

VII BUSINESS PROCEDURES

7.04 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

1. The Board of Regents is authorized by statute to contract for goods, services, and capital improvements. (I.C. 18.3 and Chapter 262)
2. The Board delegates this authority in certain circumstances. (IAC 681-8.2[3])
3. The code excludes the Board of Regents from using the Department of General Services for printing. (I.C. §§18.29 and 18.49)
4. Remedies for breach of contract shall be in accordance with the Iowa Code.

B. Organization and Responsibilities

1. The Board of Regents shall establish policies and maintain oversight of all procurement functions. The Board Office and institutions shall meet regularly to insure coordination of purchasing policies and procedures.
2. Equipment, furnishings, supplies and services are purchased by the chief business officer of each institution, acting through the institutional purchasing director, on the basis of quotations when practical and feasible, with exceptions noted in this chapter. Such purchases need not be reported to or approved by the Board of Regents, provided that the chief business officer 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 IX of this Policy Manual.

3. Each Regent institution, through a central purchasing authority, shall be responsible for purchasing supplies, equipment, and services. 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.

4. Each Regent institution shall establish a purchasing procedure for goods and services.
5. The Iowa Administrative Code allows vendors to charge interest of 1% per month in some situations when a claim remains unpaid after 60 days. This does not apply to claims against the state under Chapters 25 and 669 or claims paid with federal funds. (IAC 681-8.2[4])
6. Targeted Small Business - Purchasing.

All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to targeted small businesses. This rule is intended to implement I.C., §§73.15 - 73.21..
7. The provisions of IC Chapter 551, "Unfair Discrimination," shall not apply.
8. Employees, officers, and members of the Board of Regents shall comply with Regents Conflict of Interest Policy and the I C Chapter 68B, "Conflicts of Interest of Public Officers and Employees."

C. Qualified Suppliers of Goods and Services

1. Each purchasing officer shall maintain a master list of prospective suppliers and utilize this list to request, when practical and feasible, three or more quotations for each item to be purchased.
2. Any person, agency, or firm wishing to supply materials in a category may request, in writing, that its name be added to the master list. The name is added to the list if, in the professional judgment of the purchasing officer, the addition would aid in fostering a competitive situation. The purchasing officer may require the requesting party to furnish information on qualifications to supply the item(s) indicated and financial responsibility.
3. Nonresponsive and Nonresponsible Suppliers. 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. Such reasons shall include, but not be limited to, the following:
 - a. Repeated delivery of commodities that do not comply with specifications;
 - b. Repeated failure to deliver within the specified time.
 - c. Refusal to deliver after making a quotation and after receiving an order;
 - d. Repeated withdrawal of quotations prior to the placing of an order;

- e. Failure to have qualified service available in the area to set up, check out, or instruct personnel in use of equipment or failure to have parts to service equipment, if a part of the agreement or warranty, written or implied;
 - f. Bankruptcy or other evidence of insolvency, or any other fact which might cause substantial doubt about the supplier's ability to continue as a responsible source and fulfill obligations;
 - g. Failure to comply with the Regent Equal Employment Opportunity Policy. Removal shall be on recommendation of the Regent Compliance Officer;
 - h. Illegal purchasing practices;
 - i. Repeated failure to respond to requests for prices;
 - j. No longer in business;
 - k. No bids or orders issued in the last consecutive two-year period; or
 - l. Failure to timely cure one or more noncompliant deliveries.
 - m. Removal from an institutional master list of another Regent institution.
4. Except for removal under items i, j, or k above, names of suppliers removed shall be sent to the Board Office with cause noted. An interinstitutional list shall be maintained and circulated by the Board Office.
 5. Removal for cause is not to exceed three years, except upon specific authorization of the Board. Reinstatement requires application to the institution.
 6. A vendor may appeal removal through a written request to the executive director once institutional procedures have been exhausted. The executive director shall establish a review procedure for such requests and make recommendations to the Board.

Vendor Appeal Procedures

Vendor appeal procedures are currently under revision and will be moved to the Iowa Administrative Code.

- a. A vendor who wishes to appeal removal from a Regent institution's qualified vendor list shall, initially, attempt to resolve the issue at the institutional level.

- b. If the vendor is dissatisfied with the institution's response, the vendor may notify the executive director in writing of the vendor's dissatisfaction and request Board Office assistance.
 - c. The executive director or designee may then take steps to assist the vendor and the institution in resolving the issue(s).
 - d. If the issue(s) remain(s) unresolved, the executive director, at the request of the vendor, may docket the matter for review by the Board. The vendor's written request and supporting information shall also be sent to the institution involved and that institution shall file a written response with the Board Office supporting the institution's position.
 - e. If the complaint is docketed, the executive director will prepare a recommendation for the Board to consider. A copy of the recommendation with notice of the date, time, and place of the meeting for which the matter has been docketed shall be sent to the vendor and the institution within a reasonable time. The recommendation and the Board action shall constitute a final report. (Board of Regents Minutes June 20-21, 1984, pp. 726-727)
7. Any complaints from suppliers received by Board members shall be referred to the Board of Regents Office for investigation. Results of the investigation shall be sent to each Board member.

Copies of any written complaints received by the institution shall also be sent to the Board of Regents Office if there are interinstitutional implications.

Complainants are required to exhaust administrative remedies at the institutional level before making a written request for review to the executive director.

Vendor Complaint Investigation Procedures

Vendor complaint investigation procedures shall follow those procedures established for vendor appeals (8.03F) of removal from Regent institutions qualified vendor lists.

If the complaint is docketed, the results of the investigation shall constitute the basis of the executive director's recommendation. If the complaint is not docketed, the results of the investigation shall be sent to each Board member.

D. Competitive Conditions

The following policies establish the competitive conditions under which Regent institutions shall operate.

1. Competitive Procedures. Each purchasing officer or business manager shall be responsible for establishing procedures to ensure that goods and services are competitively bid. Written bids are required for purchases which are expected to exceed \$10,000 at the universities and \$5,000 at the special schools regardless of the funding source.

Negotiated, noncompetitive, and sole source purchases are recognized by the Regents as proper procurement procedures in appropriate circumstances where the public will be served. Regent institutions shall justify the use of negotiated, noncompetitive, and sole source purchasing procedures upon request.

2. Bidding. Purchasing officers shall use two types of bid solicitations, either formal or informal. The determination of which type of bid to be used shall be at the discretion of the purchasing authority, except as otherwise provided by law or administrative rule.
 - a. Formal Sealed Bid. Public notice is required for formal sealed bidding with a bid opening at a specified place on a scheduled day and at a scheduled time. Sealed bids will be publicly opened and read at the date and time specified in the written notice, unless otherwise indicated in the bid documents.
 - b. Informal Quotation. This is a request for prices or quotations that is mailed, faxed, communicated by telephone, emailed or otherwise delivered electronically by the purchasing department with due date and time noted. There is no public reading of bids or quotations.

Institutional purchasing offices shall provide an opportunity for qualified prospective suppliers to prepare timely bids or quotations.

- c. Bids or quotations are tabulated in the purchasing department. A buyer either makes the award decision or consults with the requesting department for assistance in the decision, particularly when alternate products are offered by bidders.
- d. The names of the bidders and the amounts bid shall be supplied to any person upon request after the opening of the bids and as soon as the evaluation of the bids is completed. Information will not be released in situations in which the release would provide a competitive advantage to any of the bidders. The name of the successful bidder shall be supplied to any person upon request after the award has been made.
- e. 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.

- f. 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 purchasing director or their designee. It shall be the responsibility of the chief business officer or his/her designee to monitor the low bid rejections. The purchasing director shall review bid activity on a quarterly basis.
3. 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 executive director.

Procedure for Withdrawal of Bids

- a. A request to withdraw a bid shall be provided in writing to the chief purchasing officer or designee of the institution taking such bids.
 - b. A vendor is required to provide written documentation of any alleged error.
 - c. Each request for withdrawal will be considered on its own merit.
 - d. An investigation into the request of the vendor to withdraw a bid shall be carried out by the chief purchasing officer or designee, who shall then report and make recommendation for action to the chief business officer of the institution.
 - e. A request for withdrawal of bids shall be made part of the vendor's record.
 - f. Any future request for bid withdrawal by the same vendor may because for removal from all Regent institutions' bid lists as an indication of a nonresponsible supplier.
4. Bid Security. Regent institutions are encouraged to use bid security as an incentive to suppliers to enter into contractual requirements. Regent institutions shall cooperate in establishing a common set of conditions under which bid security is appropriate.

Common Conditions for Use and Reporting of Bid Security

- a. Bid security shall be used in cases where the purchasing agent determines there is a need to protect the interest of the institution. The need for bid security may, in part, be determined by the size of the proposed purchase, the item or items being bid, the competitive conditions surrounding the purchase, and the history of such purchases, including general reliability of vendors being requested to bid a particular purchase.

- b. From time to time, it may be appropriate to require bid security from prospective buyers.

Bid security, when utilized for purchasing, shall follow bid security requirements as set forth in the IAC 681-8.6(2 & 4). .

5. Sole Source Purchases. The Regents recognize that in some instances scientific, mechanical, and technical equipment or supplies or services may be required which are obtainable only from a sole source. This occurs when: a) there is only one person or firm that can provide the requirement; or b) no other known person or firm is available with an equivalent service or supply.
6. Emergency Purchases. The Regents recognize that in some emergency situations the taking of competitive bids or quotations is not feasible or possible. In such situations the requirements to do so may be waived. An emergency includes: a) when life will be endangered; b) property will be destroyed; or c) other specific instances to be approved by the Board Office.
7. Iowa State Industries. Iowa Code documents instances where institutions are exempt from purchasing from Iowa State Industries. I.C. §904.808 Nothing herein shall require Regent institutions to procure items from Iowa State Industries when such items are purchased from Targeted Small Businesses.
8. Iowa Products and Labor. 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 and 18.6)
9. Exclusive Franchises. All purchases of equipment, furnishings, and supplies for which an exclusive franchise is granted, such as laundry equipment including for residence system facilities, vending machines, beverage contracts, and coin-operated equipment are subject to the receipt of bids or quotations
10. 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. Examples of professionals who provide professional services include but are not limited to: doctors, accountants, software

programmers, real estate appraisers, nurses, guest artists, guest entertainers, guest lecturers, guest musicians, guest performers and guest speakers.

- b) Selection of a Provider. Professional service agreements for greater than \$10,000 must be selected through a competitive Request for Proposal (RFP) process unless the service is a sole source purchase that is appropriately documented. The \$10,000 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. Professional service agreements, which are less than \$10,000 over the course of service, may be entered into without using the required competitive bidding process. 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) Contractor Accountability. Work requirements should clearly define all performance objectives, work expectations and project milestones, 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) Terms and Conditions for Professional Service Agreements. The following terms and conditions must be included in all professional service agreements:
 - 1. 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.
 - 2. 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.

3. **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.
4. **Performance Monitoring.** The institution shall monitor the compliance with the terms and conditions of the agreement and applicable laws and regulations.
5. **Provision of Liability.** The contractor shall be required to show proof of insurance coverage and workers compensation in compliance with statutory requirements, in the form of a Certificate of Insurance.

11. Purchase of Insurance

Purchase of insurance and risk management guidelines will be addressed in subsequent revisions to this chapter.

E. Specifications and Standards

Consistent with the Board's purchasing policies and procedures, institutions, when establishing standards and specifications and size of orders for products, equipment and services, shall give due consideration to the ability of Iowa businesses to compete in bidding for those products, equipment or services. The institutions shall continue to observe the goals of quality and economy in purchasing while meeting the needs of the institutions.

1. Specifications shall be prepared to assure that they do not restrict or preclude competition.
2. All requests for bids and proposals for materials, products, supplies, equipment, services and other needed articles to be purchased at public expense shall, whenever possible and practical, be made in general terms and be general specifications rather than be brand, trade name, or other individual mark. Brand names and numbers, when used, are for reference purposes and indicate the character or quality desired. If

brand names are used, the specifications shall contain an "or equal" or "or acceptable alternate" clause. The chief purchasing official shall determine what is an acceptable alternate.

3. Recognition is also given to standardization and compatibility requirements which should be maintained for purposes of economies in replacement and maintenance.
4. Life cycle cost and energy efficiency shall be included in the criteria used by institutions under the Board of Regents in developing standards and specifications for purchasing energy consuming products. "Life cycle cost" means the expected total cost of ownership during the life of a product.

Preference shall be given to purchasing American-made products and purchases from American-based businesses if the life cycle costs are comparable to those products of foreign businesses which most adequately fulfill the institution's need. (I.C. §18.3)

Iowa Code addresses purchasing paper and other recycled products. (I.C. §18.18)

5. Standard terms and conditions, contained on request for bids, quotations, and purchase orders, are intended to ensure that all the basic considerations relevant to the agreement are covered. For purposes of internal consistency all Regent institutions shall standardize general terms, conditions, and titles of procurement documents which are attached or affixed, including but not limited to exclusive agreements between parties, acceptance agreements between parties, acceptance conditions, guarantees and warranties, rights of inspection, termination, and listing of specific federal regulations.

F. Inspection and Testing

1. When practical and feasible, Regent institutions should test and evaluate all supplies, materials, and equipment.
2. Product association testing reports, independent research laboratories or governmental testing reports may be utilized in evaluation criteria.
3. An inspection of goods shall be performed at time of receipt and/or use.

G. Cooperative Purchasing

1. Regent institutions are encouraged to exchange price information, supplier lists, bidder histories, and standard specifications and to implement interinstitutional purchasing

arrangements wherever practical and feasible so that maximum value can be obtained.

2. 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.
3. Regent institutions are encouraged to purchase from state central purchasing contracts if it is in the best interest of the institution.
4. State agencies, by prior agreement, may purchase items through Regent institutions providing that such purchases shall not jeopardize educational discounts accruing to Regent institutions.
5. 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.

H. Code of Ethics

Regent institutions shall adhere to the professional ethics embodied in the code of the National Association of Educational Buyers.

I. Review and Documentation

1. Prior to awarding a grant or purchase of service contract to a private agency, Regent institutions shall obtain from the auditor of state or the auditor's designee a certification stating that the grantee or contractor has an accounting system adequate to effect compliance with the terms and conditions of the grant or contract. The certification shall include an evaluation of internal controls in the accounting system to determine whether the system provides reliable information and promotes efficient operation of the agency. (I.C §11.36)

A private agency awarded a grant or purchase of service contract by or through the Governor or a state agency shall submit to the audit required by this section prior to the actual transfer of funds and shall pay for the audit under I.C Chapter 11. The auditor of state may accept an audit report by an independent certified public accountant as evidence of adequacy. To the extent possible, the auditor of state shall use existing records on file in the auditor's office to make a determination of adequacy.

2. An annual report on purchasing shall be submitted by each institution to the Board Office. A joint report shall be docketed for Board information annually.
3. A report on purchases from Regent employees shall be submitted by each institution as part of the institution's annual purchasing report to the Board.
4. Each Regent institution shall maintain a purchasing policy and procedure document.
5. Each Regent institution shall be custodian of its purchasing records, including but not limited to purchase requisitions, requests for quotations, purchase orders, vendor correspondence and related documents and shall maintain such records in accordance with applicable state law.

J. Surplus Property Disposal

1. Regent institutions will establish surplus property disposal procedures to insure items defined as surplus by departments are placed within the institution to the extent feasible.

2. After confirming requirements of original funding source, items declared surplus and not placed within the institution may be disposed of in one or more of the following ways:
 - a. Use as a trade in;
 - b. Transfer to another Regent institution or state agency;
 - c. Sell to highest bidder after soliciting three or more bids;
 - d. Auction to the highest bidder;
 - e. Sell internally through surplus sales open to the public;
 - f. Dismantle for parts utilization; and
 - g. Scrap if no other value can be determined.

K. Equipment Purchases

Definitions:

1. Moveable equipment is defined as any moveable property valued as per this chapter of this Policy Manual which is identifiable, and is not a replacement part, and is of a use, size, and/or shape that permits the attachment of university inventory control number.

Fixed equipment is defined as permanently affixed/installed furniture, fixtures and equipment. Examples include but are not limited to: elevators, kitchen cabinets, laboratory casework, building directories, library shelving, drinking fountains, signage, plumbing fixtures, building mechanical systems, fixed electronic equipment, and fixed theater or classroom seating, as well as other fixtures and equipment installed with the intent of permanent use in that location.
2. Equipment purchases are subject to the following review procedure prior to the issuance of a purchase order or any other purchase commitment by the institution.
 - a. Equipment with a unit cost less than \$250,000 or a total cost less than \$500,000, will be purchased by the chief business officer of each institution, acting through the institutional purchasing agent, as outlined in Section B of this Policy Manual.
 - b. Equipment with a unit cost greater than \$250,000 or a total cost of \$500,000 to \$1,000,000 will be submitted to the Board Office for approval. The Executive

Director will notify the Board of such actions. At the discretion of the Executive Director, the equipment purchase may be submitted to the Board for approval.

- c. Equipment costing more than \$1,000,000 will be submitted to the Board for approval..
3. The Executive Director may approve emergency purchases which exceed \$1,000,000 to be followed by Board notification. Emergency purchases are defined in Section D6.
4. Any request submitted to the Board Office for approval pursuant to sections 2b. and 2c of this policy will include the following information regarding the equipment to be purchased.
 - a. Description of the equipment.
 - b. Justification of the need for the equipment.
 - c. Any known alternatives to the equipment proposed.
 - d. Estimated cost and source of funding.