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Office of General Counsel

Procurement


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Session Overview

- Purchasing Options
- Purchasing Requirements
- Request for Proposal (RFP)
- Delegation of Authority
- Contract Supervisor


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Procurement

General compliance, not Marketplace system process



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Contract vs Purchase Order

Contract

- Services
- Intellectual Property
- Real Estate
- Data

Purchase Order (PO)

For off the shelf items or widgets that don't involve services

Question to ask: can this item be returned and resold? If yes, use a Purchase Order.



Master Contracts

State of MN/Department of Administration Contracts

Purchasing off state contracts makes the procurement piece compliant with state law and board policy without the need for an RFP. Purchasing off a state contract does not mean that the legal terms are in Minnesota State's best interest or abide by other regulations that we are subject to. If the purchase is for software legal review is required.

Cooperative/Joint Purchasing Programs

Still require legal review as terms may need to be modified
Is this the best way to procure 526010F015D:8011A011E5099 v0m6





Purchasing



Purchasing Requirements for \$25,000.01-\$50,000

System Procedure 5.14.5 Part 4. Subpart B

The purchase may be made either upon sealed bids or by direct negotiation by obtaining two (2) or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. Quotations may be obtained by telephone or in written form via facsimile (FAX), delivery



Purchasing Requirements for Over \$100,000

In addition to doing a sealed bid or proposal (RFB/RFP)
System Procedure 5.14.5 Part 4 Subpart. D.

Require written approval from the vice chancellor-chief financial officer. Colleges and universities shall submit a memorandum explaining the need for the purchase, and the purchase amount, shall verify that funds are available for paying for the purchase, and shall describe what process will be used in making the award.

Limited exceptions to vice chancellor approval: Written approval not required for the following types of purchases where the value of the purchase is less than or equal to \$500,000.

1. Utility services provided annually where no competition exists or where rates are fixed by law or ordinance.
2. Merchandise purchased for resale. Vice chancellor-chief financial officer approval is not required for blanket encumbrances established for purchasing card programs; however, individual purchases made using purchasing cards are subject to the purchasing requirements within part 4 of the system procedure.



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Purchasing Requirements for Over \$100,000 (2)

Businesses with more than 40 employees within Minnesota

Vendors who intend to bid on any purchases or contracts exceeding \$100,000 and who have had on any single working day in the previous twelve (12) months more than forty (40) full-time employees within Minnesota shall apply for a Workforce Certificate of Compliance from the Minnesota Department of Human Rights. Bids or proposals on purchases or contracts exceeding \$100,000 from vendors who have not applied for this certificate must not be accepted. An award exceeding \$100,000 must not be made to vendors who have not obtained this certificate.

Required by Minn. Stat. 363A.36



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Purchasing Requirements for Over \$100,000 (3)

Businesses with more than 40 employees outside Minnesota

Vendors who do not have more than forty (40) full-time employees in Minnesota, but who have had on any single working day in the previous twelve (12) months more than forty (40) full-time employees in the state in which their principal place of business is located, shall have a Minnesota Workforce Certificate of Compliance or shall certify that the business is in compliance with federal affirmative action requirements in order to receive a contract award exceeding \$100,000.

Required by Minn. Stat. 363A.36



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Purchasing Requirements for



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What is it?

Contract "creep" is when your contract goes over dollar amounts and/or exceeds 5 years which triggers additional requirements.
RFP/RFP, Board Approval, Equal Pay, Affirmative Action, VC Approval

How Does it Happen?

Amendments

Adding funds via an amendment increases the total value of the contract.
Contracts for the same service year after year.

Should I be doing an RFP?

Renewals

Renewals add time to the contract. If the renewal(s) push the contract



RFP - Request for Proposal

RFP- What is it?

A public document that identifies the needs of Minnesota State and provides instructions to vendors on how to respond.

RFP- Why do it?

Because it is required by law and policy for purchases over \$50,000.

RFP-





RFP - Evaluation

This is arguably the most difficult and most challenging aspect of the RFP procurement process.

The first critical step to help ensure a successful evaluation is the creation of a well-thought-out and well-written RFP.

Why/What can go wrong?

- Vendor Dispute/Challenge
- Unfavorable Press or unfavorable public scrutiny
- Loss of Money
- Organizational conflicts of interest



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RFP - Evaluation Form

Be very thoughtful when creating the evaluation form.

You may want to create this at the same time the RFP is being drafted or you may want to draft it in collaboration with the evaluation team.

At the very minimum, make sure the form is consistent with the criteria and weight as stated in the RFP.

Remember, this is public data.



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Data Privacy in Procurement

You have Government Data

Documents created during procurement are government data, e.g., evaluation forms

Maintain "official records" in accordance with approved retention schedule

Privacy laws apply

E.g., Minnesota Government Data Practices Act (MGDPA) Minn. Stat. Chapter 13

You have responsibilities

Appropriate protection, release, referral

Not everything is confidential

Even if a vendor labels their documents "confidential" they may not be under MGDPA



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What is Public? When?

Minn. Stat. § 13.591, Subd. 3 (b)

RFP Submissions - all responses become property of Minnesota State

Prior to due date specified in solicitation

All submissions are private or nonpublic

At due date specified in solicitation

the names of the responders becomes public

After completed evaluation process (contract signed) - pursuant to statute, completion of evaluation process occurs when government entity has completed negotiation with selected vendor

all remaining public data submitted by all responders is public



Trade Secret Data

Trade Secret Data is nonpublic BUT:

Must meet each element of Minn. Stat. § 13.37 Subd. 1(b)

1. Supplied by the affected individual or organization;
2. Is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy; and
3. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can



Single Source- Definition

"Single source" means an acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service, or construction item.

Laws, Policies & Procedures:


[Minn. Stat. § 16C.02, Subd. 18](#)

[The State Single Source Policy](#)

[Minnesota State Board Procedure 5.14.5](#)




Delegation of Authority



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Delegation of Authority What is it?

“ The formal conveyance from one person to another of the authority to bind Minnesota State Colleges and Universities, the system office or a college or university to a legally enforceable obligation. Any such transfers of powers and duties of the Board and the chancellor are therefore significant actions requiring great care and scrutiny.”
Minnesota State Board Procedure 1A.2.2



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Delegation of Authority Who has it?

Board of Trustees


- The Board of Trustees receives its authority from the State of Minnesota's Constitution and Minnesota Statutes.
- The Board of Trustees gives the Chancellor his/her delegation

Chancellor

- The Chancellor receives delegation of authority from the Board of Trustees
- The Chancellor can give delegation of authority to others

Others

- Others can receive a delegation of authority from the Chancellor: e.g. Presidents
- Some of these "others" are allowed to delegate to "others": e.g. Presidents delegating to CFO



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Contract Supervisor (2)

What is the Role of the Contract Supervisor?

Takes **responsibility** and **ownership** of the:

- Procurement process (determining if the transaction is subject to competitive bid process, or should be, and acting accordingly);
- Contract documentation (Initiating, during and conclusion)
- Understandings, intentions and obligations each party is making to the other party;
- Terms and conditions outlined in the contract, and/or the statement of work to be performed and the delivery schedule for that work, deciding if work is satisfactory, or unsatisfactory
- Determining appropriate compensation/payments; and
- Benefit to Minnesota State's stakeholders, including colleagues, leadership and any individuals Minnesota State serves.



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Contract Supervisor (3)

A good Contract Supervisor will stop and ask:

Should we be doing this contract?

- Is this a good use of tax payer money?
- Is this related to our mission and to benefit Minnesota?
- Is this truly necessary?
 - Is there an employee who should or could be doing this instead?
- Could this cause unfavorable scrutiny or reputational harm?
- Is a funding mechanism in place for need? (now and duration of service)?
- Ask, WHY, are you doing this (*Want* v. *Need*)



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Encumbrance

Funds must be encumbered prior to making an obligation

- Minn. Stat. Ch. 16A15, Subd. 3
- Minnesota State Procedure 5.14.2, Part 4

An employee authorizing or making the payment, or taking part in it, may be liable to the state for the amount paid

A knowing violation of Minn. Stat. Ch. 16A.15, Subd. 3, is just cause for the employee's removal.



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Business Decisions

What are they?

A business decision is a decision as to whether or not something is "good" business.

This includes a



Examples of a Legal Decision

The other party requests that the contract be subject to the laws of another state or country, and by signing the contract Minnesota State agrees to another state's law.

Any disputes will be decided by binding arbitration.



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