

## 1. Purchasing

The Regents affirm that the best interests of the State of Iowa and the Regent institutions are served through implementation of a fully competitive purchasing system.

### A. Authority

- i. The Board of Regents is authorized by statute to contract for goods, services, and capital improvements. ([Iowa Code Chapter 262](#) and §§[8A.122](#) and [8A.302](#); capital improvements are addressed in Chapter 2.3 of this Policy Manual.)
- ii. The Board delegates authority to approve agreements and contracts for all goods and services purchased by the institutions, except for capital improvements, fire protection, legal services, and engineers. ([681 IAC 8.2\(3\)](#))
- iii. Remedies for breach of contract shall be in accordance with [Iowa Code Chapter 554](#).

### B. Organization

- i. The Board Office and institutions shall meet regularly to ensure coordination of purchasing policies and procedures.
- ii. The Regents Chief Operations Officer (COO) position will be responsible for setting the direction and prioritization of sourcing initiatives across the five Regents.
- iii. Each institution shall appoint a designee from the Purchasing Department to be a member of the Procurement Council.
- iv. The COO along with Procurement Council will be responsible for ensuring the coordination of regent strategic sourcing activities as well as the monitoring of compliance with campus utilization of the resulting master agreements.

- v. Goods and services are purchased through the institutional purchasing designee, on the basis of competitive procedures and vendor negotiations. Such purchases need not be reported to or approved by the Board of Regents, provided that the Director of Purchasing/Manager of Purchasing has determined that there is no unusual circumstance which requires the special attention of the Board and provided the purchase does not involve a lease which must be approved or reported.

Policies related to capital projects, including bidding, bid security, selection of architects/engineers for Regent institutions are in Chapter 2.3 of this Policy Manual.

### C. Policies and Procedures

- i. Competitive Bid Thresholds: Each Regent institution, through an institutional purchasing department, shall be responsible for purchasing goods and services in compliance with all applicable state and federal laws and regulations. Institutions may delegate purchasing responsibility to departments. Low dollar procurement authority may also be delegated to institutional units through the use of credit cards or other appropriate procurement instruments, consistent with prudent, contemporary business and audit practices.
  - a. Regent Master Agreements shall be used whenever possible. Exceptions to the use of such agreements must be supported with sufficient justification – ie. Lower price, emergency need, etc.
  - b. Iowa State University will process purchases of \$15,000 or more for the special schools.
  - c. Purchases less than or equal to twenty five thousand dollars (\$25,000) may be delegated to individual department purchasers.
  - d. Purchases of goods and services between twenty five thousand and one (\$25,001) and fifty thousand (\$50,000) per transaction, may be purchased through an informal competitive bid with an adequate number of vendors.
  - e. Purchases of goods and services over fifty thousand dollars and above, shall be purchased through a formal competitive bid process.

- ii. Equipment Procurement:

Equipment purchases, except those included in a capital project, are subject to the following review procedures prior to the issuance of a purchase order or any other purchase commitment by the institution.

- a. Equipment with a unit cost of less than \$1,000,000, will be purchased by the Director of Purchasing of each institution, acting through the purchasing agent, as outlined in section C of this chapter.

- b. Equipment with a unit cost greater than \$1,000,000 and less than \$2,000,000 will be submitted to the COO for approval.
  - c. Equipment costing more than \$2,000,000 will be submitted to the COO for approval. At the discretion of the COO, the equipment purchase may be submitted to the Board for approval.
  - d. The COO will provide a summary of all equipment purchases of \$1,000,000 or more to the Board on a quarterly basis.
- iii. Purchases Exempt From Competition:
- a. Emergency Purchase - An emergency includes but is not limited to one of these conditions:
    - 1) In which an immediate or emergency need exists for the item or service because of events and circumstances not reasonably foreseeable.
    - 2) Critical to sustaining patient care or human life, maintaining critical equipment or services, or similar.
    - 3) In which there is a need to protect the health, safety, or welfare of persons occupying or visiting a public property.
    - 4) In which an institution must act to preserve critical services or programs.
    - 5) Purchases that are considered time sensitive and would result in increased costs due to delay or the inability to continue to provide necessary services to patients, students, public, etc.
    - 6) Each institution will submit a quarterly summary of emergency purchases over \$50,000 to the COO.
  - b. Sole Source Purchase - In some instances equipment, supplies or services may be required which are obtainable only from a sole source. Sole source purchases must be documented and reviewed/approved by the institutional purchasing designee.
  - c. Negotiation - Competitive and non-competitive negotiation may replace competitive bidding when in the best interest of the institutions. Justification for such use must be documented and available upon request.
- iv. Evaluation and Award Process
- a. Each institution will evaluate and award based on pre-defined criteria.

- b. Scoring and assignment of points will be done in a consistent and defensible manner to ensure the integrity of the process. Both objective and subjective criteria may be used.
- c. The names of the bidders and the amounts bid shall be supplied once the evaluation of the bids is completed and the award is made via a formal request for information. Information will not be released in situations in which the release would provide a competitive advantage to any of the bidders.
- d. Nothing contained in these conditions shall be construed to mean that the lowest priced goods or inferior or substandard goods must be purchased. The Regent institutions are to purchase goods at the lowest cost consistent with the quality and service required.
- e. Should a buyer recommend an award to other than the low compliant and responsible bidder, a review of the recommendation shall be conducted by the institutional purchasing director or designee including a documented rationale for the recommendation. It shall be the responsibility of the chief business officer or his/her designee to monitor the low bid rejections.
- v. **Withdrawal of Bids.** Bids may be withdrawn prior to the time set for receipt of bids. Bids shall not be withdrawn after that time, except as noted herein, without penalty. Only in the event of an obvious and documented error where it would be a manifest injustice to require the vendor to perform, can a vendor withdraw a bid after the time set for receipt of bids. Such withdrawal of bids can be done only upon the recommendation of the institution under procedures approved by the CPO/COO.
- vi. **Bid Security.** Regent institutions have discretion to use bid security as an incentive to vendors to enter into contractual requirements.
- vii. **Iowa Prison Industries.** Regent institutions are encouraged to include Iowa Prison Industries in competing for Regent's business.
- viii. **Iowa Products.** All state agencies shall use those products produced within the State of Iowa when they are of a quality reasonably suited to the purpose intended and can be secured without additional cost over foreign products or products of other states. ([I.C. §73.1](#))
- ix. **Targeted Small Business.** It is the policy of the Board of Regents, State of Iowa to provide contract opportunities to targeted small businesses. All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to targeted small businesses. ([681 IAC7.7](#))

- x. Professional Service Contracts.
  - a. "Professional service agreements" are contracts for unique, technical and/or infrequent functions performed by an independent contractor qualified by education, experience and/or technical ability to provide services. In most cases these services are of a specific project nature, and are not a continuing, on-going responsibility of the institution. The services rendered are predominately intellectual in character even though the contractor may not be required to be licensed. Professional service agreements may be with partnerships, firms or corporations as well as with individuals.
  - b. Selection of a Provider. Professional service agreements for greater than \$50,000 must be selected through a competitive Request for Proposal (RFP) process unless the service is a sole source purchase that is appropriately documented and approved by the COO. The \$50,000 threshold is not based on a one-time cost, but rather on a cumulative cost for on-going services under the terms of the project engagement or extension of the project engagement. Professional service agreements, which are less than \$50,000 over the course of service, may be entered into without using the required competitive bidding process. Total payment to a professional services provider for services provided to any one university department may not exceed \$50,000 in a fiscal year, unless subject to competitive bidding or review and approval by the institutional purchasing department and COO. Selection of a professional service provider shall be based on a variety of criteria including, but not limited to, demonstrated competence, knowledge, references and unique qualifications to perform the services, in addition to offering a fair and reasonable price that is consistent with current market conditions. Additional criteria may be used as appropriate to the circumstances.
  - c. Provider Accountability. Work requirements should clearly define all performance objectives, work expectations, project milestones, and specific final deliverables and hold the contractor accountable for successful completion of the resultant agreement. Requirements may include, but not be limited to, reports, training sessions, assessments, evaluations or other tangible services.
  - d. Provisions of Professional Service Agreements. The following terms and conditions must be addressed:
  - e. Performance Requirements. Performance requirements should be precise and written in such a way that it can easily be determined if and when the contractor has successfully fulfilled his/her obligations under the Agreement. Consequences for noncompliance such as non-payment and/or termination of the contract must also be defined. Scheduled due dates that specify milestone targets must be clearly identified and may include, but not be limited to, regular meetings scheduled to evaluate progress, identification of problem areas to determine actions to be taken to resolve any concerns, dates for formal written reports, required oral progress reports, and contract monitoring requirements.

- f. **Period of Performance.** The resultant agreement must specify a start date and a completion date. While there may be exceptions, in most circumstances an end date to the agreement will be required. If an end date cannot be determined, a maximum time limit or maximum number of hours must be stated. Agreements with organizations are typically written for a specific term of successive years. In some instances, these agreements are annually renewable. Other provisions of an agreement may include a renewal clause beyond the original term of the agreement. Extended term agreements for individuals are discouraged.
  - g. **Compensation and Payment.** Compensation and payment terms include elements relating to cost and payment, such as maximum cost, (i.e. not to exceed cost), cost per deliverable, hourly rates for individuals providing services, number of hours required, allowable expenses and total authorized for expenses, payment and invoicing procedures. Compensation and payment terms should also include a statement as to whether the Regent institution will pay expenses incurred by the contractor and if so, which ones. Such expenses may include, but not be limited to, airfare (economy or coach class), lodging and subsistence necessary during periods of required travel; expenses incurred during travel for telephone, copying and postage, and private vehicle mileage. If other types of expenses are allowed, they must be clearly defined.
  - h. **Performance Monitoring.** The institution shall monitor the compliance with the terms and conditions of the agreement and applicable laws and regulations.
  - i. **Provision of Liability.** The provider may be required to show proof of insurance coverage and workers compensation in compliance with statutory requirements, in the form specified by the institution.
- xi. **Qualified Vendors of Goods and Services**
- a. Each institutional purchasing department shall maintain an electronic master list of prospective suppliers. Any person, agency, or firm wishing to supply goods or services may request to be added to the institutional master vendor list. The name is added to the institutional master list if, in the professional judgment of the Purchasing agent, the addition would aid in fostering a competitive situation. The Purchasing agent may require the requesting party to furnish information on qualifications to supply the item(s) indicated and financial responsibility prior to determining whether to add a vendor's name to the institution's master list.
  - b. **Exceptions to Policy:** Third party bid subscription services, who themselves do not supply goods or services utilized by Regent institutions, are not approved vendors.

- c. Nonresponsive and Nonresponsible Vendors - Once a supplier is added to the master list, the name shall not be removed from the list by an institution except for good and sufficient reasons. Removal for cause is not to exceed three years, except upon specific authorization of the COO. Each institutional purchasing designee shall report such vendors to the COO. Reinstatement requires application to the institution. Such reasons shall include, but not be limited to, the following:
  - 1) Delivery of goods and services that do not comply with specifications;
  - 2) Refusal to deliver after submitting a quotation, bid, or proposal and after receiving an order;
  - 3) Withdrawal of quotations, bids, or proposals prior to the placing of an order;
  - 4) Failure to comply with state and federal laws and regulations;
  - 5) Illegal purchasing practices;
  - 6) Consistent failure to respond bid opportunities requested in the last consecutive two-year period;
  - 7) Failure to timely cure contract compliance issues;
  - 8) Removal from an institutional master list of another Regent institution.

#### xii. Vendor Appeal Procedures

The following procedures shall be used by any Vendor who wishes to file a complaint regarding a Purchasing action made pursuant to Chapter 2 of this policy manual, with the exception of disputes involving the terms, conditions, obligations and interpretations of executed contracts or purchase orders; including, but not limited to, change orders. If an executed contract or purchase order contains a dispute resolution clause, that clause shall apply and not the procedure outlined in this section. The filing of a complaint shall not delay the award process if it is determined to be in the best interest of the institution. Failure to raise a timely complaint in accordance with the following procedure shall be deemed a waiver of the right to contest the matter further.

- a. Informal Dispute Resolution with the University Department  
A Vendor who has a concern with a decision made by a Purchasing Agent shall contact the Purchasing Agent within five (5) working days of when the Vendor became aware, or reasonably should have become aware, of the decision or action which forms the basis of the concern. The Purchasing Agent shall discuss the issue(s) with the Vendor in an attempt to resolve the dispute.
- b. Initiation of Complaint to University Administration

- 1) Within five (5) working days of discussing the matter with the Purchasing Agent, a Vendor (hereinafter "Complainant") shall outline the concern in writing to the institutional Purchasing Director or Purchasing Designee.
  - 2) The complaint shall be in writing and shall include the following information:
    - a) Name, address, and contact information of the Complainant;
    - b) Identification of the purchasing action complained of, including the RFQ/RFP number if available;
    - c) A detailed statement of the legal and factual grounds of the complaint, including copies of relevant documents;
    - d) The specific relief requested; and
    - e) Signature of the Complainant
  - 3) Upon receipt of the complaint, the Purchasing Director or Purchasing Designee shall conduct a review of the complaint and render a decision within ten (10) working days. Where information needed for the decision must be obtained from sources outside the Purchasing Department, the university's response may be delayed up to ten (10) additional working days.
  - 4) The Purchasing Director's or Purchasing Designee decision shall be in writing and shall contain the name and contact information of the individual to whom the decision may be appealed.
  - 5) The decision of the Purchasing Director or Purchasing Designee is final unless written appeal is filed with the individual identified in the written decision to receive the appeal. The appeal must be filed within five (5) working days of receipt of the Purchasing Director's or Purchasing Designee written decision, and shall contain the specific grounds upon which appeal is made.
- c. Appeal to University Administration
- 1) Upon receipt of the appeal, the institution's Business Vice President, or his/her designee, shall conduct a review of the written record of the complaint and render a decision in writing within ten (10) working days.
  - 2) Copies of the decision of the institution's Business Vice President, or his/her designee, shall be provided to the Complainant and the institution's Purchasing Director.

- 3) The written decision of the institution's Business Vice President shall be final unless written appeal is filed with the General Counsel for the Board of Regents.
- 4) Should the complaint be affirmed at any stage of institutional review, the institutional representative responsible for reviewing the complaint may, in his/her discretion, grant the requested relief or fashion an alternate remedy as deemed appropriate. The issuance of a specific remedy shall not be subject to appeal under this procedure.
- 5) Copies of any written complaint received by the institution and any decision rendered pursuant to this procedure shall be forwarded to the Office of the Board of Regents.

d. Appeal to the Board of Regents

- 1) Written appeal to the Board of Regents must be filed with the General Counsel for the Board of Regents within five (5) working days of receipt of the final decision of the institution's Business Vice President. The appeal must state the specific grounds on which appeal is made and include copies of all relevant documents and written institutional decisions.
- 2) Upon receipt of an appeal to the Board of Regents, the COO, or his/her designee, shall take steps to assist the Complainant and the Institution in resolving the issue(s)
- 3) If the issue(s) remain unresolved, and in the opinion of the COO the complaint involves serious questions of law or allegations of procedural error having a material impact on the award process, the appeal maybe reviewed by the Executive Director. The Executive Director shall notify the parties in writing of the date on which the appeal will be heard.
- 4) If a right of review is granted, the parties may submit additional written argument for review by the Executive Director. The Executive Director shall notify the parties of the deadline for submission of additional written materials. Oral argument before the Executive Director shall not be permitted.
- 5) Following review and determination by the Executive Director and in consultation with the COO, the appeal may be docketed for the next regularly scheduled Board Meeting. The Board, if docketed, may affirm, reverse, modify or remand all or any part of the final institutional decision. The decision of the Board of Regents is considered final agency action.

### xiii. Cooperative Purchasing

- a. Regent institutions are encouraged to participate in interagency cooperative purchasing agreements. It is the Regents' intent that such cooperative purchasing continue to provide the lowest competitive price consistent with quality and service requirements of Regent institutions.
- b. Regent institutions may purchase from state central purchasing contracts if it is in the best interest of the institution.
- c. State agencies, by prior agreement, may purchase items through Regent institutions providing that such purchases shall not jeopardize educational discounts accruing to Regent institutions.
- d. Regent institutions are encouraged to participate in interinstitutional cooperatives with other universities, health care organizations, and similar affinity groups to gain better prices and choices.

### xiv. Reporting

An annual report on purchasing shall be submitted by each institution to the CPO.