



April 27, 2011

Honorable Don Harmon  
Co-Chair  
Senate Committee on Procurement  
329 Capitol Building  
Springfield, Illinois 62706

Honorable Pam Althoff  
Co-Chair  
Senate Committee on Procurement  
M103C Capitol Building  
Springfield, Illinois 62706

Dear Senators Harmon and Althoff,

On behalf of Northern Illinois University faculty, staff and students, I want to express appreciation for the opportunity to provide feedback to an appropriate legislative forum on the serious implementation issues arising from the state's newest procurement act, Public Act 96-795.

Prior to its enactment on January 1, 2011, public universities operated under an effective and compliant system that fully addressed the Illinois Procurement Code, yet also encouraged price competition, access, and efficiency across a very wide spectrum of procurement transactions necessary to operate public universities. Multiple levels of oversight existed previously, including the fiscal and fiduciary oversight from each gubernatorially appointed university board of trustees. Since the governing boards were created in 1996, I am aware of no major procurement issues in public universities that would cause such dramatic purchasing changes for public universities that are contained in Public Act 96-795.

As you may recall, the Illinois Public Higher Education Cooperative (IPHEC) was formed as a bidding consortium and administrator of bidding procedures under the Procurement Code. In 2004, the General Assembly created the Procurement Policy Board (PPB) with overarching review authority for all procurements and sole source transactions. Despite these multiple layers of oversight, public universities demonstrated exemplary Procurement Code compliance, while remaining competitive in the performance of our academic mission.

Notwithstanding the successful implementation of the PPB, new structures have been imposed on public higher education by PA 96-795. Extensive personnel resources have been tasked in committees and working groups attempting to develop systems and staff

assignments necessary to operate under the new statutory requirements. After several months of operating under Public Act 96-795, it is readily apparent the new requirements of the Illinois Procurement Act are adversely impacting the ability of Illinois public universities to fulfill our educational, research, and public service mission. Illinois' public universities must be permitted to operate and compete in a national and regional higher education marketplace.

Unfortunately, while Public Act 96-795 was passed by the General Assembly with good intentions, its unintended consequences are very real and must be addressed. Public universities are facing increased procurement costs, new, complex and often conflicting requirements for supplier certifications, reduced incentive for price competition, dwindling participation from small and diverse business enterprises due to the complexity of procurement regulations, and severe constraints on a public university's ability to contract with entrepreneurial ventures and research institutions around the nation and world that work in partnership with suppliers and providers of specialized products.

As I stated earlier, higher education is competitive, and Illinois' public universities are competing with national and international institutions. As such, our procurement processes must be timely, efficient, and cost effective. University procurement operations must also be able to respond quickly to a wide range of services and programs related to students, student life and the unique demands of a residential campus living and learning environment. Public universities maintain a significant scope of essential services and facilities which cannot be interrupted or delayed related to student life, the physical plant and core infrastructure, technology, and campus security. Within the framework of the Procurement Code as adjusted in Public Act 96-795, university procurement activity is not adequately distinguished from the provisions applicable to other state offices and agencies.

Northern Illinois University's DeKalb campus alone comprises 764 acres of living and learning space, almost 24,000 students and over 4,000 faculty and staff on any given school day. Accordingly, I cannot overstate the necessity of the Senate Committee adopting the procurement recommendations offered by President Hogan of the University of Illinois, and I also offer the attached additional recommendations for consideration.

Thank you again for the opportunity to state our concerns. Please let me know if you need any further clarification on the recommendations attached.

Sincerely,

  
John G. Peters  
President

Attachment

# NORTHERN ILLINOIS UNIVERSITY

## Initial Recommendations

### Senate Committee on Procurement

April, 2011

#### Sponsored Projects (Grants) 30 ILCS 500/1-10(b) (2) (and other applicable sections)

The application provisions of the Procurement Code contain a general exception for “this code shall not apply to grants except for the filing requirements of section 20-80.” It is recommended that the term “grants” be clarified to include “grants, sponsored projects, and related expenditures.” This exception is necessary to clarify the general exception for grant related activity, whether a vendor/supplier is either specifically named in a grant or because the scope of the project funded by the grant requires specialized equipment, vendors, or suppliers.

#### Accountability Standards/Federal Oversight

The vast majority of sponsored program funding for higher education is covered under the federal cost principles of OMB A-21. These principles have recently been codified into law under 2 CFR Part 220 and therefore serve not only as guiding principles but as law. The primary basis for these principles is the assurance that all costs incurred with federal funds are allowable (A-21 sets out a list of allowable direct costs), allocable to the project, and consistently applied. In addition, all federal funds are subject to an annual OMB A-133 audit to test whether such funds were managed in accordance with these principles. Finally, individual agencies can impose stricter costing principles than those found in 2 CFR Part 220.

More important than the existing oversight processes is the impact of the procurement process on NIU's ability to effectively manage and carry out the awarded program scope. Considerable delays in procuring required project equipment (which is already clearly identified and approved by the sponsor within the awarded budget and often based upon vendor quote) and other purchases can significantly hamper the Principal Investigator's (PI) ability to either begin the project on time or ensure that program activities can be completed within the timeframe of the award. Awarding agencies regularly monitor program and expenditure activity to ensure that program activities are occurring as proposed.

An inability to carry out a program's scope within the planned time frame is not viewed by federal agencies as solely a PI issue. In fact, it is an institutional issue because NIU as an institution is the official grantee of all sponsored awards and is ultimately responsible for both the compliance and programmatic aspects of an award. As such, program delays can severely impact NIU's ability to secure future federal funding due to the perception that our institution does not have adequate systems and controls in place to effectively carry out the work we propose to do. NIU could attempt to restructure the scope of work and timelines within the proposals to account for possible procurement processes/delays, but doing so would severely jeopardize the competitiveness of these proposals.

Two frequent issues that surface with respect to procurement delays and program impact are: 1) specialized equipment purchases; and 2) sub-award processing. Often our PIs rely on very specialized equipment that is only available through one or two vendors. When vendors refuse to enter into the appropriate agreements to do business in the State of Illinois, NIU may find itself forced to relinquish an award. Beyond this, evidence of a long-standing working relationship between scientists and key equipment and supply manufacturers is itself a highly rewarded element of the competitive review process itself.

As the federal government continues to promote collaborative research, NIU must be able to efficiently issue sub-awards as are anticipated in grant awards (transfer of scope of work to another party) that are paid using grant funds. **Existing exceptions under section 30 ILCS 500/1-10(b)(2) are interpreted to allow for a grant exemption when a sub-award entity is named. This is helpful, but sub-awards are often added after the award is made. This amendment would clarify this general exemption.**

### **General Exemptions Unique to Universities**

Due to the nature of the Illinois public university structure and operating requirements several non-discretionary transactions are affected by the new Code requirements.

**General exemptions should apply to procurements related to areas such as:**

- **library, non-credit and credit educational services, and accreditation requirements**
- **specific performers, artists, musicians, and entertainers**
- **Intercollegiate Athletics events**
- **Externally funded events, activities, and conferences**
- **Foreign suppliers/vendors offering specialized equipment**
- **Academic programs where travel and accommodations are required such as field trips, study abroad programs, and conferences.**
- **Memberships in external organizations applicable to the university mission**

**It is also recommended that the Governmental Joint Purchasing Act be amended to facilitate university participation in cost-effective procurement opportunities through participation in consortia or group purchasing agreements with governmental, educational, and research entities.**

### **Communications Reporting Requirements (Sec. 50-39)**

The new communications reporting requirements present significant operating overhead delay and costs, as well as confusion among university personnel participating in procurement activity. **It is recommended that a series of general exemptions be adopted for higher education so as to focus this requirement on major procurements. Thereafter, the universities will continue to work with the Ethics Commission on rules applicable to reporting requirements in higher education.**

**More information is needed on this topic. However such exemptions should at least include:**

- **Procurements below the applicable small purchase thresholds**
- **Procurements associated with Grants or Sponsored Projects**
- **Internal communications among the universities related to cooperative procurement transactions among any or all of the State universities.**
- **Communications unrelated to sourcing or solicitation of bids.**
- **Allow for a designated reporter whenever a group of personnel is involved with an applicable procurement communication.**
- **Communications undertaken by university employees who have no means of influencing procurement decisions within their scope of employment.**

### **Public Hearings**

**Sole Source Awards (Sec. 20-25(a))** – A public hearing for sole source transactions should not be required unless an objection is filed following notice of the sole source award. The time frame for the public hearing should also be extended to at least within ten working days of the sole source notification.

**Emergency Procurements (Sec. 20-30(a))** – A public hearing for the renewal of an emergency purchase beyond the initial 90-day limitation should not be required unless an objection is timely filed following the notice of the renewal extension. The time frame for the public hearing should also be extended to at least within ten working days of the sole source notification.

### **Vendor Certification Requirements**

The new Procurement Code requirements pertaining to the conduct of business with the State of Illinois, Board of Elections registration, and certification requirements related to business enterprises eligible for recognition under the Minority, Female, and Persons with Disabilities Business Enterprise Act, are especially significant hurdles for competing business interests. **It is recommended that these documentation requirements be reviewed for simplification so that suppliers are encouraged to participate and offer the diversity and price competition necessary and in the best economic interests of the state and the universities.**

### **Specific Vendor Certification Requirements Related to Vendors and Subcontractors**

#### **Subcontractors (30 ILCS 500/20-120)**

**The extension of financial information requirements to subcontractors should be deleted from the code as it is not practical to enforce and can only serve to slow the contracting process.** In actual practice, only rarely does a contractor have all subcontractors identified prior to submitting a bid or proposal. Collecting this data including the subcontracts at any stage of a project requires an inordinate cost to

universities where staffing is limited. In a special case where additional information might be needed, vendors would be required to respond.

**Continuing disclosure; false certification (30 ILCS 500/50-2)**

**Annual recertification requirements should be dropped.** With the stipulation that disclosure is required as needed when the circumstances of the vendor or subcontractor have changed during the completion of a contract, an annual requirement is a needless activity. The requirement of (30 ILCS 500/20-120) (b) to provide information should it change, would seem adequate.