

Contact: Andrea Anania

### **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:

- ◆ ISU reviewed and approved four sales proposals and one complaint was received and resolved (see pages 3-4);
- ◆ UNI approved three proposals and is currently finalizing review of a fourth proposal (see page 4)
- ◆ SUI, 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.

**IOWA STATE UNIVERSITY – sales opportunities**

PETROGRAPHIC SERVICES

ISU's Geological and Atmospheric Sciences Department requested approval to begin selling petrographic analysis services to the private sector.

During its investigation, ISU learned there are three private sector suppliers of various types of petrographic services located in Pennsylvania, Texas, and Washington. Despite the presence of these suppliers, Iowa companies were contacting ISU and expressing concern about their inability to obtain certain services.

ISU services include the analysis and interpretation of samples and data submitted by the private sector. During the review, ISU learned that SUI was offering a different type of petrographic services, which did not include the analysis and interpretation of samples and data.

The Competition with the Private Sector Committee (Committee) concluded the services offered by ISU were not readily available in Iowa, nor would ISU be competing with SUI. Providing these services was viewed as being consistent with the University's goal of greater interaction and partnership with private industry. In addition, providing these services gives students hands-on educational and fieldwork experience. Consequently, the request was approved.

RECIPE ANALYSIS

ISU's Department of Food Science and Human Nutrition was contacted by several groups, including a large insurance provider in Iowa, to provide recipe analysis services. These services had not been marketed, but were being requested to help support the privately led and Governor endorsed Healthiest State Initiative. Upon investigating, ISU was able to find one entity in Colorado that provided a similar service, but could not find any providers in Iowa.

The Committee reviewed this request and determined the Department of Food Science and Human Nutrition was providing a valuable service not available in Iowa. In addition, ISU supports the Healthiest State Initiative. As a result, the request was approved.

BIODEGRADABLE POLYANHYDRIDE SYNTHESIS

ISU's Chemical and Biological Engineering Department has the expertise to synthesize biodegradable amphiphilic polyanhydrides, which can be used as carriers for drugs, proteins, and vaccines.

Many pharmaceutical and biotechnology companies test a few grams of these substances for their in vitro and in vivo testing before investing in their use as a carrier. Selling small amounts (1-10 grams) of the polyanhydrides ISU has synthesized is highly beneficial to University research, education, and economic development efforts, as the feedback from pre-clinical testing helps accelerate product development for FDA approval.

The Committee reviewed the request and determined there were no other known competitors selling synthesized amphiphilic polyanhydrides. Given its positive impact on the University's education, research, and economic development efforts, the Committee approved the request.

GENOMIC ANALYSIS SERVICES

ISU employs an internationally renowned researcher with a unique expertise in livestock genomics. The researcher was contacted by colleagues who requested he provide both genomic analysis of livestock data and training in the techniques utilized. Because the demand for this service is based entirely on the researcher's expertise, it is not a service that can be duplicated in the private sector. In addition, the projected total sales volume for these services was not significant from a financial perspective. As a result, the Committee approved the request.

## **IOWA STATE UNIVERSITY – complaint**

### VIDEO PRODUCTION SERVICES

An anonymous email complaint was received expressing concern that ISU's Brenton Center for Agricultural Instruction and Technology Transfer (Brenton Center) was contracting with private companies to provide video production services. The complaint stated the services were provided at rates less than the complainant's brother's video production company could sell the services.

Upon investigating, ISU learned the Brenton Center was not advertising its services or soliciting this business. However, the Brenton Center had been approached by private firms requesting these services. When the request seemed to be consistent with the University's educational mission, the Brenton Center performed a small volume of video production work for these firms.

As a result of the complaint, the Brenton Center immediately discontinued this practice and no longer accepts external requests for video production services.

## **UNIVERSITY OF NORTHERN IOWA**

### PRODUCE STANDS

In August 2013, UNI's review committee approved a request from Green Project UNI: the Panther Plot to hold 1-2 "Produce Stands" a week. The Panther Plot is a student-run, sustainable, on-campus garden.

The produce will be sold to students and faculty outside Maucker Union at a rate comparable to other local farmer's market prices.

Produce sales fall under the exemption provided in Iowa Administrative Code 681-9.4(1)c "The activity is carried out for the primary benefit of the campus community and is incidental to the education, research, service, or extension missions of the university."

### AQUATIC THERAPY POOL RENTAL

In August 2013, the review committee approved a request from Athletic Training – Health, Physical Education and Leisure Services to rent the aquatic therapy pool.

Rental of the pool falls under the exemption provided in Iowa Administrative Code 681-9.4(1)b "The activity is needed to provide an integral good or service which is not reasonably available in the community; or the activity is needed to provide an integral good or service at time, price, location or terms which are not reasonably available in the community."

### CADAVER LAB RENTAL

In August 2013, the review committee approved a request from Athletic Training – Health, Physical Education and Leisure Services to rent the cadaver lab for demonstration space.

The rental of the lab falls under the exemption provided in Iowa Administrative Code 681-9.4(1)a "The activity is deemed to be an integral part of the institution's educational, research, public service and campus support functions, and other educational and support activities."

### EYE TRACKING EQUIPMENT INSTRUMENTS RENTAL

The committee is currently finalizing review of a request to allow the rental of eye tracking equipment instruments. A decision will be made later in March or April following a meeting with faculty within the Departments of Chemistry and Psychology.