



PA State System of Higher Education Board of Governors

Effective: October 8, 1998

Page 1 of 6

POLICY 1998-04-A: PROCUREMENT OF GOODS, SERVICES, SUPPLIES, AND CONSTRUCTION

See Also:

Adopted: October 8, 1998

Amended: April 8, 2004

A. Policy

All procurement of goods, services, supplies, and construction for the Pennsylvania State System of Higher Education will conform to the policies, procedures, and statutory limitations published in the Commonwealth Procurement Code, Title 62, Pennsylvania Consolidated Statutes, Title 24; Section XX-A of the Pennsylvania Unconsolidated Statutes, and this policy. The State System will use the provisions contained in this policy to implement the Commonwealth Procurement Code.

B. Background

Act 57 of 1998 and subsequent amendments, known as the Commonwealth Procurement Code (Code), establish the statutory limitations and provisions for all procurement activities for the Commonwealth of Pennsylvania. The provisions of the act apply to the State System as a state-affiliated entity.

C. Purpose

The intent of this policy is to assign specific responsibilities and establish procedures that will be used to implement the Code within the State System.

D. Definitions

The following definitions apply to the State System.

- **Agency Head**—The chancellor is the agency head for the State System, as referenced in the Code.
- **Contracting Officer**—The chancellor, the president of each university, and their designees are designated as contracting officers and, as such, are the only

individuals authorized to procure goods, services, supplies, and construction; enter into and administer contracts; and make written determinations with respect to contracts for the State System.

- **Department**—For those cases in which the State System, by virtue of its status as a state-affiliated entity, is granted similar authority to that assigned to the Department of General Services in the Code, “department” shall mean the agency head.
- **Fiscal Officer or Comptroller**—The chancellor and the president of each university, or their designees will appoint a fiscal officer or comptroller, who will be responsible for reviewing all procurements (except small purchases) for fiscal responsibility, budgetary appropriateness, and availability of funds.
- **Purchasing Agency**—The State System is a purchasing agency as defined in the Code. The chancellor will act as, and assume the duties and responsibilities assigned to, the purchasing agency head.

All other definitions applicable to the procurement of goods, services, supplies, and construction will be as defined in the Code.

E. Authority and Responsibilities of the Chancellor

The chancellor will serve as agency head and carry out the duties and responsibilities of that office as defined in the Code and this policy. These include:

1. Formulate implementing policies and procedures consistent with the Code and Title 24.
2. Delegate contract authority to System contracting officers consistent with System policy.
3. Audit and monitor implementation of the System’s procurement program.
4. Make or authorize others to make emergency procurements as provided in the Code and Title 24.
5. Issue written decisions for all protests in a timely manner as directed in the Code.
6. When deemed appropriate in specific circumstances, issue letters of intent for construction contracts as allowed by the Code.
7. Establish due process procedures for hearing debarment actions and appoint a debarment board to conduct such hearings in accordance with those procedures.

8. Make the final determination for the agency in any suspension or debarment actions and issue written decision.
9. Promulgate procedures for the sale and/or disposal of surplus supplies in accordance with the provisions of Chapter 15 of the Code.

F. Authorities and Responsibilities of State System Contracting Officers

State System Contracting Officers will carry out the duties and responsibilities of that position as defined in the Code and this policy. These include:

1. The chancellor and the president of each university will designate, in writing, signature authority for contracting officers and fiscal officers. Copies of signature authority letters will be submitted and maintained in the office of the vice chancellor for administration and finance.
2. Comply with the provisions of the Code, Board of Governors' policies, and all applicable collateral statutes, including, but not limited to, the Prevailing Wage Act, Separations Act, Steel Act, State Adverse Interests Law, and Ethics Act, when contracting for goods, services, supplies, and construction.
3. Determine the method of source selection and public notice to be given for each contract.
4. Ensure that withdrawals of bids are made in accordance with the provisions of the Code and the basic policy.
5. Determine in writing the conditions justifying procurements made without competition.
 - a. Award a sole-source contract, as defined in Section 515 of the Code, for supplies, services, or construction above the limits defined in paragraphs G.4 and G.5, below, and as provided in Section 515, only after providing a copy of the written determination justifying the use of the sole source to university legal counsel for review and approval as specified in Section 563 of the Code.
 - b. Make an emergency procurement as defined and in accordance with the requirements in Section 516 of the Code. At the earliest possible and practical time in the emergency procurement process, advise university legal counsel of the circumstances dictating the procurement. Upon advisement, forward to the office of university legal counsel for approval an emergency certification justifying the use of the emergency procurement as specified in Section 563 of the Code and a contract for the required emergency services unless such items were secured by purchase order. In cases involving a purchase order,

only an emergency certification need be presented to university legal counsel for approval.

6. Determine the security, payments, and performance bonding required in each contract to ensure appropriate risk coverage for the System consistent with the Code and System policy. Provide copies to any person who makes an application for the copy.
7. Appoint members and constitute selection and negotiating boards for the procurement of design professional services in accordance with the procedures of Policy 1990-07-A or its amendments.
8. Hear and issue findings on claims and/or disputes concerning administration of a contract. This authority does not include decisions for bid protests.
9. Cooperate fully in a timely manner with the Office of the Chancellor in any bid protest, claim, and/or dispute concerning solicitation, award, or administration of a contract.
10. Determine the method of public notice listed in Section 512 of the Code to be given to ensure adequate competition to allow selection of a responder, bidder, or proposer responsive to the requirements of the State System including considerations of cost and other factors. Principles of public notice are provided in paragraph H below.
11. Select any or all methods of public notice listed in Section 512 of the Code, except that a general notice must be given in addition to issuance of invitation for bids to bidders on the solicitation mailing list, and/or when utilizing the pre-qualification provisions of Section 512.
12. Pre-qualify prospective bidders and offerers for particular types of supplies, services, and construction whenever a pre-qualification list is used for the procurement action. The responsive, responsible bidder most successfully meeting the conditions, cost, and other factors defined in the solicitation, must be considered for award even though that bidder was not included in the pre-qualification list.
13. Permit withdrawal of erroneous bids after opening, but before award, because of bid mistakes, as stated in Section 512 of the Code, provided notice of request for relief and supporting evidence to withdraw the bid is made in writing to the contracting officer within two business days after opening the bids.
14. Review the contractor's accounting system to ensure it complies with the provisions of Section 541 of the Commonwealth Procurement Code, whenever selecting a contract type other than a firm, fixed-price contract or an emergency procurement.

15. Award contracts to the responsive, responsible bidder, responder, or proposer (plural in the case of solicitations seeking multiple awards) who best meets the State System's needs in terms of cost and other factors as defined in the solicitation.

G. Other Authorities and Duties

1. In implementing the provisions of the Reciprocal Limitations included in the Code, the State System will use the list of discriminating states prepared and published by the Department of General Services for administering the Reciprocal Limitations provisions.
2. The State System will participate in the Contractor Responsibility Program in coordination with the Office of the Budget and the Department of General Services.
3. The appointed fiscal officer or comptroller of each State System institution, and the Office of the Chancellor for Office of the Chancellor procurements, will review and approve all procurements for fiscal responsibility, budgetary appropriateness, and availability of funds. Also, at his or her option, this officer may serve as a nonvoting member of an evaluation committee for requests for proposals or similar contract bidding, or a selection committee for acquisition of services.
4. In contracts requiring signature by two authorized State System officials, ensure that the individual signing as the contracting officer is a different individual than the one signing as the fiscal officer/comptroller.
5. The provisions of Section 514 of the Code, entitled Small Procurements, will be limited to procurements at the amount published in Policy 1983-02-A: Purchasing, or its amendments.
6. The provisions of Section 514 of the Code, entitled Small Procurements, for construction projects will be limited to procurements up to and including \$10,000, as adjusted annually by the construction cost index published by the Department of General Services.

H. Principles of Public Notice

The following principles of good procurement practices will be considered when determining the public notice to be given for System procurements.

1. Responsiveness
 - a. The objectives and policies of the agency.

- b. Community understanding of purchasing procedures and requirements.

2. Accountability

- a. Compliance with all federal, state, and local laws, statutes, and regulations, and State System and university policies.
- b. The maximum value for each dollar of expenditure sought assertively through the widest possible audience of potential vendors to maximize competition. Competitive practices may be set aside only in the most justifiable circumstances. Collaboration with other universities and public agencies will be pursued to maximize value.
- c. Adequate documentation will be maintained and provided for public review.

3. Fairness and Openness

- a. All competitive suppliers are granted equal consideration as far as state or federal statutes and institutional policies permit.
- b. A reasonable effort is made to make all competing suppliers aware of institutional needs related to the procurement.
- c. Minority/Women Business Enterprises (MBE/WBE) are sought actively to provide them the opportunity to respond to the solicitation in accordance with Policy 1995-02 and System procedures.
- d. Honesty in sales representation is demanded, whether offered by verbal or written statement, advertisement, or a sample of the product.
- e. Business is conducted with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.
- f. Receive consent from the originator of proprietary ideas and designs before using them for competitive purchasing purposes.
- g. Every effort is made to negotiate an equitable and mutually agreeable settlement of any controversy with a supplier. Major controversies are submitted to arbitration or other third-party review, as permitted by the Code and Act 188 of 1982. Personal and institutional gifts or gratuities are not accepted.