreement that stated that the changes in conditions of employment for employees shall be bargained and forwarded that information to Director Aaron Carter. Acting Chairman Bedore stated that he has not seen anything yet. Director Carter asked Mr. Kanellopoulos if he was referring to the information he sent him that morning. Mr. Kanellopoulos replied no, that it was information regarding the language from the collective bargaining agreement that talks about changes in conditions of employment must be bargained. That is the part of the contract that controls that when an employee has parking and you try to eliminate the parking they have been getting or try to eliminate a

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benefit that is not contained in the contract, but people have been getting and to take it away. It is preferable not to take it away and if you try it has to be impact bargained. Member Black commented that Mr. Kanellopoulos stated that it might not be in the contract. Is there precedent for this and have grievances been filed for these kinds of changes in conditions? Mr. Kanellopoulos replied that any time CMS has eliminated parking, for example, it has always lead to impact bargaining eliminate the parking. Member Black asked if CMS has been able to uphold the elimination of free parking or under impact bargaining say that you will make other arrangements. Mr. Kanellopoulos replied the CMS has always upheld it. Acting Chairman Bedore stated that the Board will take a look at it and will have the topic on the next meeting agenda.

Acting Chairman Bedore wanted to back up to facilities again. There is a DHS building on West Lawrence in Springfield. Could you give the Board a breakdown on how you are going to consolidate because the square footage is totally out of line at overall 473 sq. ft. and personnel space of 378 sq. ft. Mr. Kanellopoulos replied that it is an office that CMS will be consolidating with another DHS office. CMS had bid that consolidation out, had proposals and were ready to award the lease, but the deal did not go through so CMS had to start over. This lease is in place to just keep the current lease going. CMS recognized that this needed to be consolidated and are working on getting that done. No further questions or comments were made.

Next on the agenda was Illinois State Police/Franklin Life Building. Mr. Kanellopoulos stated that CMS has been working with the Illinois Gaming Board and the Civil Service Commission to expand Gaming Board space in that facility and also move the Civil Service Commission into the building. Those projects will probably be completed over the next four to six months. When those projects are completed CMS will have 830 full time employees in the facility; 586 are ISP, 145 CMS Bureau of Benefits and there will be 93 Gaming Board and 6 from the Civil Service Commission. Acting Chairman Bedore asked if that was the ultimate goal for CMS. Mr. Kanellopoulos replied no, once the floor plans are done for the Gaming Board and the Civil Service Commission CMS will take another survey of the building and see what they can do. Acting Chairman Bedore stated that it is documented that Franklin Life, granted an entirely different operation, had 1351 employees in those buildings. He realizes that there is space needed for radio rooms, interrogation, etc., but would hope that CMS could get close to 1000 when it is all done. Mr. Kanellopoulos replied that it is their goal to get as close to that number as possible. No further questions or comments were made.

Next on the agenda was the Illinois State Police Regional Headquarters in Ashkum. Mr. Kanellopoulos stated that this is a lease in Ashkum, Illinois for an ISP office. Mr. Kanellopoulos stated that Col. Todd Kilby could talk more about the consolidation of communication towers. The reason this lease was put in place is that there is a communications tower at Ashkum and the lease will eventually be consolidated, but ISP and CMS are not ready to do that yet. So this lease is being put into place and can be terminated at any time once ISP is ready to move the communications tower. Col. Kilby stated that the ISP is currently undergoing a consolidation statewide to make the operation more efficient, which involves the consolidation of multiple communication centers, now 21, into 5 by the end of the project. This project has been approved through Motorola and OMB. District 21 Ashkum is one of those communication centers that will be a part of this consolidation and will move during this consolidation to Des Plains along with the communication center in Joliet. Acting Chairman Bedore asked what is the proposed dollar amount per square foot? Mr. Kanellopoulos replied that the base rent is \$5.61 and the total direct cost is \$7.55. Acting Chairman Bedore commented that this was a good consolidation and it is a lease that can be gotten out of at any time. Director Carter asked if there was a time frame for the consolidation. Mr. Kilby replied that the total time frame would be approximately October 2015 statewide. No further questions or comments were made.

Next on the agenda was Agency Emergency Procurements. In attendance was Malcolm Weems, Director of CMS and Roger Nondorf, Chief Administrative Officer for CMS. Acting Chairman Bedore stated that CMS provided a report, which just arrived at 3:00 p.m. yesterday afternoon. The Board has made some comments about it and wanted to know if CMS wanted to give a summary of their report since the Board did not have time to review it. Mr. Nondorf apologized to the Board for not getting it to them sooner. He wanted to review it with their CPO, which happened yesterday morning and with just the demands of the day he

couldn't get it to the PPB any sooner. Acting Chairman Bedore stated that if you go back to the previous meeting minutes from October 17, 2012 you said you would get reports to the Board and even implied that they would be there pretty darn soon. Director Weems even stated that he would try to put together the information to get a better understanding of what is happening. This was October 17, 2012 and the Board received this yesterday at 3:00 p.m. Mr. Nondorf replied again with their apologies. It is their desire to give the Board good information and they did put a fair amount of effort into researching it so they would be able to do that. Mr. Nondorf wanted the Board to refer to the PowerPoint CMS provided to the Board on the Summary of Fiscal Year 2012 Emergencies. After the last meeting CMS asked Director Carter to provide the copy of the spreadsheet that was being used for the discussion at the October meeting. That spreadsheet has been updated to accurately provide the basis for the emergency, for the CMS engaged emergencies and was a part of the packet that was delivered yesterday. CMS identified 25 different emergencies that were associated with CMS and sought to characterize those in one of three categories: Unforeseen Circumstances, BEP Educational Process, and Process-Related Failing. Mr. Nondorf stated that he would be happy to talk about each one of those. Mr. Nondorf stated that if you look at the 25 CMS emergencies, 7 of them were in the category of unforeseen circumstances. Another 7 were in BEP Educational process and 11 were in Process-Related category. Mr. Nondorf would also like to add that of those 25 emergencies 8 were under the small purchase threshold, which is something CMS has not typically done. He would also add that 90 day extensions of indefinite quantity contracts are not being termed emergencies. This is not something that has had the historic approach, but in conjunction with wishes of the CPO and working together those are now being termed emergencies and he believes that both of those have contributed to a number of the 25.

Acting Chairman Bedore stated that there seems to be a disagreement between our Board and staff and what you deem as 25 emergencies associated with CMS. The Board's staff has come up with 78 that are attributed to CMS. He really hopes that everyone can sit down and work this out. CMS was working off an old sheet and there have been many emergencies since then. In fact, at the end of November we are now at \$75 million worth of emergencies, which is \$15 million a month. If you times that by another five months to go that is \$105 million plus \$75 million. Acting Chairman Bedore stated that he does believe that Director Weems will receive the award for the highest number of emergencies in the history of the State of Illinois. There is no doubt about it. CMS will hit \$180 million by the end of the year. The last time the Board was talking about this it was at \$60 million. It is now \$75 million. So your report does not cover all of the new emergencies. Acting Chairman Bedore wanted to talk about some of those new emergencies. Yesterday there was an emergency meeting regarding mineral oil, flour, and yeast for the Department of Corrections. This was for food for the prisoners. CMS stated, for example, yeast, there is no BEP, there is nothing involved with that. It is a straight out contract. Mineral oil, the stock from the first emergency was critically low in August. DOC notified CMS a second time that the vendor refused to deliver. CMS stated that the new solicitation is in process, but not yet published. Eleven months to get mineral oil, what is going on? I don't understand this. Acting Chairman Bedore is wondering should the Agencies be getting this power again to do their own purchasing. Yesterday there was a dispute at this emergency meeting and DOC was saying it is CMS and CMS is saying no it is DOC and it goes back and forth. How can you sit there and explain how it takes 11 months to get mineral oil? There is something basically wrong with this. The agencies are blaming CMS. There is one common denominator, CMS. How can this go on like this?

Director Weems replied that what he believes they are talking about with emergencies are symptoms of their procurement process. CMS does not direct the procurement process, they work hand-in-hand with the CPO's office and the agencies. To characterize this as a problem with CMS one really does not fully understand how the procurement process in this State works. Director Weems stated that he has worked in procurement before in the State of Illinois before becoming the Director of this agency. The procurement process currently requires at least three entities at one time to work together to produce a procurement. Again it seems that we have a disagreement over which procurements are CMS procurements or not. That is one place in which we have a disagreement and can work it out and go through each emergency to establish who the originating agency is. The other part is what Mr. Nondorf put together, which took some time to do, was to talk about why we have emergencies. When you talk about one example of agencies blaming one another and unfortunately when that happens, it takes time to work those things out. The procurement process here is not a process that normally takes two or three months and thinks that everyone understands that. The average procurement here, especially an RFP, takes from six months to a year. Director Weems

stated that if Mr. Nondorf could get back to his presentation he is going to talk about where emergencies originate and where the bulk of their issues are. Director Weems stated that he agrees with the Board that CMS should be planning better, but let's think about that is being said. We are going over the same thing that was discussed at the last meeting. Are we really saying that an agency has to plan all procurements that they are going to embark upon a year before they need it? That is not realistic. The needs of agencies change, but know that the CMS procurement process takes a long time and when they arrive at a result that is not in the best interest of the State, CMS has to do it again and try to get it right. In the meantime you have to keep things running and will need an emergency contract. Again, there are some ill planned procurements, but if you really want to deal with this we need to make sure that the Board and everyone involved understands the process and talk about where the hang ups are. Director Weems wanted to back up a little and say that arriving at an emergency is not CMS saying I want an emergency. CMS has to go to the CPO's office to get that emergency approved. This is all of us working hand-in-hand trying to keep services at the State going to make sure agencies can do their job, but let Mr. Nondorf get through his presentation so they can talk about where the issues are and concentrate efforts and resources to reduce the number of emergencies.

Member Morales wanted to know how many CMS emergencies where there really? Was it 25 or 75 or somewhere in between. If the Board could get a solid supported answer it would be beneficial. Mr. Nondorf replied that it is a reasonable request and would be happy to comply and will work with staff and go through the spreadsheet. He also wanted to add that he could speak to specific situations in the context of the presentation asked by Acting Chairman Bedore and could field more questions. Mr. Nondorf stated that they are not here today to talk about the unforeseen circumstances. Somebody sues the State, it holds up a procurement. A vendor refuses to ship a critical item you have to react. Those types of things are not why we are here today. If you look at the 25 emergencies, the ones CMS characterized as CMS's responsibility, only 7 of those were in that category. Next was the BEP Educational Process and believes that it touches on some of the comments Acting Chairman Bedore made about food. Mr. Nondorf stated that he would disagree with a statement that food and BEP don't co-exist. Acting Chairman Bedore replied that he didn't say that. He said that the solicitation did not have any of those requirements for these products. Director Weems stated that he believes the point that Mr. Nondorf was getting to is that when CMS arrives at putting a solicitation out without a BEP goal or with a BEP goal there is usually a lot of back and forth and that takes time, but understanding the BEP process and that we are really talking about a culture shift at the State of Illinois to make sure that CMS can look at food, which are usually IFB's. Usually in the past it was just assumed that there would not be any BEP requirements related to those types of procurements. CMS has since changed its policy on IFB's and look at IFB's for participation goals since there are different ways to arrive at a BEP goal. Director Weems stated that what Mr. Nondorf is saying is that the BEP process and educating people sometimes will cause procurement delays depending on what they are.

Acting Chairman Bedore wanted to get back to that item that you are having difficulty with getting people to meet goals and things of that nature. He asked for CMS to come up with a report of how many pre-bid conferences has CMS had in the past year. Mr. Nondorf replied that CMS would have to pull that information, but your suggestion is well taken. As CMS sought to react to the training needs both of the vendor community, the effected agencies and the staff in the procurement process, which has been a recommendation that CMS made and are working with the CPO to certainly hold many more bid conferences so people would have an opportunity to understand the requirements. Acting Chairman Bedore stated that if we go back to your comments, Director Weems, from last month's meeting, you stated there is a cultural change at the State of Illinois. We have known for a long time and it goes on and on. What I am saying is you have gone into new areas for BEP. You are putting goals on areas that have never had goals before. What communication have you had with the gravel people or anyone else? Have you called them in and laid out what your goal is? Director Weems replied that he is not sure who the gravel people are, but if he is asking if CMS has done outreach on BEP, absolutely. In fact, CMS has BEP liaisons for every agency in State Government and even under different elected officials they have a BEP liaison. CMS has put out communications about their policy changes increasing BEP participation at every turn. CMS invites everyone and make sure that people know what they are doing. It is not a matter of CMS not trying to reach out, but what they are talking about are the people who actually do the procurement work. The work in the agencies to make sure they understand what is actually described in statute. Director Weems stated that there is an issue right now where there is a belief with some that small business set asides shouldn't have

goals. CMS disagrees with that. Small business set asides could be \$5 million. That's a big contract and CMS thinks that they should look at those for goals. Now there is a difference in opinion and it is going to take some time to get that procurement done. He is not saying right or wrong, but this is CMS' view and how they interpret the statute and are not accusing anyone on the other side of wrong doing. It is going to take time for CMS to figure it out. These are the things that go into creating emergencies and that is why it is very important for everyone to understand an emergency is not just someone waking up on Monday saying I need something procured Tuesday and I am going to start the process. When that happens it should be dealt with in a different manner and maybe not grant the emergency.

Member Ivory stated that being the fact that he is on the BEP council and has served in the prior years before Director Weems became the Director and before we had SB51. He believes that he is intimately qualified to make some of the comments he is about to make. One of the things that have concerned him over the years being on the BEP Council has been clear. He thinks that anyone on the BEP council knows that I am a fierce advocate of inclusion. Over the years within CMS and throughout State government it has been clear to him that there is the Governments comment "everyone in and no one left out". We have not made it a reality and what he has detected on his own personal perspective and being a part of the council and knowing the other council members. They have been pushing very aggressively with CMS to make sure there is greater inclusion in terms of the numbers that have been seen in the past and what has been allowed in BEP has been a very serious problem with waivers and all kinds of issues and have been discussed for a number of years. Member Ivory thinks it is very critical, in his opinion, that as we take a look at some of these issues from his perspective, is that we have done more under Director Weems, in his opinion, in reference to inclusion. Member Ivory stated that he and Director Weems have had some healthy conversation and have disagreed, but have understood that this needs to be a trend to change. Member Ivory is concerned when he saw the number of emergency contracts and was pointed out that we have a problem so he took a step back because everyone has made comments and it doesn't sound well, but is there a reason and rationale for it. It has been very clear in the BEP Council and the CMS council that we need to be more inclusive. Whatever needs to be done in order to make sure that the minority goals are there, because the numbers the Board is looking at are awful across the State. Member Ivory is just saying from his perspective that he thinks that some strides are being made. He doesn't want us to get sidetracked and the ultimate objective here is how we make procurement better. Let's not cast stones because at the end of the day all we want is a procurement process that is transparent, smooth and clear. We need to take time and listen to what some of the problems are because we are smart enough to figure out how to fix some of these problems as we continue to move forward.

Acting Chairman Bedore stated that he appreciated Member Ivory's comments. No one is saying that we shouldn't have inclusion, but there is obviously a problem. Acting Chairman Bedore stated that 42% of what CMS has on their summary sheet have been posted after the contract expired, isn't there any planning? No one is arguing about inclusion, but you have to plan ahead and can't wait until something expires and go out. It is not the way purchasing works. Director Weems replied that he agrees that planning does need to take place, but there are more moving parts to getting a solicitation posted than an agency saying post a solicitation. There are two other entities that have to speak before something gets posted. Director Weems wants to get back to their presentation because what they are talking about is making sure that other people understand why something just getting posted takes longer than it should. Again, CMS is just trying to decide on the method that they are going to use while working with the SPO and the PCM's, which has taken months. Some of the things being discussed here need to be in the proper context and would invite the staff and the Board to sit down with us because having this conversation for an hour will not get you to the real answer that you are looking for. If you are really talking about getting to a solution we can stop dealing with the symptoms and let's talk about the process and what the process lacks. Again, if there is poor planning then we should deal with it.

Acting Chairman Bedore stated that the examples that he gave represented poor planning. Answer this one for the Department of Corrections for mineral oil. The vendor refused because of slow pay. DOC notified CMS in January that the vendor was refusing to deliver. The stock from the first emergency was critically low. Then in August DOC notified CMS again that the vendor refused to deliver. CMS stated that the new solicitation is in process, but yet not published. That was in August – this is December. Director Weems replied that he is not familiar with this issue, but what you are saying and keep repeating is that the

solicitation has not been published. That is not something that CMS can just answer. Like I said before there is an SPO and a PCM also involved because if there was something that needed to be published he could not do it because he doesn't have the authority to post. If you want to understand what this issue is again CMS invites you and the staff to sit down and they will go over it with you. Mr. Nondorf wanted to add one thing. Chairman you asked Director Weems about outreach education efforts and bidders conferences. CMS has been holding vendor symposiums and just a few weeks ago held one in the equipment commodities area. CMS did that in the context of both changes with IFB now carrying goals. This is the area that everything that we have talked about today is equipment and commodity items. This is where the vendor community has never historically, because of the nature of the procurement approach, been asked to comply with a BEP goal. There is a lot of misunderstanding about this, you are right. CMS is trying to hold bidders conferences and vendor symposiums on these issues.

Mr. Nondorf stated getting back to the presentation the last slide on the Process-Related Failing. This speaks to what Acting Chairman Bedore is saying. Under SB51 there are multiple stakeholders involved in the procurement process. When an originating agency needs something they run through a process to get that. They work with their own agency SPO's as part of the process to engage the procurement activity even though CMS will be the procuring agency. CMS works with the agency, works with the agency's SPO and are also accountable to the CMS SPO on those transactions. So now CMS is doing a procurement on behalf of a sister agency and have two SPO's involved. This is a conversation that he and CPO Brown have been talking about over the last several months looking at their process. Because what we are talking about is really an extended procurement process. What used to take three months maybe takes six and some of that is educational and some of that is process related. We all have limited resources and CPO Brown and I, on behalf of CMS, have been working to look at where we can positively affect the activities associated with the process to make sure that the limited resources that everyone has to deal with are applied where they can have the biggest level of impact. Mr. Nondorf stated that when he talks about process-related failing, this is why it took so long for CMS to look at this and again his apologies, but he cannot tell you who is responsible for every one of those process failings. It might be that the agency started late. It might be that the agency started on time, but had a back and forth with a PCM or the SPO on defining specifications or needs. It could be that it was CMS failure or it could be a combination of multiples. If it comes out of the agency late it gets to CMS late. Is CMS doing the procurement? Absolutely. Is CMS responsible for it coming out late? I would have to say no, to the degree that the process does have many stakeholders under SB51. This is what the legislation calls for and working to evolve into it does create a more lengthy procurement process that does, unfortunately on occasion translate to the need for emergency procurement to ensure the critical needs get met. Put on top of that some of the educational things that are challenges, which we embrace and are happy to pursue. Then there are the standard emergency types of things that no one can predict or forecast. Some of these contracts are only 12 months long. At what point do you start. Many of these perishable type items we don't contract for those. It is a moving number and is done in shorter terms. These are not multi-year contracts. My point is that there are a lot of reasons for emergencies to occur. Mr. Nondorf stated that he also put together a list of unawardable contracts. There were 107 solicitations that were posted that were not awarded. CMS categorized them for the Board, but when you talk in terms of why that happened. For example BEP: vendors not responsive to the BEP-U plan. They probably delivered something, but didn't follow the requirements of the BEP Act or the requirements of the solicitation. CMS cannot award that. Another is did not reach bid opening operational changes. CMS may have cancelled that solicitation to put it back out with a bid meeting to help educate. Another is no bids received because they didn't understand some of the new requirements. It is on us and we don't shy away from that or step away from that to help educate the community, vendors, the staff, the other agencies and to the extent that is what CMS is doing. They are more than happy to do that and answer any questions the Board might have. There are elements here that are a work in progress.

Director Weems stated that to Mr. Nondorf's point if CMS is going to provide information that is related to this problem then we should be doing it together. If we really want to work on a solution then we need to meet prior to this meeting together so we could be at least talking about the same group of procurements and the same dollar amount. Regardless of what CMS sends over to the Board but talk about what you believe the problem is. Because it sounds like all you believe the problem is for CMS to get their procurements in earlier and it will be fixed. That is not true. We should be sitting down and talking about what the real issues are and I think that what Mr. Nondorf put together for the Board was to put it into some

context to understand that this is not a one shot deal here and that there are several different avenues for an emergency and should be looking at each one of them and try to mitigate the emergencies in each of these categories and how can we do that. Acting Chairman Bedore stated that he has no problem with that and understands what he is saying that it is the agencies, its SB51, the BEP program, it's everything, but when we have cases in front of the Board. These are not things that have expired last week. Again with DOC, they are asking for materials that the inmates use to sew up bags. CMS went out to bid January 6, 2012 and the contract expired January 14, 2012. There is nothing on here for BEP. The old master contract has expired and CMS is estimating replacing the contract will be in effect by October 2012. This agency again had to go in front of the emergency Board because they didn't believe that it would be ready. As of today it still is not ready. Acting Chairman Bedore stated that there are problems in your agency whether you want to agree to them or not. Here you state in this emergency meeting "we will have this emergency contract to you in October". These are your words not mine. How about the contract for commercial envelopes? The contract expired months ago. There is lab equipment for the Illinois State Police not yet awarded. This contract expired 12-31-11. Director Weems replied again because we are repeating ourselves and want to make sure that he answers. If you are telling him about a contract that is not awarded we have talked about numerous reasons why a contract would not be awarded. We talked about that it takes more than just an agency to post a solicitation. If you really want to know what the issues are allow us with the Board's staff to do an analysis using apples-to-apples information so CMS can get you a real answer. Director Weems understands that the Acting Chairman is passionate about this which is good, but let us make sure that we know what we are talking about. Let's make sure that we know the whole issue and that is all he wants to do. At the last meeting you talked about the janitorial issue at the Bilandic Building and CMS is prepared to talk about it. Director Weems wanted to state again that there is more than one reason for a solicitation to not be posted and there is more than one reason for a contract to not be awarded. Just keep that in mind. Acting Chairman Bedore stated that the Board is not going to let this go. Director Weems replied that CMS does not want them to. Acting Chairman Bedore stated that when CMS is talking about lab equipment and the essential things for the Department of Corrections and then go to an emergency meeting and state "we will get that contract to you. It has been over a year and we have had all kinds of issues, but we are going to award it by October". Then the agency says that they don't believe CMS and had to do another emergency. They were right and you were wrong. CMS stated that they will have this done by October and the agency responded that they didn't believe CMS would.

Mr. Nondorf stated that when CMS appeared before the Board at the last meeting we discussed the Bilandic contract and some of the reason for that emergency. CMS did follow-up with the solicitation as they described and corrected the emergency affidavit. When CMS did have a chance to review and look at it - it did not accurately reflect the circumstances of the emergency as related to a State-Use vendor that CMS intended to give it to at that time. Days before they were implementing they decided to step back. CMS did provide a solicitation in accordance with their commitment to the Board to the SPO, but this is an area where CMS believes a goal is appropriate on this janitorial contract. CMS has had conversations with the CPO as CMS is establishing policy. CMS has supplied the solicitation they are ready to publish, but not sure if the goal is appropriate or not and asked CPO Brown for his comments. CPO Brown stated that he has had on-going discussions with CMS about the application separate, but distinct laws. He is very interested in understanding the statistical basis for the approach that CMS is suggesting by including BEP goals in small business set aside contracts. The Acts are written separately and exist independent of each other and don't reference one another and speak to exclusivity in their governance as well as their application. CPO Brown stated that he does not have any disagreement or discouraging any element of inclusion or diversity he is trying to find out how to make a legitimate procurement calculation of what is pretty exclusive territory and would be very helpful to understand some experience in this. In looking back historically at Illinois' experience prior to the CPO's office being independent of CMS these programs were not merged and existed in an unmerged capacity since their existence. That is not to say that they cannot be merged and it is not to say that there cannot be benefit from their merger. These are two very exclusive functions and are trying to be introduced with one another at the same time. CPO Brown stated that he does not take that introduction lightly and doesn't want to do it without an anticipation of success. He can speak to the relationship that the small business program has. The CPO's office just filed their annual FY12 report with the General Assembly in December. We represent the 69% of all small business set aside contracts go to BEP contractors. Of that specific set aside CPO Brown believes it is the highest rate compared to any other categories one might choose to evaluate. We can define our own categories and that is part of the

problem and is very concerned about defining categories and using numbers that create a dismal return. He wants them to be successful and have a positive outcome. There are several laws that speak to percentage that speak to goals that speak to elements of attainment. Those are all math and as a CPO we have a responsibility to answer that math with something that can be validated and numbers that support all of these goals. That is the approach he is taking and is the approach he would like to see through before we introduce these two very distinct programs that have very distinct purposes with one another and see what we get. He would like to be methodical about that. Director Weems wanted to add that it will take some time to do an analysis and CMS might end up having an emergency contract. This is a good example and thinks that what CPO Brown is doing and is responsible in his approach. It is going to take some time and it might mean that we have an emergency contract in the meantime until we come to a resolution.

Member Ivory wanted to direct a question to CPO Brown. He wanted to clarify that the CPO is doing an analysis and that the Act for the SBI and the BEP Council Act that you are struggling to see if it needs to have a BEP goal on it. Member Ivory wanted to make a suggestion. If you take a look at DOT, who he has worked with over a number of years, when they do an SBI there is always a goal attached to that. Precedence has been established with DOT on SBI's that you still have a minority goal even at the State level. If precedence has been established you may need to have some conversations with DOT because he believes they take a different view and have been doing this as long as he can remember. Member Ivory recommended that CPO Brown should talk with CPO Grunloh and find out what their rationale is for still having a goal when they have an SBI. CPO Brown replied that he would be happy to look into the programs run in DOT through the federal system. Acting Chairman Bedore stated that he now understands the delay. Acting Chairman Bedore asked where Director Weems was in April, May or June of this year when the contract expired. Mr. Nondorf replied that CMS is not shying away from their failings and are not pretending to be perfect in any way, shape or form. There are mistakes that get made every day and would suggest that part of that is due to the workload today is not the workload of the past prior to SB51. CPO Brown and I are having those conversations and are looking for opportunities to refine processes to make sure that limited resources can be used effectively to accomplish big gains. In this specific case certainly the element of human failure and certainly the desire to do the right thing the State-use vendor that did not work out. These are the types of things that are a perfect case study. These are the types of things that when it does go off track the solution under the Code and for those types of scenarios is the emergency.

Member Black asked what type of timeline could we establish today where CMS could meet with the Board staff and then a reasonable timeline when CMS could come back to the Board to address some of specific issues. Director Weems replied that CMS could meet as soon as possible and then update the Board at each meeting until a resolution is met. Director Weems stated that it is foolish to think that this could be resolved in 30 – 60 days, but could work on it and meet each month and work toward a solution. Member Black stated that if it could get worked out if Director Carter to inform the Board of when those meetings are scheduled and a brief summary and give the Board some indication as to when you could come back to the Board and give some indication of what specific road blocks or difficulties that are occurring. Member Black stated that he knows a company that has had a lease with the State for some time and expires on December 31, 2012. They call him on a regular basis stating that they haven't heard anything. Member Black stated that if they hadn't heard anything assume that the lease continues until you hear something. The vendor did mention that they were always notified in six or seven months that the lease expires and if they intend to renew the lease they would need to get those facts and figures to CMS. This time he just happened to catch it that it is getting close and hasn't heard a thing. So the vendor calls someone in CMS and he understands the turnover and the people he use to work with are no longer there. The person at CMS stated that he was glad that he called because those RFP's are due today. The vendor hurried and got his in. He put together three very competitive offers and still has not heard anything. Member Black stated that he knows things have changed and told the company that they may not be notified anymore and might have to watch a website or will have to figure out how to do this if you intend to renew your lease. Director Weems replied that it is a multifaceted issue, but you would need to be on their website so you can be notified. The Bulletin is what CMS uses to notify everyone what they are doing. They have had some personnel changes and some changes to their operation as of recent, but the bottom line is that they have a client relations unit and their main clients are the agencies, but the public is also their clients. CMS wants to fix that and work towards a better process. Member Black suggested that Director Weems and Director Carter get together and work out some meeting dates then Director Carter can let the Board know when

those meetings are and a timeline of when they could come back to the Board and discuss what those issues are. Director Weems replied that he will definitely do that and will reach out to Director Carter.

Next on the agenda was the Agency/University Procurement and Usage. Director Carter stated that due to the concerns from the Board staff took a look at some of the vehicle usage throughout the State. As a sampling the staff worked with CMS very closely with Mr. Will Walker. They also looked at Northern Illinois University, Southern Illinois University – Carbondale and University of Illinois – Champaign/Urbana campus only. One of the big things that Member Black led the charge on was the concern with policies and take home vehicles overall. Out of the four that were sampled all four do have policies for take home vehicles. Both NIU and SIUC only have two vehicles permanently assigned as take home vehicles. UIUC has six vehicles assigned as permanent take home vehicles and the agencies under the Governor, which Mr. Walker can speak to further, has a little over 2100 permanent take home vehicles within their fleet. One of the other big things that staff found out working on this is that we definitely have an aging fleet. They are getting older and after talking with Mr. Walker they have a plan to turn the fleet over. Director Carter stated that he did ask that the U of I be here, but he was called to jury duty this morning, but Mr. Walker can answer questions on the CMS data.

Mr. Walker thanked the Board for having him here. He stated that he knows that there was a lot of information in the study that was provided to the Board and would answer any questions they have. Acting Member Bedore stated that the one thing that he noted is that there are some really old vehicles with some really high mileage. How can that be? Has CMS done some type of study? Would it be cheaper to just buy some new vehicles? Member Morales also asked if there was any set turnover and efficiency schedule that CMS has. Mr. Walker stated that when he arrived in the Division of Vehicles about a year and a half ago over 60% of the cars were over 8 years old and 150,000 miles and the aging fleet is really expensive to maintain. One of the first projects that they embarked upon is trying to replace all of those vehicles, which is a long slow process. CMS has to balance the needs versus the political reality. CMS has embarked on the schedule of trying to replace every vehicle in the fleet over the next seven years. They are going to do that by purchasing about 1500 vehicles a year so within seven years every vehicle will be under 8 years old and under 150,000 miles. This doesn't mean that we will get rid of all vehicles that are old because some jobs are to drive around State parks and pick up trash and you don't need a new truck to do that. So there will always be a need for some of the older vehicles. There is a plan to replace every vehicle in the fleet and eventually meet the miles requirement that has been referred to as well. Acting Chairman Bedore stated that if he reads this report correctly that total for repair and maintenance is \$1.8 million. Do you have a breakdown for the Universities? Director Carter stated that this is just one University. Mr. Walker stated that if it was CMS it would be higher than that. Acting Chairman Bedore stated that he would think that the Universities would come up with some plan for replacement of these vehicles. Mr. Walker replied that he could not speak about the Universities, but he knows that operating old fleets gets expensive and there is a breakeven point at about 150,000 miles where it is cheaper to buy a new car. The Federal Government works on a standard of about 85,000 miles and would love to be in that position, but we are not. Member Ivory wanted to know when CMS decides to purchase new vehicles what happens to the old vehicles. Do we have an auction? Mr. Walker replied that it is like any other piece of property with the State of Illinois, which goes to State surplus. CMS uses the I-Bid system so people can go online and place bids and sell the car electronically. Member Morales asked if all purchases are done through the State of Illinois purchasing program, correct? Mr. Walker replied that those agencies under the Governor do, but the Universities do not have to purchase off the master contracts and can purchase on their own if they choose to.

Acting Chairman Bedore stated that he knows that Mr. Walker cannot answer this, but hopes that CPO Bagby would pass this on to the Universities for an answer at a future meeting. There is some equipment with odometer readings from NIU that has 700,000, 248,000, 153,000, 152,000, 162,000, 181,000, and 849,000 miles, which has to be a mistake. How can that be efficient to operate this type of equipment? It can't be. These pieces of equipment would have to be in the shop every month. Mr. Walker also wanted to add that one of the other things that CMS is doing is procuring software to better manage the fleet. Once they have proper data then they will be able to better manage it. Once all of the cars are under control, down the road CMS will be working on the fuel issue. We can do a lot at the State to do a much better job at purchasing fuel as a group and is a huge opportunity to save millions of dollars there, but CMS is not ready to do that yet. Acting Chairman Bedore stated that the Board will have this back on the agenda when the

Universities can be in attendance to discuss their program and what their replacement plan is. No further questions or comments were made.

Next on the agenda was the Procurement Policy Board's 2012 Audit. Director Carter stated that the Office of the Auditor General has completed our compliance audit for the last two years ending June 30, 2012. He is happy to report that there is nothing to report. Our previous five findings were all cleared up and implemented and we had zero new findings. It is a pretty good audit for two years. Acting Chairman Bedore replied that it was a good report and keep up the good work. No further questions or comments were made.

Next on the agenda was the University Pouring Rights in Procurement. Director Carter stated that Higher Education CPO Ben Bagby is here to speak about it as well as the Board's Legal Counsel. Director Carter stated that the Board received a complaint much like CPO Bagby received that a potential vendor has concerns the University procures their pouring rights amongst other things in combination. Director Carter stated that the Board's legal counsel, Mr. Todd Turner, will give his interpretation of the section of the Code. Mr. Turner stated that Section 20-50 prohibits putting into an RFP or a solicitation certain incentives or requirements for donations and contributions alike. What was presented to him was as a sample solicitation which we call the request for quotation from Southern Illinois University for pouring rights. When you look at this request it states under the heading the University is seeking five elements in the financial proposal and one of those is a commission calculated as a percentage of gross revenue from all snack and vending sales and/or a guarantee amount. They also asked for in exchange for an exclusive beverage program licensing fee, a minimum guaranteed dollar return and a lump sum payment in the beginning of the contract or annual installments paid yearly over the life of the contract. The fifth thing is additional annual financial incentives beyond those outlined above. What we have is a procurement that seeks cash incentive or monetary incentives. Mr. Turner stated that he looks at these as sort of a hybrid contract and is sort of a sale of an exclusive right, but yet under these contracts the University is actually purchasing beverages. That means that if it falls under the Procurement Code and he believes that if you look at Section 20-50 that this type of solicitation presents a problem and potential violation of Section 20-50. This issue has been looked at for a long time and now that it has ramifications with the Universities especially because they have these exclusive rights type contracts that are set out in a procurement solicitation format. There is one AG opinion on the issue that involved office supplies where in the solicitation the State sought cash incentives and cash rebates as part of the procurement. The Illinois Attorney General found that that would be a violation of Section 20-50. When you look at the particular proposal that he reviewed and look at Section 20-50 there are no judicial cases that have interpreted that language, but if you look at the legislative history when this language was adopted you will find that the discussion on the floor discussed what it means to add this language and what will be. Representative Black stated that there would be ramifications with the Universities and their pouring rights and types of exclusive rights type of contracts. What was made clear by the sponsor of the bill in the House is that they are all for the University getting contributions some sort of cash incentives and those types of things, but that they needed to be separate transactions from the procurement process. The proponent of the legislation said that the purpose stated for legislative history purposes what they meant with this is that you keep the transactions separate. The procurement versus the exclusive rights and the donations that may go along with exclusive rights should be separate transactions. Based upon that he came to the opinion that when you put the two together, which has been done in this request for quotation at SIU, you run into the very problem that the legislature wanted to avoid in that you have mixed together a request for proposal and the State paying money for juices and drinks, but at the same time also requesting certain contract or annual installment payments or other financial incentives and minimum guarantees. When you put those two together into a solicitation it appears that it is a violation of Section 20-50 under what precedent there is for the State.

CPO Bagby stated that he is not here to give his legal opinion because that is not his role any longer, but will give some comments. Before any action is taken you need to have the University people in here. Because they are the ones that have the greatest stake in this and will have the best understanding of this because of this whole provision in the Procurement Code came about because of a University transaction. CPO Bagby stated that his recollection was that the donation was to the University Foundation, a separate entity from the University. It was not related to the transaction that was actually an issue. He believes the situation that was raised and commented upon at the time was that they want the vendors to donate to the

Universities and want that to continue. They don't want that contribution such as to a scholarship fund to be a part of a procurement transaction. CPO Bagby believes that is what the General Assembly was after to keep the procurement separate from donations and contributions alike. Procurements are a business transaction. Donations are just not a part of the business transaction that we enter into when we issue solicitations. He believes that we need to start with that.

Acting Chairman Bedore stated that if you go out and solicit a purchase of milk for the U of I and in the contract you state the vendor has to contribute so much. You don't feel that it is a violation? CPO Bagby replied he doesn't think it is appropriate to tie a contribution or donation to a procurement. Where is the contribution? Where is the donation? Look at the definition of those. Those things are freely given such as to a charity, your church and anything like that, but in these transactions we are talking value for value, consideration for consideration. This is not a donation there is no contribution involved whatsoever. What about economic investment. That is another thing that is prohibited. CPO Bagby said he didn't see any economic investments here either. When you have a situation where somebody brings in a vending machine, particularly the coffee type where they are blended on site. You have to bring a water line and a drain line to it. Now that vendor has to put those in or run an electrical connection they are making an economic investment at the site. I don't think that it is prohibited. That is necessary for the vendor to do the concession for which they have agreed to pay a fee. When they leave they abandon it, but that is not any kind of economic concession. Now if we required the vendor to put up a warehouse on campus to hold the vending supplies and build it three times what you need so the University could use it for their own needs that is an improper economic investment. It is not in here and I don't see that at all. CPO Bagby stated that he is talking about Section 20-50, which prohibits contributions, donations, bonuses, incentives and economic investments. Acting Chairman Bedore wanted to go back to what he said about there is no contribution. Mr. Turner stated that when he looked at this issue he spoke with CPO Bagby about it and was hoping to reach the same conclusion as he did because he knows that it will create some issues that will need to be addressed. However, based upon his interpretation of legislative history, based upon his review of the legislation and based upon the Attorney General opinion, he believes that financial contributions, donations, cash bonus or incentive or economic investment. He believes that it was an attempt by the legislation to broadly define almost any sort of "here University we are giving you this" and if it is done outside of a procurement on their own volition a contribution can be made, but the reason why I reached the opinion I did is because it states in the solicitation that he is looking at lump sum payment at the beginning of a contract or annual installments made yearly over the life of the contract. Additional annual financial incentives are what they are seeking. They use the word financial incentive and if you look at Section 20-50 it doesn't use financial incentive, but it does say cash bonus or incentive. Mr. Turner is sympathetic to the idea that the Universities need to be more entrepreneurial and try to raise funds other than just General Revenue Funds, but the way that Section 20-50 is currently written he would have to respectfully disagree with CPO Bagby that you read the terms so narrowly that what he is talking about falls outside of what is prohibited. Again, when he started looking at this he was hoping to come out with the same opinion and when he didn't that made him feel all the more sure that he was probably right because he was reaching an answer that he didn't want it to be. What you have here is the University is selling some exclusive rights. That would not fall under the Procurement Code if you didn't put it in a procurement that is a separate transaction. What the University is doing then is buying certain beverages and you put that in a procurement that is separate and when you buy those you sell some type of exclusive rights he thinks that the University could sell those licensing rights and that would not fall under the Procurement Code and that would avoid the 20-50 problems. Now, how easily that could be done would have to be discussed with the University. Mr. Turner stated that there is a way to solve this problem without contorting the language of the statute.

Acting Chairman Bedore stated getting back to CPO Bagby's comment that he was not there to give all the answers regarding this issue. U of I was invited here. Are you going to hide behind that you can't answer because nobody else is here? CPO Bagby replied that he is not hiding, he is in plain sight and the Board was told earlier that Mike Bass was not able to make it due to jury duty. It was a simple answer. This is something that can be dealt with at the next hearing. Acting Chairman Bedore stated that he was referring to having someone from the law department at the U of I. CPO Bagby replied that he was not sure if anyone was here or not. He stated that there is room for disagreement on this. CPO Bagby stated that he could look at the fact that the word incentive is used in the solicitation and see that it is completely harmless. There is nothing wrong with the word incentive here. The problem here is an incentive that is one that is outside of

the transaction, one that does not have anything to do with the financial determination or the calculation of the overall return. Incentives such as letting the president of the University fly around in a corporate jet owned by one of the vendors. If we ask for that then we should be kicked out. We don't do that kind of thing. A discount for prompt payment and incentive to pay quickly is time honored. You see that all over the place. If you take the language or if you take the position that Mr. Turner is giving you that he could not have a prompt payment incentive and he couldn't ask for a volume discount and cannot ask for an advanced payment because that gives him a better price from the vendor. He also cannot accelerate renewals to get a better price for that. You are cutting out all sorts of things that are standard business transactions. Think of this as what are we trying to avoid here. We are not trying to avoid getting the best deal for the State we are trying to avoid somebody pushing money over on the side to try to get an advantage because somebody who gets that money on the side puts pressure on the people in procurement because someone more favorable made that donation. It is not happening here it doesn't happen here. There is no evidence of it happening here.

Acting Chairman Bedore stated for example there was a solicitation, not recently, where a University was purchasing juice and part of the contract was that they had to buy \$50,000 worth of advertising in the Illini Athletic Book or one of the things of the Illini. Do you think that was right? CPO Bagby replied he does not know because he does not know how it was phrased. He cannot answer that, but would certainly take a look at that. CPO Bagby stated that a lot of the things are the way that they are phrased and if you are telling someone to go do this or else. That is one thing, but if the vendors are proposing to you or if they think it is valuable to them to advertise the Universities have complete discretion in that area to determine the duration, the terms and conditions and alike. When you are selling exclusivity you are selling marketing all the kind of things it is kind of hard to sell exclusivity on a soft drink when you buy the soft drink from somebody else. You can't do it. It just doesn't work so they have to be tied together. It is one of those things that the only way this thing works is to provide the financial benefits to the University is to put these together and it does actually work. You have the exclusivity on the pouring rights you have to have the same company provide the product – it just doesn't work the other way. There is no logical sense to have it separated. The State gets a lot of benefit from this. Acting Chairman Bedore replied that nobody is disputing that. What he is disputing is the language. In this specific case the State purchased juice. They go out for a solicitation and in the solicitation it suggested. It didn't say that you must give \$50,000 of advertising to the Illini Union, but the vendors know that if it is suggested in there and that they don't contribute and do this advertising the people reviewing the bid are going to reject Bill Black's juice company because he is not going to contribute. They may give it to Larry Ivory because he said that he is going to contribute \$50,000 to the Illini Union. The contract didn't say that you must give \$50,000 of advertising, but it suggested it. CPO Bagby replied that it is sometimes hard what a vendor reads when you are looking at something. For example, Mr. Turner and I are in a difference of opinion on a piece of legislation that has been in place since 1998. People can have a difference in opinion and I cannot control that. Again, it is how it is written and what is really being said. It is hard to speculate without having everything in front of you to look at. All he can say is that he does not see a bonus here in the way that Mr. Turner is talking about. CPO Bagby believes that the AG opinion said look at the plain meaning of the words. He looked at the definition in the dictionary.

Member Ivory stated that what is interesting is that sometimes things are purposely implied when you talk about this issue like with the advertising piece. You don't say it, but the people in the business understand and it is just like going overseas and doing business in a foreign country. Sometimes you understand in order to do business you have to do certain things. They don't have it written down, but you understand that culture and you don't comply to that you don't get the business. There are some concerns in reference to the interpretation. Member Ivory stated that he can tell CPO Bagby is a great advocate on behalf of the Universities and defending their interest extremely well, but in some cases what Member Ivory has not seen in the series of times where he has had conversation on any number of issues related to the Universities that he has not seen very often, like with other CPO's, where you seem to weigh on the side of the University on every aspect of conversation that he has heard. It just seems that way to him. CPO Bagby replied that Member Ivory needs to ask the University about a recent transaction that he cancelled at the very end of the process and are very angry with him. He also stated that he doesn't think that the Universities are always right, but he doesn't think that they are always wrong. He thinks that they run a pretty clean operation. They have the same problems that every other agency has and when he comes in and says things it is difficult.

Change is hard. CPO Bagby stated that he has told the Universities just recently that he doesn't think that they are doing P & A correctly and told them how to change it. Some of these things happen you just don't happen to see, but when their position is the right one or is as good a position as the other one why not defend it? Member Ivory replied that he respects that.

Member Black stated that he remembers this issue very well and thinks Representative, now Senator, Schoenberg tried to make it very clear that there is a difference between exclusivity or pouring rights and then vending machines that would be throughout the general campus community. As he recalled he believes that it was someone from the Division of Intercollegiate Athletic (DIA), the agency that uses private money to finance intercollegiate athletics and they were asking, as many colleges did and still are, who will give us helmets, uniforms, shoes and in return you put your logo all over the stadium. Member Black stated that he thought it was pretty much limited to athletic facilities the exclusive pouring rights and for that the University got a very reasonable price under market would get uniforms, helmets, shoes and the University would sell their product exclusively at the athletic venue. He doesn't think Representative Schoenberg was intending to say that they could have that exclusivity throughout the campus. He believes that Representative Schoenberg was trying to say if the dormitory or the housing division wants new vending machines in the dorms or food court that they could go out and solicit bids and it would not necessarily be the exclusive pouring rights owner that could send in a bid for a vending machine. Part of this came up because a vendor was saying it is only the two big beverage companies that have the line of product you want so therefore he could not go in and his interpretation, I believe was, that if he wanted to come in and bid on that then I would have to give the University something as does the exclusive vendor and that is where we run into problems. CPO Bagby replied that if he recalls that the University of Illinois does not have 100% exclusivity. Member Black replied that he thinks they do at the athletic venue. CPO Bagby replied that he thinks that might be right. In the academic area he believes there are other vendors that are operating on campus with Pepsi or Coke and in terms of not being able to compete sometime you are just not big enough to compete. Sometimes it is possible that they plan to have 100% exclusivity might not be the best if someone can come in and show that they have niche and they can do better than somebody else or have some feature about that that just presents an opportunity for someone that is attractive. Remember all of this is retail sales and you are trying to sell to a customer. It is not for internal use but for somebody else and there are different considerations that go along with that too. It is also customer driven and is not University driven. The customers might want a niche product instead of a more common product.

Member Black stated that he is amazed that our federal government has not outlawed soft drinks in dorms and athletic venues and it still might happen. He stated that he was at Memorial Stadium when we played Louisiana Tech. Three people in front of him were Louisiana Tech alumni and the guy turned around and said "what kind of stadium is this I just went down to get a Dr. Pepper and they don't have Dr. Pepper. Then I asked for a Royal Crown and they didn't have Royal Crown so then I asked for a Moon Pie and they acted like they didn't know what I was talking about. This is a really strange place." Member Black stated that he didn't want to tell him that the University has exclusive rights, but can understand why the DIA wants to do that because the General Assembly for years has said "we don't want you subsidizing intercollegiate athletics with general tax revenue". He believes that they are a little because of the title that granted women the full rights of athletics participation that men have always enjoyed and thinks that some of those tuition waivers/scholarships are being financed by some general revenue and knows that the University is trying very hard to get away from that and that is why they are always out trying to raise money. The debate he recalls was for athletic purposes and somebody did come in late and say "well we have the second or third largest collegiate library in the country. What if we wanted an exclusive contract for vending right in the library"? He doesn't believe that got past that discussion stage, but he thinks that the legal opinion seems very reasonable. If you are asking an independent vendor who might be offering milk and or milk products in a vending machine to be insinuated or somehow written in the contract that they will entertain your bid, but you have to contribute 8% of your gross sales to the Daily Illini or to the athletic fund or whatever. He thinks that we are in uncharted territory. CPO Bagby commented that he may be wrong, but he doesn't think that's the language in these documents. Member Black stated that he has not seen the documents and wouldn't think that it would be blunt, but you could not ask for remuneration on that kind of a contract and thinks that is where the small vendor today is saying that they are not getting an equal shot here. CPO Bagby replied that he believes that they are given an equal shot at the specifications that are given here – they just can't compete. Every time you write a specification you always cut someone

out. Some of our needs are just beyond what the small vendor can do. CPO Bagby really thinks that the University needs to be here to answer some of these questions.

Member Ivory wanted to know if it is fair to assume that you, CPO Bagby, are doing your job to the best of your ability. CPO Bagby replied that he is certainly trying. Member Ivory asked if it was fair to assume that as you do your job that somehow in some way this particular group has some impact upon some of the things that you would like to get done. CPO Bagby replied affirmatively. Member Ivory stated that his observation is a very candid observation that he would like for him to take to heart because you had made a comment that Member Ivory thinks is important and is sharing this with him because he believes it is important because perception is reality to the person who has the perception. The perception from my position is that you are a great advocate and great attorney in helping the University, but in some cases he didn't believe you to be as objective as some other parties. It may be well for you as you mentioned in your comments when you mentioned that you did some things in which you disagreed with the University, but the Board didn't know anything about it. It perhaps would be good for our relationship that when those things come up to share it because it may help me to have a different perception and it may help you to do your job better and help me to understand you better at the same time. CPO Bagby thanked Member Ivory.

Acting Chairman Bedore stated that he agrees with the Board's legal counsel. Member Black stated that he thinks counsel has given a decision that he cannot fundamentally disagree with. He thinks that Representative Schoenberg clearly established legislative intent. He didn't fully agree with the amendment, but it did pass and he did establish legislative intent and at some point we will have to have someone from the University come and say that either we need to get the Attorney General opinion or get a legal opinion from the University of Illinois because if we don't get this resolved somebody at some point is going to take it to court unless we get this resolved. Mr. Turner stated that for what it is worth he thinks that he understands CPO Bagby's argument and sees the distinction that he is trying to make, but when he reads the statute the statute doesn't make the nuanced distinction that CPO Bagby reads into. The best fix is some sort of clarification in the statute itself. Acting Chairman Bedore asked if the Board should go through with any type of motion today. Member Ivory replied that he thinks the Board should go on with a motion and if it passes then it will give the University the opportunity to come back to make their own case and that could change our opinion. Since they didn't come it is the appropriate thing to do at this time. Member Black made the motion and was seconded by Member Ivory. Mr. Turner stated that if there are contracts pending like this it may be that we wait until the next meeting and table this because if you make a decision it could impact pending contracts. Acting Chairman Bedore stated that any contract that is in effect is in effect. He is not sure if the Board knows of any pending contracts. Director Carter replied that there is at least one. Acting Chairman Bedore asked when it was going to be issued. CPO Bagby replied that he has been holding it for a while pending this meeting. Acting Chairman Bedore asked if the Board should make this motion effective after our next Board meeting. Member Black stated that he would alter his motion to that effect and the new motion was seconded by Member Ivory. Acting Chairman Bedore stated that there is a motion that the Board is in full agreement with the Board's legal counsel, but the effective date would not take effect until January 31, 2013. With a 3-0 vote the motion was unanimously approved.

Acting Chairman Bedore asked if CPO Bagby had an update on the Natural History Building. CPO Bagby replied that he is not sure if the contract negotiations are quite finished with the architect yet, but thinks there is a Board meeting in the first part of January and will be going before them then. Acting Chairman Bedore stated he thought it was going to be after the November meeting. CPO Bagby replied that he thinks that the contract just didn't get negotiated is what he understood.

Next on the agenda was Legislation. Director Carter stated that he has nothing to add at this time.

The next scheduled meeting for the Procurement Policy Board is set for January 10, 2013 pending Board confirmation.

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