



## **System Procedure 5.14.2 Consultant, Professional or Technical Services and Income Contracts for Board Policy 5.14**

### **Part 1. Purpose**

To establish guidelines and authority for the procurement and management of consultant, professional, and technical services contracts, ensuring compliance with Board Policy 5.14 and relevant laws. This procedure outlines the process for contract preparation, approval, and execution within the Minnesota State Colleges and Universities.

### **Part 2. Authority**

Board Policy 5.14 Procurement and Contracts authorizes the chancellor to develop procedures for entering into consultant, professional, and technical services contracts.

### **Part 3. Contracting Authority**

Colleges, universities, and the system office have authority to enter into individual contracts with a Total Contract Value (TCV) of up to \$100,000 without the Vice Chancellor for Finance and Facilities (VC-CFO) approval.

Contracts of any value with a term in excess of five years require approval by the VC-CFO.

Each college and university must develop procedures for entering into contracts in consultation with the system office. Employees and their exclusive bargaining representatives must also be consulted regarding the proposed procedures and must address topics such as employee protection, information availability and reporting, conflict of interest, and renewal restrictions.

### **Part 4. Contract Preparation**

Contracts must be prepared on forms approved by the system office to ensure that they include all state-required contract language. Any modification of forms approved by the system office, or the use of a non-system office form requires the review by system legal counsel and approval of the VC-CFO. System legal counsel includes either the Minnesota State General Counsel's Office or the Minnesota Attorney General's Office.

### **Part 5. Use of E-Procurement System for all Non-Construction Contracts**

All non-construction contracts, agreements, and commitments must be maintained and monitored through the designated e-procurement system. Contracts, along with all relevant documentation, must be completed within, or uploaded into, the e-procurement system.

## **Part 6. Encumbrance**

Funds must be encumbered prior to making an obligation. An authorized employee must certify that the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it. College, university, and system office administration must assure proper authorization is on file for employees charged with encumbering funds. An expenditure or obligation authorized or incurred prior to encumbering funds is in violation of state law and ineligible for payment until made valid and is in violation of Minn. Stat. § 16A15, Subd. 3. 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. § 16A.15, Subd. 3, is just cause for the employee's removal. The State cannot agree to indemnify third parties or hold them harmless (Minn. Stat. § 16A.138; Minn. Const. Art. XI, Sec. 1).

## **Part 7. Prepayment**

Minn. Stat. § 16A.41, Subd. 1, generally prohibits Minnesota State from paying in advance, except as set forth in Minn. Stat. § 16A.065.

## **Part 8. Consultant, Professional, or Technical Services Contract Definition**

A consultant, professional, or technical services contract means any agreement entered into for consultant, professional, or technical services, usually on a short-term basis for a finite period of time, and for one or more specific purposes. These contracts are predominantly intellectual in character, which could include consultation analysis, evaluation, prediction, planning, or recommendation; do not involve the provisions of supplies or materials; and result in the production of a report or the completion of a task.

### **Subpart A. Contracts must generally not exceed five years**

Contracts must contain any amendment information including the amount previously paid. Any contract or amendments to original contracts that a campus or the system office proposes to continue beyond five years must be reviewed and approved by the VC-CFO.

## **Part 9. Single Source**

Single Source designation is applied to an acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service, or construction item. Minn. Stat. § 16C.02, subd. 18.

For proposed single-source contracts with a TCV of \$100,000 or greater, the request form for a single-source exception must be completed and approved by the VC-CFO prior to contract approval. For proposed single-source contracts with a TCV of less than \$100,000, the request form for a single-source exception shall be completed and approved by the institution's chief financial officer.

## **Part 10. Contracts in Excess of \$100,000**

Contracts \$100,000 or greater require system office approval from the VC-CFO. The college or university shall submit a request for VC approval form explaining the need for the contractor, the proposed process to be used in selecting a contractor, estimated cost, and verify that funds are available for paying the contractor. The VC-CFO will review the memorandum and respond in writing.

Contracts requiring VC-CFO approval include consecutive single-year contracts with the same entity and contracts with amendments which, when added together, have a TCV of \$100,000 or greater.

### **Subpart A. Public solicitation**

For contracts with TCV anticipated to exceed \$100,000 in total, request for proposals must be solicited by public notice through publishing a minimum two week notice on a State of Minnesota website or in one or more official newspapers. The official newspaper may be the State Register. In addition to the public notice, requests for proposals may be solicited by directly notifying prospective bidders not less than seven (7) days before the final date of submitting bids. Minnesota State may solicit proposals for those contracts with a TCV under \$100,000.

### **Subpart B. Minnesota Department of Human Rights**

Contracts with a TCV exceeding \$100,000 must not be executed to any consultant, contractor, vendor, or supplier who has not obtained the required certificate or received an exemption.

#### **1. Businesses with more than 40 employees within Minnesota**

Consistent with Minn. Stat. § 363A.36, vendors who intend to bid on any purchases or contracts exceeding \$100,000 and have had on any single working day in the previous twelve (12) months more than forty (40) full-time employees within Minnesota, must apply for a Workforce Certificate from the Minnesota Department of Human Rights. An award exceeding \$100,000 must not be made to vendors who have not obtained this certificate or received an exception.

#### **2. Businesses with more than 40 employees outside Minnesota**

Consistent with Minn. Stat. § 363A.36, 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, must have a Workforce Certificate or must certify that the business is in compliance with federal affirmative action requirements in order to receive a contract award exceeding \$100,000.

#### **3. Equal Pay**

Pursuant to Minn. Stat. § 363A.44 Subd. 8, if the amount of the contract is valued in excess of \$500,000 and the contractor has 40 or more full-time employees in Minnesota or a state where the business has its primary place of business on any single working

day during the prior twelve (12) months, the contractor must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption on the Declaration Page prior to contract execution.

### **Part 11. Contracts \$1,000,000 or greater and less than \$3,000,000**

#### **Subpart A. System Office contracts between \$1,000,000 and \$3,000,000**

The chancellor or chancellor's designee shall consult with the Board of Trustees' Chair and the Chair of Finance and Facilities Committee on all system office contracts with a total contract value (TCV) of \$1,000,000 and less than \$3,000,000. If the contract moves forward to executed status after consultation, it will be reported to the Board at the next scheduled Board meeting. The Chairs can recommend a full Board review after consultation is concluded prior to contract approval.

#### **Subpart B. College and University contracts between \$1,000,000 and \$3,000,000**

The Chancellor or the Chancellor's designee must report any college or university contract with a TCV of \$1,000,000 and less than \$3,000,000 to the Board at the next scheduled Board meeting after the contract has been executed. The Chancellor or the Chancellor's designee can recommend a full Board review if a review is believed to be in the best interest of the system prior to contract approval.

### **Part 12. Contracting with Targeted Group Businesses (TGBs)**

Purchasing practices will include provisions for procurement from small TGBs as set forth in Board Policy 5.14 and System Procedure 5.14.6 and related Policy 5.14.

### **Part 13. Income Contracts including Customized Training and Grants**

Colleges, universities, and the system office may enter into income contracts, including grant agreements other than federal grants or grants from Minnesota state agencies, contracts to provide customized training instruction, or otherwise generate income without additional authorization from the board if such contracts or agreements do not exceed \$3,000,000.

### **Part 14. Intra-Agency and Inter-Agency Agreements, Joint Powers Agreements, and Master Contracts**

Colleges, universities, and the system office must consult with the VC-CFO prior to executing an income contract exceeding \$3,000,000 or five years. Consultation must also occur prior to execution of any income contract that concerns uses in general obligation or revenue fund bond-financed property.

Federal grants or grants from Minnesota state agencies do not require prior approval by the board or consultation with the VC-CFO.

## **Part 15. Restrictions**

### **Subpart A. Contracts with law firms or lawyers**

Only Minnesota State legal counsel has the authority to represent the state. Colleges, universities, and the system office may enter into contracts with a law firm or a lawyer for non-legal services, subject to review by system legal counsel and approval of the VC-CFO and system legal counsel. The following language must be included in any contract with a law firm or a lawyer for non-legal services: "Contractor's duties do not include providing legal services to the state within the meaning of Minn. Stat. § 8.06."

### **Subpart B. Contracts for banking services and banking-related services**

Minn. Stat. § 16A.27 gives to the commissioner of Minnesota Management and Budget the authority to "control the amount and manner of deposit of state funds." The system office, colleges, and universities must work with Minnesota Management and Budget when seeking any services related to the handling of state funds, banking, or banking services. The VC-CFO must be consulted prior to execution of any banking services contracts. Colleges, universities, and the system office must re-bid bank services at least every ten (10) years.

### **Subpart C. Contracts for audits with a public accountant**

Minn. Stat. § 3.972, Subd. 3, places a restriction on contracting with public accountants for audits. Contracts with a public accountant for an audit, except a contract negotiated by the state auditor for an audit of Minnesota State, must provide the legislative auditor with a copy of the final report of the audit upon completion of the audit. Board Policy 1A.2 requires board approval of audit firm contracts under certain circumstances.

### **Subpart D. Employer-employee relationship**

A contract must not establish an employer-employee relationship as defined in Internal Revenue Service rules.

## **Part 16. Code of Ethics**

All Minnesota State employees engaged in contracting and purchasing are subject to Minnesota law applicable to state employees, including Minn. Stat. §§. 15.43, 43A.38, 43A.39 and System Procedure 1C.01.

## **Part 17. Accountability**

The chancellor for the system office and the president of each college and university shall designate an employee who will have overall responsibility for complying with state and federal laws, board policy, bargaining agreements, and systemwide procedures for all consultant, professional, and technical contracts.

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## Procedure History:

*Date of Implementation: 07/28/1996*

*Date of Adoption: 07/28/1996*

*Date of Last Review: 05/09/2024*

### *Date and Subject of Amendments:*

05/09/2024 – Amended to include several significant changes and updates:

1. **Adjustment of Contract Value Threshold for Sourcing Events:** The threshold for the total contract value necessitating a sourcing event (e.g., request for proposals, bids, information, etc.) has been increased from \$50,000 to \$100,000.
2. **Board Consultation Requirements:** New stipulations have been introduced that require Board consultation for all system office contracts valued between \$1,000,000 and \$3,000,000.
3. **Mandatory Use of E-Procurement System:** There is now a requirement for the utilization of an approved e-procurement system for all non-construction contracts.
4. **Clarification on Single Source Contracting Exceptions:** The procedure now includes clearer guidelines for the use of single source exceptions in contracting processes.
5. **Audit Contract Requirements Update:** The requirements for audit contracts have been revised to follow the new legislative mandates specified in Minn. Stat. § 3.972, Subd. 3.
6. **Addition of Definitions for Enhanced Clarity:** To improve the understanding and interpretation of the procedure, additional definitions have been integrated.
7. **General Procedure Modifications:** Various modifications have been made to enhance the clarity and applicability of the procedures.

05/17/2016 - Amended title to include income contracts. Amended to comply with policy requirements in Policy 5.14. Amended Part 5 to prohibit pre-payments except allowable in Minn. Stat. § 16A.065. Amended Part 6, Subpart B to require single source exception form. Amended Part 9 to require consultation with the vice chancellor-chief financial officer prior to executing an income contract exceeding \$1,000,000 or five years and contracts of any value involving bond financed property. Other formatting changes throughout for consistency with other policy and procedures.

Additional HISTORY