

Contact: Marcia Brunson

ADOPTION OF AMENDMENT TO THE IOWA ADMINISTRATIVE CODE

Action Requested: Consider approval of the adoption of an amendment to Iowa Administrative Code 681, Chapter 8.

Executive Summary: At its October 2010 meeting, the Board approved filing notice to amend IAC 681, Chapter 8 "Purchasing". The amendment revises rule 8.9 to make Regent purchasing policy for conflict of interest vendors consistent with state government as outlined by Iowa Code section 68B.3. The notice of intent to amend the rules was published in the Iowa Administrative Bulletin on December 1, 2010. The notice established a comment period which ended on December 21. No comments were received.

The rule as it currently exists is shown below with the proposed amendment following.

CURRENT 681 IAC 8.9 (68B.262) Prohibited interest in public contracts.

8.9(1) *Board policy.* It is the policy of the board of regents that no employee of a regent institution, employee of the regent board office, or member of the board, shall sell, either directly or indirectly, any goods or services to any regent institution or board office, except under the following conditions:

a. The board of regents must give its consent. The individual who wishes to sell goods or services must not participate in giving that consent. Further, the individual will be precluded from participating not only in the initial decision to purchase and to authorize, but also in all subsequent approvals which might include payment vouchers, contract amendments, or any substantive changes to such agreements.

b. The responsibilities of the individual who wishes to sell goods or services must be such that they are not related to the regulatory authority of the board over the institution or the board office. Moreover, the selling of goods or the providing of services by the individual must not affect the individual's responsibilities at the board. As such, review and approval authorizations must exist that will screen out potential conflicts of interest that could unduly influence decisions based upon providing such goods or services.

c. An individual who sells goods or provides services to board institutions or the board office cannot include, as part of that exchange, the requirement that the individual serve as an advocate for the institution or office to the board.

d. The selling of goods or the providing of services to a board institution or board office cannot be an indirect means of selling goods or providing services to the board.

8.9(2) *When authorization is required.* Each regent institution or the board office shall not purchase in any one occurrence any goods or services having a value in excess of \$2,000 from a regent institution employee, a regent board office employee, or a member of the board unless the sale is made after public notice and competitive bidding. Prior authorization can be given on a per occurrence basis or on the basis of approval by the regents of a list of individuals. Once approved by the board, an individual will remain on the approved master list maintained by the institution or office transacting business with

the individual. The master list will be reviewed periodically as part of the institution's normal review process.

8.9(3) *Authorization process.* Such requests for authorizations shall be in writing and signed by the employee or board member requesting consent and shall include the individual's name, the individual's job responsibilities, the name of the individual's firm, if applicable, a listing of goods or services to be supplied, a supporting narrative comment as to the rationale for doing business with the individual and an explanation of why the sale will not create a conflict of interest or provide financial gain by virtue of one's position within the agency.

8.9(4) *Emergency purchases.* Purchases from such individuals that are critical to sustaining patient care or human life, maintaining critical research equipment, or similar instances, must be approved by the vice president for business and finance, superintendent, or equivalent title, or their designees, with subsequent approval by the board of regents at the next scheduled meeting.

8.9(5) *Reporting.* Regent institutions and the board office shall include with their annual purchasing report to the board a summary of the preceding fiscal year's purchases from individuals approved per subrule 8.9(2). The report will contain a narrative, where appropriate, relative to changes from the prior fiscal year in scope of services or goods provided, including, for example, assumption of additional product lines, expanded service capabilities and any other pertinent information that may have an effect upon increased volume for a particular individual or firm.

8.9(6) *Competitive bidding.* All purchases of goods or services by regent institutions, the board office, or the board also must comply with applicable bidding requirements.

8.9(7) *Effect of other laws.* Neither these rules nor any consent provided under them constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Notwithstanding board consent under these rules, it is the responsibility of the individual selling the goods or services to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

8.9(8) *Definition.* For purposes of these rules, the definition of employee shall be as follows:

"Employee" shall mean a paid employee of the state of Iowa, the employee's spouse or minor children, and any firm of which any of those persons is partner or sole proprietor, as well as any corporation of which any of those persons hold 5 percent or more stock either directly or indirectly.

This rule is intended to implement Iowa Code section 68B4.

Amended Rule:

681—8.9(68B,262) Prohibited interest in public contracts.

It is the policy of the board of regents that no employee of a regent institution, employee of the regent board office, or member of the board, shall sell any goods or services to any regent institution or state agency or the board office, unless it is consistent with the requirements of 351—6.10(68B). To help ensure conflicts of interest are properly managed, the regent institutions shall develop an internal review and approval process for all sales by an employee in excess of the bid threshold established by Iowa Code section 68B.3. Blanket approval may be granted.

This rule is intended to implement Iowa Code sections 68B.3 and 68B.4.

If the Board adopts this amendment, the required forms will be filed on February 4 and published in the February 23 issue of the Iowa Administrative Bulletin. The amendment will be effective on March 30, 2011.