



Chairman: David Vaught

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

Minutes – April 11, 2013 Meeting

Present in Springfield: David Vaught
Ed Bedore
Larry Ivory
Bill Black

Absent: Rick Morales

The Board started the meeting by confirming attendance at 10:05 a.m.

First on the agenda was the approval of the minutes from the March 7, 2013 Board meeting. Member Bedore made a motion to accept the minutes as printed and was seconded by Member Ivory. The motion was unanimously approved.

Chairman Vaught stated that they are going to adjust the agenda to accommodate the Department of Corrections who has a conflict and cannot attend the entire meeting.

Chief Financial Officer for DOC Brian Gleckler stated that as many of you are aware the Department of Corrections issued a solicitation for a statewide commissary procurement in early March. They started the process of that procurement and held a mandatory vendor conference in late March. At that time there were significant issues that were raised by the vendor community in regards to the solicitation itself. While DOC did anticipate the vendor community being displeased with the solicitation, some of the things that were brought to light in the vendor conference that we were not able to address, it became clear that the procurement as it stood was not going to reach the finish line and attain the goals that we set forth to achieve as part of this procurement. Some of the issues that became apparent from the conference are that the solicitation lacked clear evaluation methods and criteria that would stand up against future protests and possible litigation that would arise associated with any award. Mr. Gleckler stated that based on many of the issues that were brought to light the CPO's office issued a cancellation addendum for the procurement indicating that a revised solicitation will be issued on the Illinois Procurement Bulletin in the near future and that vendors are encouraged to monitor that for the new posting. It is the Department's intent to improve the solicitation that was out there and make the necessary modifications. DOC is currently working with CMS and the Governor's office on the format of a new solicitation. Mr. Gleckler believes that contact will be made with the CPO's office on recommendations and input from their office and DOC hopes to have a new procurement that reaches the finish line and attains the goals set forth in the procurement in the very new future.

Chief Procurement Officer for General Services Matt Brown stated that Mr. Gleckler summarized it well, but he will reiterate that it was the CPO's office determination to cancel this procurement. The adjective that he would use to describe these sorts of decisions is that when the procurement's overall health is not good and is not something that can be amended, our way out of it requires a re-bid. In this case, as Mr. Gleckler indicated, there were some policy objections being voiced from folks who were electing to participate in the procurement and when there are policy objections or procurement issues the one mandate that they have is to make sure that the State's interests are clear. It is not to change the procurement or steer a procurement to the cause or need of those objectors, but to simply say here is what is in the State's interest and we are going to be very clear about that and if you have an objection to that policy there is another forum for that. As far as the procurement goes we are going to seek those goods and services that the State needs that are in the State's interest that are lawfully available to the State. That is the approach that the

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CPO's office takes when they see a scenario like this. They do defer to the using agency and their comfort level for how they run whatever program that that procurement services and that is the case that is before us today.

Chairman Vaught asked how long did they think this will take to get it back out there again? Mr. Gleckler replied that DOC wants to move as quickly as possible. He did not want to give a time estimate again because we don't want another false start. While it is a very high priority of the Department and the administration to get this back out on the street he did not want to tie themselves off into a time commitment at this point in time.

Member Ivory stated that he had a few questions for Mr. Gleckler. You stated that there were some objections and that some of the objections dealt with the evaluation. Can you be a little more specific in terms of what they saw and I am assuming that there were the prime contractors who were going to be bidding as a prime that had some clear objections in terms of the evaluation process. Mr. Gleckler replied that it wasn't so much what the vendor community saw as problems with the evaluation criteria. He believes that it became more obvious what the problems were from what DOC and the EEC witnessed at the hearing of the evaluation criteria on how it was going to be evaluated. Because of the way the procurement was structured that required vendors to bid all items that were included in the procurement, which is over 8,400 different items that were included in this particular procurement. They were very uncomfortable after that hearing. They had an evaluation road map set out that was going to hold up at the end of the process that would hold up with the protests that were obvious that would come and also litigation as part of the process. So rather than go all the way through the procurement and not be able to cross the finish line, DOC thought it was wisest to pause on where they were and go back and improve the procurement and make the necessary modifications so they still meet the goals and the desirable outcomes that they hoped to achieve with this that gets them across the finish line. Member Ivory stated as he understands it, that the real problem existed with the fact that the procurement as it went out lent itself to a lot of objections and one of the big objections that you saw from your perspective and what was stated at the meeting is that it would lend itself to perhaps only one or two particular candidates who would have the ability to do everything that the request was made for on the RFP. Mr. Gleckler replied yes, those were concerns that were raised. However, again, based on the procurement that was out there if it could have been a successful procurement even with those concerns, I don't believe we would be talking about a canceled procurement at this point in time. He doesn't believe after participating in that conference that we had a successful procurement. We had a procurement that needed significant improvement. Member Ivory asked was this procurement so unusual that DOC was not prepared, didn't put the language and didn't have the foresight to really understand what the objections may or may not have been or was it something new. Help me understand why it would have been such a difficult process.

CPO Brown replied that the way he would characterize the circumstances around this sort of negative feedback is that in procurement it is incumbent upon the State, it is incumbent upon the using agency, to tell the vending community how to put their best foot forward and that is really what they heard from a number of vendors. It wasn't so much of them taking umbrage with saying this is something I can't win because it's for some other vendor it's for a single vendor opportunity. It is not the kind of feedback that existed in mass, it was how do I do this? I am a vendor today and under the procurement you put forward I don't think I can be a vendor because the needs are so dynamic and the requirements are so complex and the deliverables are very tight. There are things where they are just saying, look, if this is about hearing from the market place I am telling you I cannot be a vendor because it is too tight. That goes to the statement that he made earlier, that it is incumbent on the State to make sure in our solicitations, if when we are facing policy challenges in the market place at this time, it is incumbent on the State to explain why the State's interests are served with a particular type of specification or need. The reason why that is important is because these folks have the opportunity to protest the procurement at the time it is issued and not just when it is awarded. So if we have somehow maligned a market place for our lack of understanding of the market place or if we have conducted a procurement that is restrictive, not unnecessarily restrictive not unduly, but is in fact restrictive and there might be some market participants who just don't qualify for one reason or another, the State has to be upfront about that and explain why the State's interests remain served. I think the vendors in this pre-bid conference couldn't recognize any part of that message. So that clearly needs polished here. Member Ivory replied that he clearly sees why that would be a challenge for some vendors

based on the criteria you stated if you had to bid on all 8,400 items and if you were a person who had already been participating then it may exclude you from participating in the procurement and there would be less competition. I can understand the rationale. Member Ivory asked when you maintain the integrity of the goal that was set on this procurement, is that going to be a part of the evaluation that you end up with? Because here is a concern I have and I think that legislators have spoken very clear to me about it consistently, the leaders of the caucus, are that historically those procurements that we have seen, like the commissary, has had little to no BEP goals in it. We are challenged right now in the BEP Program to get more things included and not things that are excluded. This is one of the examples where we could have inclusion. Whatever you come up with will that have any impact on the BEP goals that would be established inside this program? CPO Brown replied this might be one question that we both answer. From the procurement office they understand goals are set in a couple of ways. Goals are set statically because there is a statutory process by which you arrive with a goal setting and goals are set aspirationally and that is saying; look we don't have the type of inclusion that we want as a Statewide policy and we want to encourage more. So setting an aspirational goal is one way to accomplish that. In this case I don't think vendors raised a high degree of concern about the inclusion of a goal. They are just saying a goal is here, how do I meet that goal? What do I do as a vendor to give the best that I can give so that the State can evaluate me in a way where presumably, I could win? So they do owe that to vendors and in any goal setting process they have to make sure that vendors can respond with the best foot forward. For the State in this particular case the vendors were thirsty for more. They wanted additional information that helps them figure out what the possibilities for inclusion are. I don't believe the conversation went as far as it could have gone and could have consumed the entire period of the pre-bid conference just talking with vendors about how they meet these standards for the State of Illinois. I don't think that there is a negative impact to that activity on goal setting, but it does highlight the amount of effort we have to put forward to do it well. Mr. Gleckler stated to echo CPO Brown's statement and from the Department's perspective they do agree and maintain the importance of the BEP Program and the importance of the BEP in this particular solicitation. So regardless of the structure of this solicitation as it goes out in the near future BEP will certainly be a part of the solicitation structure and framework and is a very important goal that we expect winning vendors to achieve. One of the other items that was brought up in the vendors conference was the due date of the bid and that due date caused them harm because they did not have enough time to develop the appropriate subcontracting relationships with other small businesses and BEP vendors in the vendor community. So although we are on pause right now my hope would be that those vendors knowing that a new solicitation will be coming out in the near future are still working to develop those subcontracting relationships so when it is time to put numbers to a bid they are prepared to do so.

Member Ivory stated that he hopes you can appreciate the fact that based on historical data that he has received, these commissary contracts that have been put out have been done before with little, to no BEP goal. When you take a look at the enormous amount of black and brown people who are incarcerated and then you take a look at zero to little or no goals in reference to this issue, that you would understand why some people find this very sensitive subject to them in terms of making sure that there is inclusion and not exclusion, which is what has been done in the past. Not to say that is where we are heading now because I think we are taking some great steps and moving forward, but you have to recognize that people are very sensitive to that issue and that we should be conscientious about it because in the past we surely didn't do a good job and don't think anyone of us would sit here and say we did a great job in the past because we didn't. Now we have a chance to do it right, to make it fair, and to do what the Governor said, "everyone in and no one left out". So I hope we maintain the integrity of this by being sensitive to the vendors, but at the same time don't destroy the integrity of making sure there is BEP inclusion and that we have done everything to make sure we are as creative as we possibly can be to make sure it has been done correctly. Mr. Gleckler replied that he would just echo that sentiment. It is critical that we mesh all of these competing priorities together and into a successful procurement that not only meets those goals, but maintains a good value and bears what the market holds for our inmate commissaries so as to best service our inmate population and meshes these other priorities together as well.

Member Bedore asked for a rough breakdown of what the 84 commodities are. Mr. Gleckler replied that it is about 8,400 different items. Basically an inmate commissary is very similar to a mini Wal-Mart for example. We sell grocery items, electronics, hygiene items, and clothing items. There are many, many categories of goods that are available for resale to the inmate population, which is an important part of their

lives when they are incarcerated. Being able to shop in the commissary is a big deal, so we want to make sure that it is done in the best fashion and that we have the products that meet their needs. Member Bedore asked if this was just one bid for all of this. Mr. Gleckler replied that the way it was structured, yes. It was one bid for all 8,400 items. Member Bedore replied he could understand why there was a problem. You are asking vendors to supply bread and milk and you are asking them to supply razor blades and everything. Is that correct? Mr. Gleckler replied that they don't like razor blades, but other products yes. Member Bedore stated that after he said it he realized that it was a mistake, but you got my idea. Member Bedore asked if they are considering breaking it down into categories. Mr. Gleckler replied that is certainly one of the considerations that are on the table right now. Member Ivory asked if this procurement is going to come back in front of the Board to have discussion on it, because it is an important topic and would like to be kept in the loop on what you arrive at and come up with. CPO Brown replied that they would certainly provide him with an intent document for all parties involved and all of the stakeholders who need to be in the room to put this procurement together have finished their work and have a strategy that will procure in the following general sense, whether it is a geographical or multi-vendor strategy there are a number of supply chain strategies that may be reviewed and implemented here to make this successful and to be able to share with you what that looks like. From an overview standpoint and give the Board an opportunity to see that notice. I hesitate to give you more because that is the precursor to an active procurement and when a procurement is in development there is very little express information that we would share with anyone about its content, but would certainly give the Board an executive summary that allows you to represent that people who are considering the State policies in a reasonable manner and they are going forward in a timely manner to the success of this. No further questions or comments were made.

Next on the agenda was CMS Facilities. In attendance was Deputy Director of Property Management Nick Kanellopoulos. Mr. Kanellopoulos stated that every month he reports to the Board on the amount of savings in cost reductions that CMS has achieved both through consolidation and through new re-bids and renegotiations of leases, but he thought this month he would provide the Board with a little bit of data on how the CMS lease portfolio compares with the real estate market at large. CMS did an analysis where they compared their portfolio with the best available data, which is the BOMA Experience Exchange Report. BOMA Experience Exchange Report is a volunteer method where people send data to BOMA who creates the report. There is over a billion square feet of property included in the report from North America. For example, downtown Chicago has 44 million square feet that has been surveyed. Outside of downtown there is another 17 million and then for the rest of the State they use a multiplier based on available market data to determine what market rates are for leases in those areas. Just to give the Board an idea, if you look at Springfield, CMS currently has 46 leases totaling about 1.7 million square feet of office space. The average total cost today for that space is \$15.64. The BOMA Experience Report states that the average in Springfield is \$20.78. The median total cost for our lease is \$14.73 and the BOMA analysis is \$19.07. In Chicago CMS has 129 leases totaling 2.3 million square feet of space. The average is \$17.45 a square foot and BOMA's average came out to be \$20.23 a square foot. The median was \$18.35 and BOMA's was \$19.72. CMS has 129 leases and BOMA surveyed 100 leases. Mr. Kanellopoulos stated that what this shows is that the current portfolio is competitive with what is the best available information on what is happening in the market at this time.

Chairman Vaught asked if BOMA did any data on square feet per employee in the private sector. Mr. Kanellopoulos replied that the data he is not sure and would have to check that. If they do it is not on the snapshot he has, but he could find out if they have that data and provide it to the Board. Chairman Vaught asked if he provided a total of the leased footprint to the Board. He knows that CMS has eliminated a couple of million square feet of space, but what is the total now we have under lease. Mr. Kanellopoulos replied that right now there is approximately 6.7 million square feet of space leased across the State. When Governor Quinn came into office in January 2009 CMS had right around 9 million square feet.

Member Bedore asked how CMS was doing on the space on Chatham Road because they are still there and it has been a year. Mr. Kanellopoulos replied that their plans to do some moves around Springfield were put on hold due to Illinois State Police hiring 75 new employees for conceal and carry registration and also to bolster their FOID registration and the people are going to Franklin Life. That has had a domino effect plus CMS is also doing some other moves. For right now that move is on hold, but we are looking for a home for them. There are other issues that need to be taken care of first. Member Bedore stated that it was mentioned

that they were going to go to the fairgrounds. Mr. Kanellopoulos replied that he doesn't remember if he said the fairgrounds, but said they would look into the DNR building. CMS ended up moving the rest of the Department of Aging to the DNR building so as it sits today there is not room out there for the Inspector General. Member Bedore asked how many people are there? Mr. Kanellopoulos replied it is 6 or 7, but there are a lot of files that need to go with them and their area needs to be secure. Member Bedore stated that we started talking about this last September and if he remembers correctly that you stated that this would be completed shortly after the first of the year. Mr. Kanellopoulos replied affirmatively. Member Bedore stated now we are in April. Mr. Kanellopoulos replied affirmatively.

Chairman Vaught asked if there is any update about some legislation that came out of committee that would do some reorganization of CMS. Since the Procurement Policy Board has a somewhat direct relationship on renewed leases with CMS I am curious how this legislation would affect your role and our role in that and I think that our Executive Director should be following that legislation if it is going to subject matter hearings. Did you want to add any comment on that Nick? Mr. Kanellopoulos replied he did not. CMS Director Malcolm Weems replied that he thinks that there is going to be more discussion about everything relating to procurement and believes that CPO Brown will be involved in this as well. CMS has had conversations with the House Speaker's staff and will have some conversations with the Senate President's staff as well. Chairman Vaught stated that the Board wants to have Director Carter involved in some of those discussions as well.

Chairman Vaught stated that we just got a follow-up document from DHS through CMS. It is a little confusing and he would like to get the electronic version so it can be manipulated because there are lease numbers on three different pages and it is hard to tell what is in one lease and what is in what office. There is a 120 listings of functional offices for DHS and when you look at the document he understands that there has been some consolidations that has saved 2 million square feet, but this looks like it is ripe for a lot more reorganization and consolidation to me. Mr. Kanellopoulos replied that CMS tried putting the data on a spreadsheet into the map, but couldn't put the number into the map without making the little cloud squares too big and would cause too much overlap. Chairman Vaught asked if the Board could get it in Excel where it could be sorted by region or by lease number so they could come to some better understanding of parts of it. Chairman Vaught stated that it is interesting how long you can look at these consolidation ideas and keep looking at them even after saving over 2 million square feet. Director Weems replied that CMS agrees that they are not done with that process. Chairman Vaught stated that the Board appreciates getting this follow-up. Clearly there are different views about these things, but he appreciates the work that CMS has done on this and the \$50-60 million being saved annually in reduced rent is available for other forms of spending or other priorities of government that I tend to think are a bit higher than just paying rent for what often is excess space. No further questions or comments were made.

Chairman Vaught stated that while CMS is at the table we are going to do the Rules Review for the BEP Emergency Sheltered Market Rules and the BEP Sheltered Market Rules. Director Weems stated that they are just giving the Board an update on where CMS is in terms of Rules and the Emergency Rules. Kevin Connor, General Counsel at CMS, stated that right now CMS has Emergency Rules and regular Rules pending at JCAR. The hearing on the Emergency Rule making will be next Tuesday and CMS expects to move forward at that time. CMS initiated the Emergency Rules because broadly we can all agree that the State has a compelling interest in insuring the fairness of the procurement process. CMS received notice of intense concern from some stakeholders including some legislators regarding the fundamental fairness of the process. In light of those concerns and in light of public testimony at public hearings the BEP Counsel wishes to review evidence of disparities in the procurement process. These Rules are intended to provide a framework for that evaluation. It is not a declaration of a sheltered market. It merely provides guidelines to the Council in evaluating evidence of disparities in determining whether to recommend a sheltered market remedy.

Member Bedore asked if the Rule has been out there since 1994. Director Weems replied that CMS is trying to establish rules right now because there are no rules. Member Bedore wanted to know why CMS needs an emergency to do this when it has been out there since 1994. Where have you been before that? I don't understand. Member Bedore stated that he understands going through the other process, but why the emergency. Director Weems replied that in 1994 he was still in college, but stated that CMS was actually

trying to establish and put together a process. The truth of the matter is that CMS has received letters from the Senate President, members of the Senate, members of the House basically demanding that they do something. So when they talk about it being an emergency, lawmakers thought it was an emergency so CMS was just reacting. Director Weems thinks that the issue is that just because something has not been done for a long time does not make it less important. Member Bedore said he never said that. Director Weems replied that is not what he is saying, but just wants the Board to understand that this issue for vendors and other interest groups that they haven't done something for such a long time makes it an emergency. CMS wants to be responsive to any information or feedback they get from legislators about their concerns and want to move quickly. Director Weems stated that JCAR will decide if it is emergency worthy or not. Member Bedore replied that is correct it is their prerogative. Member Bedore stated that it just fits in to all of their other emergencies like emergency procurements. CMS is now up to \$112 million as of March 31, 2013 and are on a record pace. Director Weems asked if they are going to rehash this topic. Member Bedore replied no they are not going to rehash this, but it is just something that has not been addressed. The numbers just keep going up. In the whole year of 2012 CMS had 288 emergency transactions and so far this year as of March you have 281 you are just seven off the pace. Director Weems replied that CMS made it very clear to the Board that they are willing to talk about emergencies at every meeting until they got to a place of comfort about emergency procurements. Again, there was some information that the Board had that was not correct about emergencies and where they come from...Member Bedore replied that the information that CMS had was not correct. Director Weems replied that he doesn't want to rehash old stuff we are either going to talk about emergency rules or emergency procurements. Member Bedore stated that he just brought it up because it is another emergency. Director Weems replied let's be honest here. There are a lot of things that happen in State government that we think we can do better. I think that emergency means, for this case and these rules, is that there is a large group of vendors or citizens that own businesses in this State who feel that they have been left out of the procurement process and that is an emergency. Anytime people feel like they have been wronged CMS owes it to them to respond as if it was an emergency. Before we were talking about commissary and we have not had a procurement done for that in years. That is an emergency. We believe it is an emergency. The administration believes it is an emergency and we need to do something about it and fast. When we don't act you will have lawmakers yelling at us saying; "so this has been going on for how long"? CMS doesn't want to reply that this has been going on for a long time and will get to it and work through the normal process. We want to let them know that it is a priority for them. So other than talking about emergency procurements CMS believes that this is an emergency based on a part of their history in procurement, which they are not proud of, and might want to fix some things that might have been wrong.

Chairman Vaught asked Director Weems to give a little background because the rule does not make the background clear. He understands that there will be further hearings and further determinations of where this rule will apply. Could you give the Board a general background on specific parts of the procurement process where this might apply? Director Weems replied that he was going to use commissary for an example. What CMS knows is that there are people who are going to view what has happened with commissary as being unfair to a group of vendors. We know that there are going to be people that are going to say that CMS did not follow the Procurement Code. There are going to be people saying that since you didn't follow the Procurement Code it appears that someone at a State agency is deciding who they want to do business with and making a decision on their own. In this room we want to be able to tell them absolutely not, but what they are looking at is a process that nowhere else in the procurement process do we allow that to happen and it did happen for whatever reason. The bottom line is that what has happened here in this particular area and why CMS did these rules is because the BEP Council said CMS has to act on some of these things and the statute gives them the authority to do so CMS has just not exercised it in the past. All CMS is doing is they are able to exercise some authority and want to make sure before they do it everyone understands their process. CMS can still exercise their authority without the rules being in place, but they thought it better to create rules to be transparent about what it is they were going to do. CMS didn't want to use that process, which can sometimes be long and didn't want that process to slow up some form of rectifying the wrong. That is why CMS filed it as an emergency. At the end of the day they are trying to let people know that CMS is responding to something that has been brought to their attention by not only the business community, but also lawmakers.

Chairman Vaught stated that in the table of contents it lists Section 10.21 Contracts and Expenditures subject to the goal. You may not make an amendment in that so there is no section included for that. Could you give the Board a quick review of what that section does? Mr. Connor replied that he may need a lawyer here. Philina King who drafted the rules is in Chicago and she may be able to speak to this a little more adequately. Philina King, former Deputy General Counsel for the Business Enterprise Program. Ms. King stated that Section 10.1 outlines the types of contracts that are subject to the BEP Act. Right now the BEP Act states that all State contracts that are funded with State dollars are subject to the Act. So that particular Section for the rule kind of goes through a format of these are the types of contracts looked at, these are the contracts that are excluded and these are the contracts that are exempt. It just gives the agency, in addition to the BEP, a guideline for evaluating contracts. Ms. King stated that as we know, the State does a lot of contracts not just funded by State dollars, federal dollars, grants and so on. So that particular section leads into Section 10.23, which goes into more specific details in the types of contracts that may be exempt from BEP goals. Chairman Vaught stated that you are saying that this rule could have broad application because it applies pretty much across the board, subject to federal requirements and regulations and other that we might not know about. Is that a fair statement? Ms. King replied not necessarily. The Sheltered Market Rules really are geared towards a specific type of remedy. BEP as an affirmative action contracting program is geared towards addressing disparities in State contracting in general. The Sheltered Market Rules are to address situations where BEP is not doing enough to deal with the disparity. So it is a specific type of remedy that can only be used under certain circumstances. Chairman Vaught replied ok the Council could certainly look at any form of State spending to see if those conditions exist. Is that a fair statement? Ms. King replied affirmatively.

Member Ivory made a motion to not object to the filing of the Emergency BEP Sheltered Market Rules and was seconded by Member Black. With a vote of 4-0 the motion passed. Member Bedore made a motion to not object to the filing of the BEP Sheltered Market Rules and was seconded by Member Ivory. With a vote of 4-0 the motion passed.

Chairman Vaught stated that it was mentioned to have emergency procurements back on the agenda and working with Board staff in between meetings for a better understanding because right now we are not all in the same place. Director Weems agreed.

Next on the agenda was the University Pouring Rights in Procurement. Chairman Vaught stated that at the last meeting there was a draft policy statement. Director Carter stated that he got together with Todd Turner, the Board's Legal Counsel, and took some of the comments that the Board made from the last meeting on Pouring Rights and developed a draft and started to work with CPO Bagby as well as the University of Illinois. We went back and forth and you will see the original draft that was done and then where we stand now. Scott Rice, is available to provide the Board of where a better place for the Universities to be. Scott Rice U of I Legal Counsel, stated that this has been a good collaborative effort between Director Carter, Mr. Turner and himself. Here on behalf of Mike Bass is Mike DeLorenzo, Associate Chancellor for the Urbana Campus who has been very involved with the Pouring Rights issues. Mr. Rice stated that he believes that they are really close on this. From his perspective it is about done. The last little piece that is being worked on is the notion for how small vendors fit into this. Philosophically they agree there is a place for small vendors. We have to be careful when we embark on these exclusivities contracts that we don't lose sight of the small vendors. Mr. Rice said that he cannot speak for other Universities, but for them when he and Mike worked on the agreement for Coke they were very careful to include a spot in our Illini Union, which is the highest traffic area on campus, to make sure they were not entirely exclusive of other vendors. That was a departure of their previous contract on pouring rights when it was one vendor all the time. We know that it cost us money and as Member Black said back in January, there was a directive from the legislature to pursue these contracts and we did. The more you dilute exclusivity the more you diminish your revenue so it is finding the right balance.

Member Bedore stated that he understands what he said about the U of I and it is great that you are doing that for small vendors, but my argument is that there is still the pay-to-play when the U of I purchases coffee or juice for the cafeteria and other facilities. Mr. Rice wanted to know if he was asking if the pay-to-play is tied to the sponsorship at all. Member Bedore replied that what Southern Illinois has done is that they said that besides having the pouring rights for all events and vending machines, I understand all of that

and I don't think anybody on this Board is against that. It is when the University then purchases items that you still have that pay-to-play in there. If you wanted to sell orange juice to Southern and Carbondale you also had to contribute so much to the local sports newspaper or buy jerseys or do something. Small vendors cannot do that and I believe it was \$50,000 or something and it was worded that it would be looked at favorably. Well that is pay-to-play and that is my objection here. I don't care about the pouring and what you do with the pouring rights. That's great and if you set some of the vending machines or coolers to a small vendor that is great. My objection is for you, Southern, to say, you as a small vendor have to come up with \$50,000. A small vendor can't do that. That is pay-to-play. I understand that it was worded for advertising or something with the sports program, but what if it was worded to pay Scott \$50,000. It is the same as pay-to-play and that is my objection. Mr. Rice replied that U of I would object to that too which is why they don't do it that way.

Chairman Vaught stated that it seems to him that at the bottom of the first page and the top of the second page that the language is intended to address that issue you are raising. It says that the purpose of 20-50 is to prohibit conduct that requests payments to a third party that is not part of the solicitation, or even if it is part of the solicitation, the payment is unrelated to the subject matter or purpose. Are you saying that that is not enough language to address your concern? Member Bedore replied he is not sure if it is or not and would refer to the Board's counsel. Todd Turner, Legal Counsel for the Board, stated that he thinks the language that was just referred to does begin to draw the distinction to what is pay-to-play and what is a venue accepted concept of pouring rights. He thinks that the policy that has been drafted here does a pretty good job and there is a little difference and added some more language at the bottom regarding inclusion of smaller vendors and there is still some concern about that. But the language you are referring to he thinks does address the issue. Mr. Turner reiterated what he said last time and what we are doing here is policy because there isn't time this legislative session to get something in, but he thinks from a legal standpoint there probably needs to be a statutory change, because he does not know if this policy cannot override what a statute says. The policy can be used to clarify what it is meant by the statute. My concern is that we could have potentially a challenge again if all we have is the policy and someone could challenge under the statute, but getting back to the main question the language provided in the paragraph referenced is as close as you can get on trying to draw the line between what is pay-to-play and what is not.

Chairman Vaught asked if there was anyone from Southern Illinois University here, it doesn't look like it. Member Bedore stated that he would think that the main University would have some oversight on this. Director Carter wanted to add that he requested Scott because the large volume and the stuff they do may not affect them, but some of the major concerns were from the other Universities but when we are speaking in general policy to all of the Universities it is always important to reach out to him. Chairman Vaught stated that was his point is that one of the objections Member Bedore is raising apparently does not apply to what the U of I did, but it does apply to Southern Illinois University did as I understand it, right? Member Bedore replied that U of I has not gone out for a pouring rights bid. Mr. Rice replied that they have one in place now that is due up for renewal in a few years, but they are not in the market right now. Member Bedore stated that what U of I has done is voluntary and they are not obligated to do it. Under the pouring rights all of the machines are Coke or Pepsi, but what they have done is set aside a couple for small businesses. That is very good. It is excellent and they are not required to do that under their pouring rights. Member Bedore stated that he is not raising that issue; he is just raising the issue about when you purchase a commodity. Mr. Rice replied that the challenge there is how do we untangle the two. We try to be transparent and they went out on the Bulletin for the contract to provide the drinks to our students and disentangling that from the sponsorship side and seeking the pouring rights exclusivity that brings in the revenue is really a tuff thing to do, but in doing so you have to make it clear and for that reason U of I is more than happy to work on this policy with Director Carter and Mr. Turner. That is the way they do it. You have to be able to reasonably articulate what their mutual consideration so we don't hope to give the appearance of a pay-to-play notion. There has got to be the consideration here and that is the way we should do it and the way we try to do it. Member Bedore stated that there is obviously a concern because there was a statute and it passed even though some people objected to it, but it did pass and was signed by the Governor. Mr. Rice replied that is why the U of I approaches it the way they do and why they think the policy's fine.

Chairman Vaught stated that this may be an unrelated question, but it seems to me that pay-to-play is a form of conflict of interest and the Board has authority and SB51 where the Board sees conflicts of interest in a real contract to call a hearing and to start the process of voiding the contract. So the Board has an oversight responsibility here if they see a real abuse. Chairman Vaught asked Mr. Turner if the scenario Member Bedore laid out where there was a large cash payment required that favored some entity or part of the University or group. Is that potentially the kind of conflict of interest that might trigger the Board's oversight? Mr. Turner replied he believes so and the language that was put into the policy being described would fall outside of that language and would be potentially pay-to-play and would have oversight through conflict of interest. Director Carter also wanted to mention that during the time the Board has these contracts would have the option based on if the Board felt there was a violation of the Code could recommend to void the contract based on a violation and send that to the EEC. There are options. Chairman Vaught stated that clearly if we can reach a policy with some sort of consensus that interoperates the statute, but if the Board sees a situation where it has gone so far as to create a violation then they have further authority. That is not what we are trying to put in this document, but I think it is over there in the rest of the statute if there is what the Board thinks is abuse.

Member Bedore asked Mr. Rice if there was a list of all of the other Universities in their system of when their contracts are coming due. Mr. Rice replied that he could get it, but didn't know for sure. Director Carter stated that staff has a list and would provide it to the Board. Member Black stated that all of this started when the Chicago Bears were going to come down and play their games that one season and they demanded that they be allowed to sell alcohol, which was prohibited by State law then we changed State law. Then we had exclusivity on the beer that they sold because they had an arrangement with the Bears. It really got confusing to say the least, but when we did start to talk about pouring rights somehow I got in my mind it was for athletic venues and any athletic venue and the soft drinks would be an exclusive pouring right that is where you get the bulk of the people and it was clearly understood that they might have to pay a premium for the advertising that they would have to receive at the athletic venue. I think where we got in a mess was when we started to expand that to the Illini Union and all of the dining facilities in the dormitories and I think that is where some of the small vendors began to say I can't compete with Coke or Pepsi. Member Black said that he was just wandering around campus yesterday and things have changed dramatically. The things that college students want to drink or obtain today, soy milk, almond milk, silk milk, organic cookies, etc. I know you will never be able to satisfy all of them, but he remembers when they got into this and if there was a way to keep the Union and the dining halls out of it and just make it an athletic venue I don't think that we would have had any problems. I join with Member Bedore if there is a member of the higher education community that says that they will take a pouring right and you can advertise in the stadium or the basketball arena, but we also want \$50,000 to the student newspaper if you want to sell anything on campus. I think that is beyond the scope of a pouring rights contract and pay-to-play. I might call it something else and not sure how that ever got started. At the time when the Bears were coming down and we wanted the Universities to generate more money, i.e. not tax money, they were looking at big venues. The language is close, but you don't run Southern, Western and Chicago State. I think that we can get very close if we go back and I'm not sure if we could review transcripts, but I think many of us at the time thought that we need to raise more money for the Division of Intercollegiate Athletics not tax money. I don't want to go to Memorial Stadium with the choice of 44 soft drinks. I get a hot dog and something to drink and go watch the game. If we can just stick to what we started and say that if anyone wants to go to the Illini Union management and say that there has been a bunch of requests from students for this kind of Greek Yogurt. If the Illini Union management says we have space and if their students are asking for this and then fine we will put it in. Then that vendor does not have to be contacted by the Division of Intercollegiate Athletics and say by the way that machine or two in the Union that is a \$5,000 donation to the Division of Intercollegiate Athletics or anybody else because then I think you are really coming up to a restraint of trade order. If the machine doesn't make the money then you take it out. I think we are pretty close. I think it just got to be a definitional problem. Member Black stated that he thinks what the Chairman is talking about it may take a statutory change because there might be a couple of Universities who interoperate that to say if you want to put a vending machine on my campus I can request that you pay me a premium for that space and I don't think it was intended to be that way.

Mr. Rice replied that there is no question that the value to be able to say they are exclusive, that the more the exclusive the campus is the higher the value of those sponsorship rights. Member Black replied that he

would think it would diminish your ability to enter into a contract with Coke or Pepsi, but when you figure the audience they are exposed to in athletic venues, the Big Ten network, and the basketball arena where you have the flip sign. If what they are interested in is exposure and the number of people consuming their product I still think that is a very viable option for any business to get that exclusive pouring rights for a venue that attracts 50-60 thousand people several Saturdays a year. It just didn't dawn on me that it was going to spread to every building on campus. I think it was the law of unintended consequences and I don't want to diminish the value of it, but it might. You know as well as I do if they say you have taken away the ability to have 750 vending machines exclusivity so we are going to pay you less money. Well then you will need to get somebody who knows how to negotiate. You are getting exposure on TV you are getting exposure at the arena you are the sole provider of drinks at the arena. You still have a pretty good deal. Mr. Rice stated that another element that you started to get to is that we run into the challenge sometimes about the companies themselves have proprietary rights about what fluid can flow through what equipment and in vending machines and that presents a challenge. Member Black replied that he understands that, but if there is something popular with the student body and there are a half a dozen machines selling something that you or I have never heard of generally the big companies end up buying it before the year is out. Mr. Rice stated that what they try to make do is when the Assembly Hall has other events and if the Monster Truck Tour is sponsored by Pepsi comes through they don't turn them away. It took a while to get through that with their vendor, but Coke is a great partner for Higher Ed and understood that and they try to be mindful that it is a bigger world out there. However, with the revenue state in Higher Ed we wouldn't want to cut off our options to continue to explore. Member Black stated that he thinks that is why the bill passed originally. We wanted to enhance non taxpayer revenue to Universities who have a lot of overhead in intercollegiate sports. There are debates raging on whether we are paying too much attention to intercollegiate sports, but its big business and the taxpayers don't want to subsidize it and they shouldn't. It's just what I think what many of us view as a pouring right became almost a fence around the campus and you can only come in if you eat this, drink that or chew this and I don't think that was intended.

Mr. Rice stated that this is nearly done and if Mr. Turner, Director Carter and Mike Bass get this done and think that we need to convene a larger group that includes some of our higher education siblings to really talk about it and address the Board's questions. Member Black replied that he thinks that one sentence went a long way to clearing up what the confusion that I had, but I join Member Bedore and I'm not sure how to do this other than by statute. There is no way at any University that wants to come in and sell soy milk that is fortified with god knows what that makes you feel good and study harder and that guy says I will put in a machine, but you need to make a \$50,000 contribution to our bio science program. That was just never part of the process.

Chairman Vaught stated that his suggestion is a good one and thinks that if the Board's staff continues to work on it with them we are going to come to that fork in the road where it is going to be consensus or a need for a statute change. Member Black stated that he knows it's tough to get all of the participants in a higher education system to agree and it is always difficult to get them all on the same page. Mr. Rice replied that he would hope they would all be on the same page about the sentence we have been talking about that is not negotiable. We agree with that, we wrote it together and feel pretty good about it. Member Black stated he thinks with the language that we are a lot closer to being where we want to be and if we can get everybody to sign off and then whatever staff says we have to do I think we can clear this up rather quickly. Chairman Vaught stated that he thinks we have laid out a course unless any Board members have anything further to comment we are going to continue to work on this and appreciate your effort on this. It helps to know the specifics. No further questions or comments were made.

Next on the agenda was Legislation. Director Carter stated that he didn't have anything specific to add, but he knows going forward he is going to track this Bill that he mentioned earlier, which is HB2416 and make sure he stays on top of that one. Chairman Vaught stated that he understands that they are trying to arrange subject matter hearings on that. Director Carter replied that it is. It passed the House State Government Committee 20-0 and now it is due to have a subject matter hearing this morning, but it was postponed and he will keep the Board informed. Member Black asked if he could look into something for him and didn't get a chance to ask Mr. Kanellopoulos when he was before the Board. He knows things are very complicated and he knows that everyone wants a chance to bid on commissary items, but you look around the State and there are interstate and intrastate companies that have been distributing commissary products

for 60 years like Sysco, Cigma, Dot Foods and they all have subcontractors so they pick up whatever they want for grocery stores, convenience stores and drop it off and everybody seems happy. Now I don't think we need to re-invent the distributor's wheel to make sure that MBEP people have a chance to participate but it just depends on how far down that line you want to go. I have a specialty farmer who I think could qualify, but he only grows enough strawberries to probably serve the Danville prison, not Statewide. I mean there have been people out there that have been doing this for 60 years and could help Corrections say here's how we do it. Not every grocery store wants the same product. Director Carter replied that he would transfer that on and one of the difficulties was that they never have put a goal on it so it is reaching out and finding those people and he thinks that they need a little time to do that, but will transfer that to Corrections and CMS. Member Bedore asked do they buy local. Say there is a prison in Danville or Pontiac and there are farms around there do you buy them local like local farmers raising strawberries. Director Carter replied he is out of his knowledge base with this, but right now the problem with local is that there are regional rights to things like Little Debbie and to Pepsi and things like that. So that has been a complication and that is where the local problem comes into being an issue. I am not sure as to the produce. I know there are connections with the Correctional Industries and connections with that to buy food like that and more and more stuff soy based. The overall issue is it is going to be structured completely different from the way it was done the last 12 years. They have never really had a contract before and they have had audit findings for the last 12 years. Member Ivory stated that he thinks it is progress.

The next scheduled meeting for the Procurement Policy Board is set for May 9, 2013 pending Board confirmation.

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

A motion was made by Member Bedore and Seconded by Member Black to return to open session. The motion was unanimously approved. With no further business before the Board Member Black made a motion to adjourn and was seconded by Member Ivory.