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ANNUAL REPORT ON COMPETITION WITH PRIVATE ENTERPRISE

Action Requested: Receive the annual report.

Executive Summary: State law prohibits the Regents institutions from competing with private enterprise, except in certain situations. The Board's Policy Manual states that Regents institutions shall not engage in competition with private enterprise unless the activity will assist in the education, research, extension, or service mission of the institutions.

The institutions reported that no complaints related to competition were received from the private sector during the past year.

Each institution has a committee that meets periodically to review potential situations that may compete with private enterprise. During the past year:

- ◆ University of Iowa's committee reviewed and approved one proposal (see page 3);
- ◆ Iowa State University's committee reviewed and approved four proposals (see pages 3 – 4); and
- ◆ University of Northern Iowa, Iowa School for the Deaf, and Iowa Braille and Sight Saving School committees did not receive any proposals to review.

Background:

Iowa Code Chapter 23A prohibits a public entity from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation and authorizes the Board of Regents to provide, by administrative rule, exemptions to this prohibition for the institutions under the control of the Board. Iowa Code §23A.2(2) and §23A.2(10)k list exemptions and are provided on the following page.

Iowa Administrative Code (IAC) §681-9.4 and Regent Policy Manual §7.08D specify the Board's rules and requirements regarding competition with private enterprise by Regents institutions. IAC §681-9.4(8) details the formal appeal process for resolving complaints involving competition with private enterprise.

Each institution has established written policies regarding competition with private enterprise to ensure that:

- ◆ Activities provided by the institutions are consistent with Board policy;
- ◆ Processes are identified to handle inquiries about activities carried out by the institution; and
- ◆ There is a means for community businesses to interact with the institutions, including discussion of complaints.

Exemptions from Competition with Private Enterprise

**Iowa Code
§23A.2(2)**

The Board of Regents may, by rule, provide for exemption from the application of this chapter for any of the following:

- a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.
- b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.
- c. Use of vehicles owned by the institution or school for charter trips offered to the public, or to full, part-time, or temporary students.
- d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or University of Iowa Hospitals or Clinics.
- e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.
- f. Telecommunications other than radio or television stations.
- g. Sponsoring or providing facilities for fitness and recreation.
- h. Food service and sales.
- i. Sale of books, records, tapes, software, educational equipment, and supplies.

**Iowa Code
§23A.2(10)k**

This chapter does not apply to any of the following on-campus activities of an institution or school under the control of the Board of Regents:

- (1) Residence halls.
- (2) Student transportation, exceptions noted in §23A.2(2)(c).
- (3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.
- (4) Sponsoring or providing facilities for cultural and athletic events.
- (5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promote the identity of the institution or school and its programs.
- (6) Souvenirs and programs relating to events sponsored by or at the institution or school.
- (7) Radio and television stations.
- (8) Services to patients and visitors at the University of Iowa Hospitals and Clinics, exceptions noted in §23A.2(2)(d).
- (9) Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.
- (10) Services to the public at the Iowa State University College of Veterinary Medicine.

UNIVERSITY OF IOWA

IOWA CITY COMMUNITY SCHOOL DISTRICT (ICCSA)

During the Fall of 2008, the ICCSD proposed that the University of Iowa provide ICCSD with printing services. The services are currently performed in-house by ICCSD personnel, however, budget issues have made continued operation of the ICCSD print shop impractical.

The proposal was reviewed by the University's Competition with Private Enterprise Committee. The Committee determined that ICCSD meets the definition of a "political subdivision" under Iowa Code Chapter 23A.1. Since the requested services are not being "provided to the public," Chapter 23A (Noncompetition by Government) is not applicable.

The Committee noted that SUI printing presently has the capacity to handle ICCSD printing without incurring additional overhead costs. It is estimated, however, that an agreement with ICCSD would increase University Copy Center business by 15% and total printing business by 8%. Additionally, Iowa Code Chapter 257.11(6)(a) provides a supplementary weighting incentive to school districts that share one or more operational expenses with a political subdivision. For the purposes of Iowa Code Chapter 257.11, "political subdivision" includes an institution governed by the Board of Regents. Thus, the agreement is permitted under Iowa law and would benefit both ICCSD and the University.

After reviewing relevant statutes and policies, the Committee recommended that the proposal be approved. The Committee's recommendation was reviewed and approved by the Board of Regents' General Counsel and the Attorney General's Office. The University is in the process of finalizing a memorandum of understanding with ICCSD, and anticipates it will commence services in April 2009.

IOWA STATE UNIVERSITY

ALGEBRA PROGRAM MONITORING MEASURES (APMM)

Researchers in the Department of Curriculum and Instruction (DCI) developed a unique set of assessment tools while conducting research and testing under a federal grant. The tools, called APMM, determine students' progress in algebra. The federal government retains the right to use APMM, as does ISU.

School districts in other states requested access to APMM. Teachers and administrators must be trained to interpret and apply the results. ISU is the only organization that offers both APMM and training.

ISU reports that DCI requested approval to provide APMM and conduct on-site training in exchange for reimbursement of travel costs and all expenses. The request was reviewed with the Office of Intellectual Property and Technology Transfer to verify compliance with intellectual property and grant requirements.

The Committee approved the request because ISU is the only known provider of these services and it is an outreach activity which is integral to both the University's strategic plan and educational mission.

EDUCATIONAL TECHNOLOGY CONSULTING SERVICES (ETCS)

A group of graduate students in the Department of Curriculum and Instruction (DCI) offered free ETCS to nearby non-profit and governmental organizations as part of an instructional, entrepreneurial initiative associated with a graduate level course.

Subsequent demand for ETCS exceeded resources. To address the demand, a group of faculty and graduate students, under the Center for Technology in Learning and Teaching, offer ETCS to community clients for a fee.

ETCS enhances students' education and skills by allowing more-experienced students to mentor others through quasi-apprenticeships and by providing real-world experience. A grant from the Pappajohn/Kauffman Center for Entrepreneurship supports this initiative.

Companies within the community that provide instructional design and ETCS are highly specialized, have proprietary systems, and do not offer the same services that the graduate students provide.

The Committee approved these sales because they enhance graduate student education, fulfill a community need, and are consistent with the University's strategic plan and educational mission.

CY'S SURPRISES CARE PACKAGES

ISU Dining Services have sold customized baskets for birthdays, holidays, and special occasions to students and parents since 2004 under the name "Cy's Surprises Care Packages." In 2008, ISU Dining Services requested approval to sell the baskets via ISU's web site; the intent is not to broadly advertise outside the University.

The Committee reviewed sales history and approved the request because sales are incidental and the primary customer base is students and their parents.

IOWA 4-H FOUNDATION WEB SITE

Cooperative Extension and its 4-H Youth Development Office are closely affiliated with the Iowa 4-H Foundation. Revenue generated by the Iowa 4-H Foundation helps support 4-H programs.

Because that relationship exists, the University's Purchasing Department was asked to conduct the bid process for selecting a company to develop a web site to sell 4-H products and fulfill orders.

The Committee reviewed the product offerings, which carry the 4-H brand and its logos. The University's Trademark Licensing Office also reviewed the use of any Iowa State University marks.

The Committee approved the request because the products are 4-H branded products that are primarily sold to county extension offices and 4-H members and a private company provides web site and fulfillment services.