

STATE OF ILLINOIS
HIGHER EDUCATION PROCUREMENT STUDY COMMISSION



REPORT TO
THE MEMBERS OF THE ILLINOIS GENERAL ASSEMBLY
BY
THE HIGHER EDUCATION PROCUREMENT STUDY COMMISSION
PURSUANT TO HOUSE RESOLUTION 919

November 2010

HIGHER EDUCATION PROCUREMENT STUDY COMMISSION

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EXECUTIVE SUMMARY

Public Act 96-795 has fundamentally changed the ways Illinois public universities procure needed goods and services. As Illinois' nine public universities continue to implement the new requirements of the Act, it is becoming obvious to those charged with the purchasing responsibilities, and to the vendor community who are attempting to provide those needed goods and services, that the new requirements, however well intentioned, are having profound and unintended consequences.

Two very significant themes are emerging from higher education's experience with the Procurement Code changes.

First, certain core functions of public universities (e.g. sponsored research, libraries, student health centers, and public healthcare) often require specialized equipment and expertise that is often only available from one source. Recent experience is showing that these sole-source vendors are often not willing to complete the expanding certifications and documentation requirements required by the revised Code. Evidence is already mounting that the changes to the Procurement Code are threatening the ability of researchers to conduct their work at an Illinois public university and increasing the likelihood that Illinois will lose millions of dollars in federal research dollars due to awards being returned to the federal government or researchers taking their awards to other institutions with purchasing environments that are supportive of research.

A second consequence of the revised Procurement Code is a reduction in the number of businesses willing or able to participate in the purchasing process. The increasing certification and documentation requirements being placed on potential vendors are troubling in two ways. Fewer vendors choosing to comply with Illinois procurement certifications means less competition and higher costs for purchased goods and services. Equally troubling, the new vendor requirements are particularly burdensome for smaller vendors, who typically do not have the resources to meet these requirements. Experience is demonstrating a significant impact on small vendor participation. The developments will make state and university diversity goals more difficult to achieve.

To respond to these issues and the requirements of House Resolution 919, the report includes a series of recommendations, which are summarized below, for consideration by the Illinois General Assembly. At a time when resources throughout state government are limited and pressures mount for state government to cut costs and act more like the private sector, these recommendations are intended to promote accountability and move purchasing functions at the Illinois public universities forward in a more efficient and cost effective manner.

Foremost, the report recommends the development and implementation of a separate procurement code for Illinois public universities that supports the unique needs of the Illinois public universities. A separate Higher Education Procurement Code would be for an initial period of five years and would be subject to legislative review and renewal at the end of that time period.

Components of the separate Higher Education Procurement Code would include the following:

- Establish a State Universities Procurement Board, comprised of one board member from each public university. The Board would appoint the Chief Procurement Officer for higher education who would in turn appoint a State Procurement Officer at each public university.
- The Higher Education Procurement Code would assure that
 - a prequalification process is developed for all vendors or subcontractors who wish to conduct business with any public university with the appropriate approval documentation available electronically to all public universities,
 - all procurement opportunities above the bid limit are publicly advertised through a shared electronic bulletin board,
 - sole source hearings are held for those items where vendor questions or issues have been raised,
 - minority/diverse vendor participation goals and certification processes are developed to meet or exceed current statewide goals and annual results are widely published, and
 - at the end of the initial five year period, a performance audit by the Office of the Auditor General is requested to document cost avoidance and savings.

The members of the commission thank the General Assembly for granting them the opportunity to participate in the review of procurement regulation for higher education institutions in Illinois and make recommendations to foster a procurement environment that continues to promote transparency, accountability, efficiency, and cost effectiveness.

INTRODUCTION

The requirements of the Illinois Procurement Code impact the ability of Illinois institutions of public higher education to fulfill their educational, research, and public service missions. While Public Act 96-795 was passed with good intentions, the unintended results of the Act are increased cost, additional vendor certifications, and continued lack of reasonable exceptions for single-source suppliers (utilities/accreditation) and/or providers of unique products (single-source vendors for research equipment, and medical devices/pharmaceutical products for hospitals and student health centers). Higher education is a competitive market, and Illinois institutions are competing with national and international rivals. As such, our procurement operations must be timely, efficient, and cost effective. It is our desire to work with the General Assembly to find constructive solutions to these issues.

House Resolution 919 directed the Illinois Board of Higher Education (IBHE) to establish a commission to study the Illinois Procurement Code for potential ways in which purchases by public universities can be completed more efficiently. In response, the IBHE formed a commission of representative procurement staff from higher education institutions, appointed by

their respective presidents. The commission's research included contacts with faculty, peer public and private institutions, and discussions with the National Association of Educational Procurement and the American Association of State Colleges and Universities.

This report discusses various issues related to the impact of the Procurement Code and Public Act 96-795, reviews information related to peer institutions, and recommends revisions to the Illinois Procurement Code that would allow public higher education institutions to manage procurement functions more efficiently while maintaining compliance and transparency.

RECOMMENDATION SUMMARY

The commission recommends adoption of a separate Procurement Code for the Illinois institutions of higher education that:

- Incorporates the unique needs of higher education for various types of procurements;
- Allows the institutions to continue to lead innovation in procurement processing;
- Allows the institutions to maximize the unique opportunities available to them from consortia memberships;
- Allows the institutions to take advantage of competitive incentives from vendors; and
- Provides the necessary transparency for procurement while reducing the administrative burden that currently exists in the Procurement Code.

DISCUSSION TOPICS

The commission identified several unintended impacts of the Illinois Procurement Code on higher education institutions. Relief is requested to prevent potentially severe short-term damage to the institutions and long-term damage to the Illinois economy for the reasons described in the discussion topics that follow.

RESEARCH and LIBRARIES

Current Environment

Illinois public universities generated in excess of \$1 billion in research funding in 2009¹. Premier public “Research One” universities² and their nationally and internationally respected

¹ Based on reported Grants and Contracts for Illinois Public Universities.

² A “Research One university” is a term previously used by the Carnegie Classification of Institutions of Higher Education to indicate universities engaged in extensive research activity -- offering a full range of baccalaureate programs; committed to graduate education through the doctorate; giving high priority to research; awarding 50 or more doctoral degrees each year; and receiving annually \$40 million or more in federal support. In 1994, 59 institutions met these criteria. The Carnegie Foundation has since renamed the category and replaced their single classification system with a multiple classification system. However, many universities still use the “Research One university” term.

faculty, including Nobel laureates, Pulitzer Prize winners, and MacArthur fellows are positives for the Illinois economy. Institutions of higher education compete with other peer institutions, both state and private, for the best students and faculty. Faculty at our institutions compete for research grants/contracts and generate research funding that is deployed in Illinois. Efficient execution of their research activities is critically important to their retention and for garnering national attention and recognition for their institutions and the state.

To complete the research for which an award has been received, faculty need to acquire specific equipment, supplies, and services. If faculty cannot acquire what is needed to execute the award in the timeframe required, the award may have to be returned. The Procurement Code requirements have created the following barriers to researchers:

- **Research contract awards usually contain time constraints which do not contemplate extended lead time for the procurement of goods and services.** When researchers receive notice of an award, they need to begin work very quickly to meet deadlines for completing the research. The extensive requirements to bid out the goods and services and award the contracts can easily add months of lead time to the project before the researcher can begin. Sponsors generally support a competitive procurement process, but also expect efficient execution to meet project deadlines.
- **Complicated approval process to procure goods and services from sole source providers.** Equipment for complex research projects is often unique and available from only one source. The Procurement Code requirements complicate and lengthen the time to accomplish sole source procurements.
- **Board of Elections registration with the State and disclosure of information.** Institutions of higher education are experiencing situations where vendors are walking away from procurement negotiations or refusing to submit a proposal due to the registration requirement and the disclosure requirements. This is particularly problematic for institutions of higher education when the vendor involved is a sole source provider and even more so if they are located in a foreign country. Such vendors tend to enjoy high demand for their unique products and are not always motivated to complete disclosures. Research universities compete for faculty talent, and when Illinois procurement rules inhibit acquisition of research equipment, this can negatively impact the recruitment and retention of faculty.

Changes

Recent changes mandated by Public Act 96-795 will further impact the research mission of public universities in Illinois. Specific concerns include:

- *The requirement for vendors to register and pay a fee to do business in Illinois.* Since many vendors are unique to the specific type of research being conducted and may be located outside of the United States, they may or may not be motivated to incur the time and cost required to register.
- *The requirements for sole-source hearings and approvals by non-University employees.* These requirements are likely to delay and constrain research projects. Further, unless

there is a protest, the hearing is only attended by staff, and there is no value derived. Additionally, many of these requirements are dictated by researchers and the grants. The State process for hearings adds no value to the procurement process and delays the acquisition of equipment dictated by the grant funds. For example, the National Science Foundation's Major Research Instrumentation Program (MRI) is a competitive grant program designed to increase access to shared scientific and engineering instruments for research. The program funds proposals in the range of \$100,000 to \$4,000,000. In order to submit MRI proposals for funding, faculty must identify the instrument specifications that will meet their research needs and the total cost of acquisition of the instrument. This means that the faculty member must identify the various manufacturers of the type of instrument they are interested in, assess in detail the capabilities (e.g., resolution) of each manufacturer's instrument to provide the necessary research data, determine the final instrument configuration to meet the research needs of multiple faculty members, and secure cost information for the chosen instrument configuration. The information is then used to write the proposal, which must identify the research that will be conducted (i.e., the scope of work) and is based on the capabilities of the instrument. If those capabilities are unique and the sole source purchase request is denied, this would mean that the scope of work could not be completed and the award would need to be returned to the sponsor.

- *Additional requirements for certifications and disclosures.* In general, certifications and disclosures are a headwind for vendors to overcome. Illinois should strive to be viewed as a vendor friendly state.
- *The requirement of disclosure of discussions with vendors to be posted on a public Web site.* To avoid the possibility of disclosure of proprietary research information, the disclosure requirements should be limited to the University procurement professionals involved in the transaction. A specific example of where this will negatively impact research capabilities is in the multiple lines of research by faculty members that involve the development of advanced detection technologies for cancer. Conversations with instrument manufacturers may disclose sensitive information in order to assess the capabilities of an instrument or to develop new instrument capabilities. Disclosure of the sensitive information may put the faculty member at a competitive disadvantage should other research groups have access to that information. Furthermore, faculty members may work in partnership with the instrument manufacturer on the development of instruments with new capabilities. The faculty member will then purchase one or more of the new instruments from the manufacturer, which is sometimes done at a substantial discount or with the provision of in-kind services from the manufacturer (e.g., service, updates) that reduces the overall cost of ownership to the faculty member.

Negative Impact of Changes

Competing institutions are always courting faculty to move to Illinois' prestigious private universities or to leave the State. Requiring internationally recognized faculty researchers to log into disclosure sites to document vendor conversations is unlikely to promote faculty retention. Researchers talk to each other at national conferences; it will not take long for the word to spread that Illinois does not provide the support necessary for success.

CAPITAL PROJECTS

Current Environment

Institutions of higher education have multiple priorities and goals in their current design and construction initiatives. The overarching goals are to complete projects on time and on budget while meeting the quality and environmental standards of their institutions. A priority of some institutions of higher education is to increase diversity participation in both design and construction. The diversity firms and companies are typically smaller and often need support and assistance to negotiate the processes and requirements of the institutions and the State.

Institutions of higher education have limited project delivery options available that take advantage of new processes and systems available in the design and construction industry. At this time, only the Capital Development Board has the authority to use the Design Build or Single Prime delivery method. Higher education is required to bid projects to multiple primes for construction projects over \$250,000. A new project delivery option, Integrated Project Delivery, is receiving high marks in the industry for helping control costs and increase quality, but it is not a system allowed by Illinois law.

Design and construction timelines for institutions of higher education projects tend to be longer than in the private sector. The construction project client or user group often gets frustrated by the processes and requirements that add additional time to the completion date.

Changes

Changes mandated by Public Act 96-795 will further negatively impact the ability of institutions of higher education to meet their goals with regard to construction. Specific items include:

- *The requirement for prime contractors to provide information on all subcontractors with an annual subcontract value of more than \$25,000.* The information required includes a copy of the subcontract, certifications, financial disclosures, and potential conflicts of interest. The documentation required will be burdensome for vendors and institutional personnel.
- *Monitoring of documentation requirements based on a 20-day calendar window.* This is very difficult to accomplish. Contractors may not execute all subcontracts at the same time and may contract throughout the construction phase as a work item is scheduled. This creates a difficult monitoring situation for vendors and institutional personnel.
- *The requirement of the independent State Purchasing Officer to enter into contracts for a purchasing agency at the direction of his or her respective Chief Procurement Officer is burdensome.* This adds an additional level of review of awards by an independent agent without providing a time frame for the review and approval to occur.
- *The required reporting of material procurement communication by all State employees that will be effective January 2011 will negatively impact the workload on construction projects.* Currently, the requirement has been interpreted to include amendments and change orders that occur after the contract has been executed.

- *In construction, change orders are fairly common and encompass interpretation of drawings and specifications, architecture and engineering errors and omissions, contractor errors, unforeseen conditions, particularly in remodeling and renovation projects, schedule revisions, and owner changes. The change order process requires active involvement of the owner's representative. Documenting all communication of this process will be extremely burdensome to institutional personnel.*

Negative Impact of Changes

Subcontractor requirements in Public Act 096-795 are burdensome and difficult to monitor, particularly in a construction project. Some subcontracts are executed as needed rather than all at one time. These requirements may be particularly difficult for new and small contractors to understand, which may counter diversity participation goals since these firms tend to be smaller and have fewer resources available. Also, fewer prime contractors and subcontractors are expected to bid on projects due to new requirements that may be considered overly burdensome and require additional personnel or equipment. Some vendors are concerned about the privacy of their documents, in particular, financial disclosures. Project costs will likely increase due to new subcontractor requirements. The increased cost of administration work for prime contractors and subcontractors will be passed along to the institutions of higher education in project pricing.

The additional approvals required by independent State Procurement Officers add another step to the process and may result in extended schedules to complete the new requirements and obtain all approvals. This has the potential to impact construction schedules. For construction bids, there is a 60-day "bid hold," which is the time that the contractor has agreed his bid price shall remain valid and open for acceptance by the owner.

Monitoring of required documentation will increase the administrative load of employees of institutions of higher education during a time when there is limited funding available and personnel reductions. The required communications reporting for change orders or amendments, such as reporting all conversations related to construction change orders, negotiating prices with contractors, and other issues, will dramatically increase the administrative burden. This will significantly decrease the productivity of employees of institutions of higher education who are required to submit these reports.

HEALTH CARE PURCHASES

Current Environment

Currently, two public universities have medical schools and dental schools, one operates a hospital, and most have Student Health Services operations. These entities often require unique and specialized purchasing. They are the entities that most frequently require sole source purchases since they purchase patented devices, need accessories and replacement parts to be compatible with existing equipment, and need to standardize on specific lines of equipment in order to reduce the overall cost to the entity. Being able to make timely purchases is an essential need in this field. The need to purchase specific devices cannot always be predicted well in advance since the medical condition of patients will vary. Furthermore, the volume of needed

purchases can vary dramatically depending on the patients who present themselves, thus creating the need for frequent change orders on unique and expensive devices. Maintaining a large inventory of expensive devices is simply not practical given the razor thin operating margins that hospitals are experiencing.

Hospitals and dental schools need to be able to utilize national consortia in order to access more competitive pricing, similar to both peer institutions and hospitals throughout Illinois.

Additionally, new physicians often require the use of the newest technologies in their field. In order for the new physician to be productive and start generating revenue, all bidding/sole source hearings, etc. for these products have to be vetted before seeing his/her first patient. Unnecessary delays cause frustration both on the part of the physicians and their potential patients.

Changes

Recent changes mandated by Public Act 96-795 will further impact the public service mission of public higher education institutions that provide medical and dental services to the citizens of Illinois. Specific concerns include:

- *The requirement for vendors to register and pay a fee to do business in Illinois.* Since many vendors are unique to the specific type of medical services required, they may refuse to register. Without the administrative paperwork required by the Procurement Code, other hospitals gain a competitive service advantage.
- *The requirements for sole-source hearings and approvals by non-University employees.* These requirements further delay and constrain critical medical services and equipment acquisition. The State process for hearings brings no additional value, but rather, delays the acquisition of equipment and potentially jeopardizes patient safety or requires a patient to be transferred to a hospital not subject to cumbersome purchasing processes.
- *Additional requirements for certifications and disclosures.* These will further impact the willingness of vendors to do business with public institutions of higher education in Illinois. The annual recertification and disclosures for vendors is anticipated to become particularly problematic, as vendors may refuse to participate.
- *The requirement of disclosure of discussions with vendors to be posted on a public website.* Physician-Patient Confidentiality could be compromised when acquiring specific medical needs such as transportation for transplant organs. Teaching physicians will also need to be very mindful of federal privacy requirements in their discussions with vendors about topics, as the posting of discussion regarding risk could lead to future litigation. Finding time for posting such discussions will be a challenge for busy healthcare professionals and will erode the competitiveness of Illinois institutions.

Negative Impact of Changes

Similar to the research environment, competing institutions are currently courting faculty to move to private universities or leave the State, offering, among other things, less “bureaucracy

and red tape.” The posting of discussions with vendors on a public website could lead to a reduction in the use of innovative practices and techniques at our medical centers, which is one of the hallmarks of being a teaching hospital. Delays caused by the sole source hearing process present particular obstacles to patient safety and undermine the ability of hospitals to compete in a highly competitive market.

Student Health Services costs are passed directly on to students. The Procurement Code requirements have directly increased costs to students at one institution where Schering Plow elected not to sell pharmaceuticals to the University, thus requiring the University to seek an alternative to the formulary and increasing the cost to students.

IMPACT ON DIVERSITY OPPORTUNITIES

Current Environment

Illinois institutions of higher education desire to be leaders in the acquisition of diversity vendors. Raising the relatively low bid limits within the procurement code would facilitate additional below-bid-limit diversity opportunities. Further, the cumbersome Minority and Female Business Enterprise (MAFBE) certification process and annual sales limitations already reduce the set of vendors qualified and available to achieve diversity goals.

Changes

Changes mandated by Public Act 96-795 will further negatively impact the ability of institutions of higher education to procure goods and services from diverse entities. Concerns include:

- *Based on direct feedback of diversity vendors, many do not understand the complex requirements for bidding on projects and are concerned about the increasing legal requirements contained in certifications and disclosures.* These requirements, combined with the cumbersome MAFBE certification process, are far too difficult to navigate for many vendors. This is especially true for smaller firms. These vendors are concerned that bidding on something as small as a printing job would require legal counsel to understand and complete all of the paperwork.
- *A subcontractor who intends to perform at least \$25,000 of the work must submit similar documentation required of the prime contractors.* The collection of all the paperwork is not only environmentally unfriendly, but also burdensome on smaller firms. The additional administrative burden discourages the participation levels that diversity programs are intended to promote. Many minority- and women-owned firms choose to participate in government business as subcontractors due to the level of paperwork required of the prime contractor. This allows them to focus on their line of business instead of the administrative work.

Negative Impact of Changes

The additional administrative requirements of the changes to the Procurement Code will adversely impact diverse vendors. The effect will be to reduce the participation of vendors at a

time when institutions of higher education are seeking to continue to expand the diversity of their vendor bases.

COOPERATIVE/CONSORTIUM PURCHASING

Current Environment

Cooperative or consortium purchasing allows institutions to aggregate their buying power to create additional leverage for improved pricing on goods and services, while maximizing the productivity of purchasing staff within each institution. Higher education institutions desire to use cooperative agreements to achieve best pricing and hold down operating costs. The recent American Association of State Colleges and Universities (AASCU) and the National Association of Educational Procurement survey³ stated that “some state procurement policies inhibit colleges’ and universities’ ability to fully maximize purchasing power, generate cost savings, enhance product/service quality, and improve procurement efficiency and productivity. These include the inability of institutions in some states to participate in cooperative purchasing consortiums or reverse auctions, or to negotiate competitive bids.” As indicated in AASCU’s report, institutions are using consortia arrangements to reduce spending on a vast range of products and services. Using purchasing consortia was rated as the second-highest source of savings in AASCU’s previous study on cost containment. Some common commodities purchased through consortia include medical goods, library resources, specialized scientific equipment, and much more. The AASCU report urges stakeholders in institutional procurement to consistently and proactively pursue savings using consortia to purchase an ever-broadening range of products and services.

Currently, there is no cohesive policy for Illinois higher education institutions to use cooperative agreements. The Procurement Policy Board (PPB) requires cooperative bids to be posted to the Illinois Procurement Bulletin. In many cases, this is not feasible, given a competitive bid has already been completed by the consortia. For example, most institutions of higher education have access to a small package transportation contract that was awarded through a national educational consortia competitive bid process. The rates are some of the most competitive in the industry. The lost savings to one Illinois institution of higher education from not being able to access the contract is in excess of \$200,000 per year.⁴

Changes

Some consortia elect to post competitive bidding opportunities for goods and services on their own websites, which does not meet the requirements of the PPB. In most cases, large national cooperatives cannot compromise their competitive bidding practices to meet current expectations of the Illinois Procurement Policy Board. For example, all of the public institutions of higher

³ A Survey of the State Regulatory Environment, Institutional Procurement Practices and Efforts Toward Cost Containment

⁴ Based on a financial analysis performed for fiscal year 2009 between Educational and Institutional Cooperative rates and rates available for Illinois Universities based on volume.

education have access to and may participate in Big Ten Purchasing Consortium contracts. This offers the opportunity to leverage both volume and logistics to an extent that cannot be matched by combining all State of Illinois purchasing dollars. However, the number of contracting opportunities that institutions of higher education have no authority to participate in because of arbitrary requirements is growing and includes office supplies, Cisco equipment, copy paper, maintenance, insurance, and scientific supplies, among others.

Traditionally, Illinois public higher education contracts achieve better pricing than similar State contracts. As an example, higher education's current contract for office supplies averages 10% better pricing than the State's comparable contracts, bringing an estimated \$1,000,000 in savings each year.⁵ Higher education is concerned that the current State procurement requirements do not provide a path to allow them to capture best value as this value is often offered via "education sector" pricing discounts.

Negative Impact of Changes

The requirement to post each cooperative purchasing contract that higher education institutions wish to access to the Procurement Bulletin should be reconsidered. Illinois institutions of higher education should be allowed to participate in competitive contracts that are available to peer institutions.

DOCUMENTATION REQUIREMENTS

Current Environment

The administrative burden of the Illinois Procurement Code has resulted in procurement staff in higher education institutions spending more of their time on compliance activities required by the Code and less time achieving the best value for the goods or services needed. While the institutions support transparency, there are more effective ways to meet this important goal without compromising the ability to obtain the best values for goods and services.

The procurement code has mandated burdensome operational requirements for many years. These legislative mandates discourage small business participation, as evidenced by the many complaints institutions receive from vendors about the onerous certifications required to participate in bids. At the very least, State personnel should establish a single vendor portal for all vendors to access and fill out all required paperwork – a "one stop registration" for vendors. These requirements should be streamlined or eliminated entirely for vendors participating in procurement opportunities for institutions of higher education.

Some of the burdensome requirements of the Procurement Code before the passage of Public Act 96-795 that add little or no value to the procurement process include:

⁵ Based on analysis performed in September 2010 between Central Management Services contract for office supplies and the contract solicited and awarded by the Illinois Public Universities.

- *The Illinois State Board of Election certification process and certificate required upon submission of a competitive process proposal.* Many vendors have been disqualified from competitive bidding because they forgot to include their certificates, even though they are registered. Vendors should be allowed to certify that they are registered and not have to include the certificate in every bid. Additional paperwork discourages small businesses from doing business with institutions of higher education.
- *Work in Iran Certification.* The State requires all vendors to certify they do not do business in Iran. This includes small vendors who work on landscaping, janitorial projects, etc. If a vendor does check “yes,” there are no penalties. The legislation is ineffective.

Changes

Changes mandated by Public Act 96-795 have added to documentation requirements, effectively requiring an even lengthier formal competitive selection and contracting process. These changes include:

- *All communications between those involved in the contracting process for the campus and potential suppliers must be reported to the Procurement Policy Board through an automated reporting system; such reports will be posted publicly to the Board website.* Higher education institutions proposed a system where procurement personnel would enter the required information from vendor conversations held by groups of employees, frequently including faculty, into the database. The Procurement Policy Board and the Executive Ethics Commission did not accept this proposal and are requiring all State employees, including faculty, to report this information separately for every meeting. This requirement includes reporting any cold sales calls from vendors.
- *Requirements for public hearings for sole source purchases and extensions of emergency contracts beyond an initial 90-day period.* The Hearing Procedure documentation, including all related forms, is 13 pages long. A new Sole Source form was created, which requires institutions to create and deliver special training programs for business managers and faculty across the campuses.
- *Requirement for suppliers responding to formal competitive solicitations to be authorized to do business in the State of Illinois through a fee-based registration process with the Secretary of State.* Non-domestic and single-source vendors may not be motivated to meet this requirement, which could jeopardize research projects at Illinois institutions of higher education since only these vendors can provide the goods or services required.
- *Required receipt and posting of annual re-certification and disclosures from vendors.* Vendors must fill out an annual certification, even if they are awarded a five-year contract. There is little value in requiring this annual certification, and vendors are already indicating that they will not comply with this request. The focus should be on removing as many vendor impediments as possible from the Illinois procurement environment.

- *Prime contractors must provide contracts, certifications, and disclosures for each subcontractor at the first tier and the \$25,000 level, and any changes must be filed.* This delays the issuing of contracts. Additional procurement staff will be needed to administer and file these contracts. An alternative process would be to create a common database available electronically to all State agencies that prequalify firms for contracts and competitive processes. This pre-registration process would be less confusing to vendors and help reduce disqualifications caused by vendors forgetting to complete all required documents.
- *Requirement for copies of all subcontracts to be filed with the Chief Procurement Officer for Higher Education and for contractor and subcontractor disclosures of financial interests and conflicts of interest to be filed with the State Procurement Policy Board.* These documents are already contained within the procurement files held in the institutions, and now a redundant copy must also be housed in an additional location.

Negative Impact of Changes

Higher education institutions are concerned that additional bureaucratic requirements *do not promote competition, will increase procurement overhead costs, and may impact faculty productivity.* The number of vendors choosing to avoid the Illinois certification process is growing with each additional requirement. To provide specific examples, the following table represents a small sample of the economic losses to selected universities just during the first few months since the effective date of the Public Act, resulting from the universities having to disqualify vendors who had submitted bids because they failed to include the Board of Elections Certificate:

EXAMPLES OF UNIVERSITY BOARD OF ELECTION REQUIREMENT ISSUES				
Names of Low Bidders that Were Rejected Because of the State Board of Election Requirements	Names of Firms that Were Not Low Bid but Were Awarded the Bid Due to Low Bid Not Meeting the State Board of Election Requirements	Dollar Amount of Each		Difference Between the Dollar Amount of Each
		Low Bid	Awarded Bid	
EDC	T2 Systems	\$ 110,080.00	\$ 132,608.00	\$ 22,528.00
English Boiler	Cleaver Brooks	\$ 946,000.00	\$ 998,800.00	\$ 52,800.00
Incentra	Insight Public Sector	\$ 30,963.03	\$ 50,594.20	\$ 19,631.17
Incentra	Telesource	\$ 127,953.22	\$ 147,681.54	\$ 19,728.32
Hitachi	Midwest Media Group	\$ 2,685.00	\$ 4,870.95	\$ 2,185.95
Cook Fasser*	Insulation Dealers	\$ 81,791.40	\$ 90,066.44	\$ 8,275.04
Rock Hill Mechanical Corporation	Murphy Mechanical	\$ 105,000.00	\$ 126,300.00	\$ 21,300.00
				\$ 146,448.48
There are numerous other vendors that we have not been able to contract with due to their refusal to become certified.				
*Cook Fasser is a registered minority vendor; minority dollars were lost as well due to Board of Election requirements.				

At one university, a faculty member's entire research project valued at \$2.2 million is being held up by the vendor's refusal to sign the Board of Elections certificate as well as other certifications. The first six months of her grant award have already elapsed. In light of her

concern that these issues may not be resolved, the faculty member has discussed returning her grant to the federal government with the Vice Chancellor for Research. Having a faculty member return a grant to the federal government does nothing to support the State economy and places Illinois at a competitive disadvantage. Foreign vendors necessary to execute study abroad programs are unwilling to deal with Illinois certification requirements, and this forces Illinois schools to contract with third parties who in turn contract with the foreign vendors.

Increased costs associated with excessive documentation requirements include not only dollars devoted to more staff to meet the requirements, but also longer lead times to procure goods and services needed by faculty for research purposes. Tracking down certifications should not be a core procurement activity, but it is in Illinois.

ACCREDITATION

Current Environment

Public institutions of higher education seek accreditation to ensure their academic programs and missions are maintained in accordance with best practices. The accreditation process evaluates the institution in relation to the published accreditation criteria and provides evidence to support those findings. Educational accreditation is by definition a type of quality assurance process. This type of quality review is generally performed by a third party, which performs an evaluation of the services and operations of the institution or program to determine if applicable standards are met. If so, accredited status is granted to the institution. The third party organizations that perform the accreditations are generally private membership associations.

While the process of accreditation may be compared to audit services, accreditation is considered neither a good nor a service. It is a validation of a program with the recognition that it meets certain criteria from the educational perspective.

Changes

Changes mandated by Public Act 96-795 will further negatively impact the ability of institutions of higher education to process payments that allow for the accreditation of the institution. The sole source process must be followed, and it requires a hearing for the purpose of allowing competitors to contest the institution's intent to award a contract without first providing open competition. The additional steps are unnecessary and administratively burdensome given there are no options for any other entity to provide the accreditation review services.

Negative Impact of Changes

The Illinois Procurement Code does not allow for the unique procurement associated with the accreditation process of institutions of higher education. The cost of the accreditation is dictated by the accrediting organization and is not the driving factor in the procurement of the accreditation services. Institutions should not be subject to the posting and sole source requirements of the Procurement Code for accreditation costs, since it is a mandatory function in support of the institutions' missions.

ARTISTIC EVENTS AND PERFORMANCES

Current Environment

State institutions of public higher education frequently hold artistic functions for the student body and local communities in fulfillment of their missions. These events are not funded by State appropriations; the costs are recouped by ticket sales and related revenues. Artistic services are defined as professional services in the Procurement Code, which have a \$20,000 bid threshold.

Artistic services and performance contracts are designed to generate revenue. Artists frequently take exception to the requirements of Illinois higher education's contracts because the Procurement Code requires terms that conflict with artists' confidentiality agreements. As a result, artists sometimes elect other competitive, non-State venues.

The procurement of artistic services is not a price/value process. Institutions of higher education negotiate the best value contract possible with the performer, but the price of that performer is not the driving factor in the procurement. It is not a "lowest cost bidder" situation, given that the artists bring unique talents and name recognition to the occasion.

In addition, the process for securing artists, which often involves a last-minute, same day commitment for many venues (especially in "downstate" Illinois), is difficult, if not impossible, to accomplish under the requirements of the Procurement Code. These fast-turn arrangements do not meet posting requirements or the requirement to hold a hearing as a sole source procurement. Often, artists' agents are not willing or available to sign contracts until the day of the event, and the institution hosting the event must provide compensation at the same time. This is the unique nature of the entertainment business.

The requirements of the Procurement Code do not add value to the process of procuring artistic services and often create nearly impossible obstacles to the process.

Changes

Changes mandated by Public Act 96-795 will further impact the ability for higher education institutions to procure entertainment.

- *The requirement for vendors to register to do business in Illinois will not be sustainable if institutions wish to attract top quality artists and entertainment to their public venues. Top attractions at these public venues bring revenue to the local communities as well as to the institutions.*

Negative Impact of Changes

Artists have a range of venues to select from for events and concerts. The price of the entertainment is not the driving factor in the procurement of entertainment. Universities are cultural centers and need to have the freedom to offer any type of artistic services for our students/citizens without State administrative burdens.

The Illinois Procurement Code does not account for the unique needs associated with artistic services. The increased requirements associated with Public Act 96-795 include the negative

economic impact of not hosting events or having the events move to competing venues, which are not subject to the same requirements.

ATHLETIC PROGRAMS

Current Environment

The Illinois Procurement Code does not contain practical provisions for the unique needs of public higher education institution athletic programs. Currently, the requirements of the Code are in conflict with the terms and conditions dictated by external athletic associations. Conferences and their affiliated tournament and athletic events generally dictate the venues, lodging for teams, and transportation requirements as well as the associated vendors. Frequently, the vendors involved will not agree to State contract terms and conditions since they have predetermined conference or NCAA agreements.

Additionally, the Procurement Code does not recognize the unique nature of operations of athletic programs and potential last minute arrangements that must be made. The turnaround time required for events such as post-season tournament play does not allow time to meet the posting requirements of the Procurement Code. For example, the NCAA basketball tournament notifications can be very short (1-2 days). The team is often required by the conference to be at a venue early for practices, press, etc., and there is not adequate time to meet State requirements.

If an institution of higher education hosts events and sells merchandise, the conference sometimes mandates (as a result of existing contractual relationships) the vendors that will be used. This must be treated as a sole source procurement under Illinois Procurement Code, with all of the extended complications for time, review, and approval.

Changes

Changes mandated by Public Act 96-795 will further negatively impact the higher education's athletic programs. Specific changes that may result in loss of revenue-generating contracts and funds include:

1. *Requirement for vendors to register as a business entity with the State Board of Elections and register as a legal entity authorized to do business in Illinois prior to submitting a bid offer or proposal.* When vendors have existing NCAA or conference contracts, they are not motivated to comply with these requirements. The same applies to annual certification requirements.
2. *Disclosures and annual certifications requirements.* Institutions of higher education believe that some vendors, in particular, those with established NCAA or conference relationships, will not be motivated to sign disclosures on an annual basis.
3. *Requirement for hearings for sole source procurements.* Given that many conference and NCAA events may require sole source providers of goods and services, the added time required for hearings and State approvals provides no tangible value to the procurement and review process. This is particularly true if there are no protests.

Negative Impact of Changes

The implementation of Public Act 096-795 has increased the impediments for the continuing operations of higher education's athletic programs.

Additional consequences include significant negative economic impacts from the potential inability to host athletic events (given NCAA terms) and the subsequent loss of revenue to the institution and their surrounding communities.

As an example, public universities have the ability to host regional and/or national playoff/championship events for the NCAA. Institutions must bid for this privilege and agree to terms for these events that are mandated by the NCAA. A single event has the potential to bring revenues to local communities in excess of \$5 million.⁶ The Procurement Code negatively impacts the revenue generating ability of athletic programs of institutions of higher education in Illinois.

PEER INSTITUTION CASE STUDIES

The commission reviewed information from peer institutions regarding their state procurement requirements. Other states have recognized the administrative burden of State legislated requirements and have taken steps to provide higher education systems with relief from this burden. Examples include Kansas and Colorado.

In 2007, Kansas initiated a three-year pilot program to test higher education's assertion that the State procurement measures were financially hindering them. The two test schools were the State's flagship university, the University of Kansas, and Fort Hays State University, a regional university. Under this program, the two schools modeled their procurement programs on the best practices from Big XII schools and other peer institutions. These best practices involved allocating more purchase and procurement authority to the individual institutions. *In FY 2008 and FY 2009, the two institutions reported a combined savings of \$1,825,000.*

In Colorado, the universities were allowed to opt out of some of the State's regulatory requirements, including its procurement policies. The University of Colorado chose to participate, and that decision allowed the University to increase its bidding thresholds and tailor its contracts to better fit the University's needs and requirements. *The University of Colorado estimates that it has saved \$1,400,000 in office and scientific supplies since its procurement department has been freed from State oversight.*

It is important to note that certain vendors value education market opportunities more than State government market opportunities. Vendors offer institutions of higher education educational pricing, which is typically lower than governmental pricing, and they structure their sales forces around the education marketplace. Examples of preferential pricing include Apple computers, Silicon Graphics, Microsoft software, Tektronix products, and many educationally related

⁶ Information provided by Champaign County Convention and Visitors Bureau if University of Illinois is awarded NCAA National Tennis Championship event.

software programs. Vendors view higher education students as current and future consumers of their products, and they seek to expose and attract life-long preferences for their brands. They also view students as future business leaders who will make purchasing decisions for their organizations. Vendors are willing to offer lower prices to institutions of higher education for the opportunity for product exposure.

In these states, the institutions of higher education found ways to more effectively manage their procurement programs. The state controls, while well intentioned, effectively limited the ability of the higher education institutions to achieve the best procurement outcomes and save significant dollars that could be redirected toward their core missions of education, research, and public service.

RECOMMENDATIONS

The commission recommends the creation and adoption of a Procurement Code for the Illinois public universities that:

- Incorporates the unique needs of higher education for various types of procurements;
- Allows the institutions to continue to lead innovation in procurement processing;
- Allows the institutions to maximize the unique opportunities available to them from consortia memberships;
- Allows the institutions to take advantage of competitive incentives from vendors; and
- Provides the necessary transparency for procurement without the excessive administrative burden that currently exists in the Procurement Code for all State agencies—which requires critical resources be diverted from primary academic, research, and public service missions to administrative overhead.

This recommendation would establish a system of governance and checks and balances for higher education procurement similar to those established for governance of the University Civil Service System and the State University Retirement System. With a statutorily authorized board comprised of one board member appointed by each university governing board, the system would ensure the level of independence and accountability that the General Assembly requires. This new independent system would provide the necessary oversight and would be in addition to the current oversight exercised by each governing board and through the independent audits conducted by the Auditor General's Office.

This recommendation would also allow public universities to establish their own procurement rules similar to the authority enjoyed by the community college system, a system that is supported by multiple funding sources. Like the community colleges, public universities have multiple funding sources, with state general revenue funds becoming an ever decreasing component of total public university expenditures.

In order to implement this recommendation, the following actions are proposed:

- Introduce a bill in the General Assembly that would allow public universities to develop and implement a separate Procurement Code for public universities for an initial period of five years that would be subject to legislative review and approval at the end of this time period. Requirements of the legislation would include:
 - a. The establishment of a statutorily authorized State University Procurement System (SUPS), which is governed by a board comprised of one board member appointed by each university governing board. The Board would recommend the proposed Procurement Code for Higher Education to the Joint Commission on Administrative Rules (JCAR), hire and manage the Chief Procurement Officer for Higher Education, and have ongoing responsibility for the development of procurement policies and evaluation of the universities' performance.
 - b. The hiring of a full-time Chief Procurement Officer (CPO) for Higher Education by SUPS for a five-year term who is professionally credentialed (NIGP/UPPCC or NAEP) and has the responsibility for developing and implementing the Procurement Code for Higher Education in conjunction with SUPS and the public universities.
 - c. The appointment of State Procurement Officers for each public university by the CPO whose minimal credentials would include a Bachelor's degree and NIGP/UPPCC or NAEP certification within three years of appointment.
 - d. Review and approval of the proposed Procurement Code for Higher Education by the Joint Commission on Administrative Rules and all modification to such rules, including changes in bid thresholds.
 - e. Public advertising of all purchasing opportunities above the bid limits through an electronic procurement bulletin.
 - f. Sole source hearings for those items where vendor questions/issues have been raised, with final determination made by the CPO for Higher Education.
 - g. Required certification to conduct business in Illinois at time of award, including subcontractors above prescribed levels through a prequalification process whose results can be accessed by all public universities.
 - h. Development of MAFBE/diversity goals and certification process that recognize higher education's commitment to diversity with goals that are at least as rigorous as the State's MAFBE Act and require the annual publication of results.
 - i. An audit of public universities' compliance with its Procurement Code by the Auditor General's Office prior to the end of the initial five-year period, with a report to the General Assembly that documents cost avoidance and savings.

We are confident that the above framework would provide the State of Illinois with the necessary assurances of independence, accountability, and transparency regarding procurement matters without the excessive administrative burden that all universities are currently experiencing. In this period of constrained resources, we believe the proposed framework is a cost effective means of managing higher education procurement matters.