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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 Regent 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.

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

- ◆ SUI received and reviewed one formal complaint; the Committee approved the University's practices (see page 3);
- ◆ ISU reviewed and approved three sales proposals (see page 4-5);
- ◆ UNI, ISD, and IBSSS did not receive any proposals or complaints.

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 Regents 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 state Board of Regents or a school corporation 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 the following on-campus activities of an institution or school under the control of the state Board of Regents or a school corporation:

- (1) Residence halls.
- (2) Student transportation, except as specifically listed 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, except as specifically listed 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

OFFICE OF THE STATE ARCHAEOLOGIST (OSA)

Rolling Hills Consulting Services, L.L.C. alleged that OSA's contractual archaeological services to private and public agencies were in violation of state law and University policy prohibiting competition with private enterprise.

OSA has primary responsibility for the: (1) discovery, location, and excavation of archaeological sites; and (2) recovery, restoration, and preservation of archaeological remains in and for the state of Iowa. Also, OSA is charged with maintaining the Iowa Archaeological Site File and Database, which is available to archaeologists, students, and the general public.

Services provided by OSA to other state agencies would fall under the definition of "political subdivision". Therefore, Chapter 23A – "Noncompetition by Government" is not applicable as OSA is not providing the services "to the public".

With respect to OSA's provision of services to private third parties, there are a several statutory and administrative law exemptions for Regents' institutions. These exceptions are generally related to goods, products, and services that are directly and reasonably related to the institution's mission of research, public service, and education.

The University reports that: (1) archaeological research services provided by OSA (via contract and grant-funding) are directly related to and enhance the missions as nearly all service requests are driven by state and federal compliance legislation that exists because of a perceived public good; (2) the information gathered is entered into the publically-accessible Iowa Archaeological Site File and Database; and (3) OSA contributes to SU's educational mission by providing necessary resources for students.

Based upon the above information, the recommendation of the Committee was that the practices of the OSA did not violate statutory law and institutional policies prohibiting competition with private enterprise. Rolling Hills Consulting Services was informed of the Committee's recommendation and the Senior Vice President's subsequent affirmation of the recommendation.

IOWA STATE UNIVERSITY

AUTOMATED BOREHOLE TEST DEVICE

A prototype automated borehole test device was developed through the joint efforts of an Iowa-based geotechnical instruments company and an ISU research group. This privately funded project was conducted under ISU's Institute for Physical Research and Technology (IPRT) Company Assistance program. The goal of the program is to help Iowa companies realize commercial impacts through research and development of their products.

As part of this ongoing effort, IPRT requested approval to operate a fee-for-service rental program using the prototype device. The rental program is not intended to compete with the Iowa-based geotechnical company but rather to: (1) serve as a way to increase awareness; (2) generate interest in the equipment; and (3) provide potential customers with a mechanism for trying the prototype equipment without investing in equipment they have not tested.

If companies using the IPRT rental program find that the equipment meets their needs, it should translate into added sales for the Iowa firm. As each automated borehole test device will ultimately be custom-built by the Iowa company to meet the buyer's specific needs, this assistance has been welcomed.

The Competition with the Private Sector Committee reviewed the request and approved moving forward with a fee-for-service rental program, not to exceed two years in duration. The Committee thought after two years the Iowa-based company would be in a position to provide equipment for rental and testing purposes.

AGRICULTURAL AND BIOSYSTEMS ENGINEERING TESTING SERVICES

ISU's Agricultural and Biosystems Engineering (ABE) department works closely with several agricultural companies, some of which work with ISU on collaborative research projects and/or fund projects.

On occasion, one or more of these companies will request that ISU provide testing services on a fee-for-service basis. ABE researchers do not intend to solicit or advertise this business and the scale of these requests is generally limited. For nearly all tests they are asked to perform, there are no commercial companies capable of performing the testing as the testing protocols were developed by ABE researchers.

The Competition with the Private Sector Committee reviewed this request and determined that ABE researchers are not competing with the private sector. Instead, the Committee determined ISU is providing a necessary testing service that is not yet available in the private sector, while enhancing agricultural research efforts in the state. As a result, the request was approved.

NUTRITIONAL WELLNESS RESEARCH CENTER MONITORING SERVICES

The Nutritional Wellness Research Center (NWRC) requested approval to sell wellness monitoring and assessment services using technology licensed from a private sector company. This licensed technology provides NWRC with necessary tools to assist participants in wellness monitoring and individual wellness program assessments.

NWRC anticipates three types of activities will be generated using this technology: (1) service learning partnerships; (2) research partnerships; and (3) fee-based wellness monitoring and assessment services for external parties.

These fee-based services are initially anticipated to be limited in scope and involve other governmental entities or political subdivisions. Other organizations may also choose to use these services.

The Competition with the Private Sector Committee reviewed the request and considered its impact on other wellness services providers. Given its expected limited impact on private sector providers, the heightened focus on wellness in Iowa, the benefits of increased research opportunities, and the ability to create added service learning activities for students, the Committee approved the request. Approval was granted conditionally upon working out appropriate protocols and agreements with participants and the licensing company.