

POLICY STATEMENT AS TO 30 ILCS 500/20-50

The Procurement Policy Board (PPB), Chief Procurement Officer for Higher Education (CPO) and the State public universities recognize that exclusive beverage pouring rights and other exclusive and concession contracts are critical to the universities' operations and essential for revenue generation. It is important to carefully consider Section 20-50 of the Illinois Procurement Code (30 ILCS 500/20-50) and its potential implications for these agreements.

The relevant portion of Section 20-50 states:

A solicitation or specification for a contract or a contract, including a contract of a college, university, or institution under the jurisdiction of a governing board listed in Section 1-15.10, may not require, stipulate, suggest, or encourage a monetary or other financial contribution or donation as an explicit or implied term or condition for awarding or completing the contract. The contract, solicitation, or specification also may not include a requirement that an individual or individuals employed by such a college, university, or institution receive a consulting contract for professional services.

The plain language in Section 20-50 makes clear that contracts may not be predicated on financial contributions, donations or other actions that could be construed as a prerequisite obligation required to win a contract. In other words, contracts contingent on a "pay to play" inducement are expressly prohibited.

However, the intent of Section 20-50 is not to prohibit the granting of exclusive license rights in exchange for bargained-for consideration. Payments made by a vendor in exchange for exclusive rights, such as pouring rights constitute lawful consideration paid in exchange for value received under a contract, and is not a financial contribution, donation, charitable contribution, kickback or an "encouraged" economic investment or other payment that is prohibited by Section 20-50. For instance, Section 20-50 does not prohibit a contract that grants a company exclusive rights to sell and market beverages on a university campus in exchange for the vendor's payment to the university of consideration, whether in the form of commissions on beverage sales, sponsorship fees, or other similar contractual components. Such payment is lawful consideration for value received by the vendor in the nature of exclusive marketing and sales rights. The payments made by the vendor are in no way donations or any other type of payment intended to be barred by Section 20-50 ("Barred Payment").

However, universities should remain vigilant as they pursue such contracts to comply with the requirements of Section 20-50. Elements of lawful consideration should be clearly identified and the value of the payment to the university and the value of what the vendor receives in exchange for any such items should be reasonable and articulable. The purpose of 20-50 is to prohibit conduct that requests payments to a third party or the university or State agency that is not part of the solicitation, or even if it is part of the solicitation, said payment is unrelated to the subject matter or purpose of the solicitation.

In order to not be a Barred Payment under Section 20-50, the payment from the vendor must be supported by additional consideration (such as exclusive rights to sell items or right to advertise) other than the consideration of the State's awarding a contract to purchase of goods or services.

Care should be taken with regard to exclusive rights contracts so as to avoid unnecessarily excluding small vendors while not materially diminishing the value of exclusive contract rights.