

Ohio Department
of Administrative Services

Ohio**DAS**

**State of Ohio
Procurement Handbook
for Supplies and Services**



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Foreword...

Each fiscal year, state agencies spend more than two billion dollars to purchase supplies and services that are necessary for their daily operation. Purchases range from computers to vehicles to uniforms to food.

Although procurement of supplies and services may appear to be as simple as placing an order with a local supplier, agencies must be aware of Ohio laws that govern the process. Laws place significant penalties upon the individual when purchases are made outside of the established policies and procedures. These laws, policies and procedures may be intimidating to both the novice and the seasoned procurement professional.

A good procurement system balances *fairness, value, accountability, and flexibility*. Vendors competing for state business want equal opportunity and *fairness* in the awarding contracts. State agencies stretching their budget dollars want the best *value* and lowest price. Taxpayers want *accountability* to ensure that their hard-earned tax dollars are spent wisely and ethically. And purchasers want the *flexibility* to use their best judgment and experience to accomplish all of these.

Procurement is both art and science. This Handbook attempts to capture the science: laws, procedures, thresholds, and other objective guidance. That being said, there is no attempt made to capture the “art” of common sense. For every guideline, it is not difficult to formulate an exception where the rule may not seem to apply. For these cases, agencies are encouraged to contact the respective procurement offices of the Department of Administrative Services for further guidance.

This Handbook is specific to Ohio law and is designed to supplement generally accepted procurement practices. The Handbook should be considered a living document that will be updated to reflect the needs of state agency customers. For those agencies who prefer an electronic version, DAS will maintain the Handbook at its website at the following address:

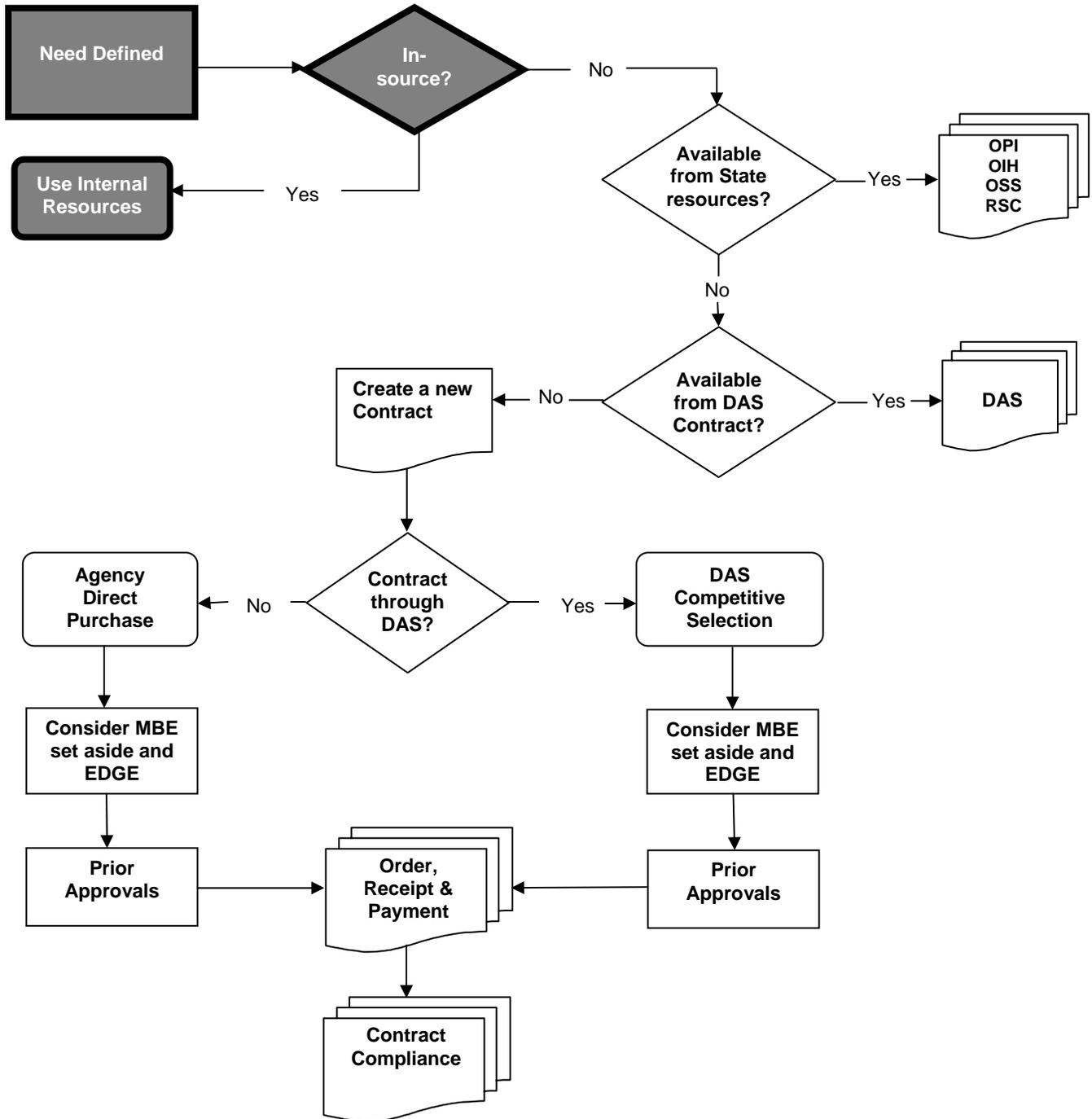
http://procure.ohio.gov/pdf/pur_procmanual.pdf

We encourage your input in continuing to improve this document.



1.0 Overview

You are now at the first step in making a purchase – defining your need and if the need can be met by using internal or external resources. In this chapter you will receive guidance on how to define your need and what you should consider when using internal or external resources to supply the need.



1.1 Preliminary Definition of Need

The first step in any procurement is to define what is needed, when it is needed, and in what quantity. It is the responsibility of the buyer to review specifications, locate a supplier and have the product or services delivered within required time frames and at competitive prices. The success or failure of this effort will determine if the agency is able to meet its daily operational needs and remain within budget.

Where does one begin to locate a supplier and obtain the products or services being requested? The first inclination may be to pick up a telephone and begin calling known suppliers. There are times, however, when this approach results in incorrect items, delays and additional costs to the agency. If the need is urgent, price and quality may also be sacrificed in an effort to meet the urgency of the need.

Buyers must be aware of these issues and give thoughtful consideration to the procurement to ensure the need is met correctly. Although not all inclusive, questions that a buyer should ask include:

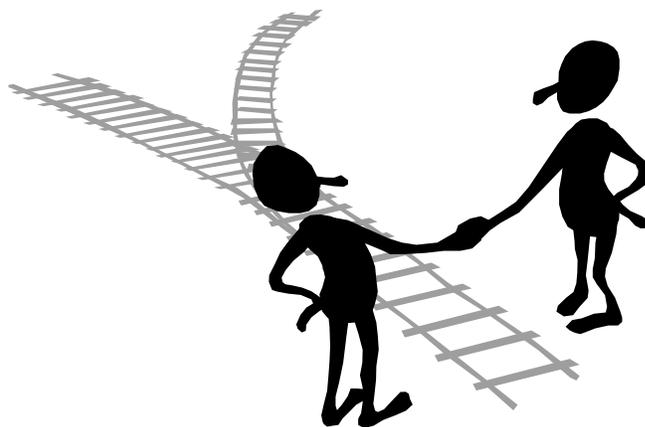
- What types of supplies or services are being requested?
- What is the time frame for providing the supplies or services to meet the need?
- Will the item or service be required beyond this purchase? If so, how often?
- What is the dollar value of the required supplies or services?
- Will it be necessary to write specifications?
- Can recycled content items be used to meet the need?

1.2 In-Source or Out-Source Decision

Once the need is defined, consideration should then be given as to who will supply the item or provide the service. Generally, most supplies, materials and equipment are purchased from vendors who are manufacturers or distributors of the particular item being sought. In some situations, services may be obtained through the use of agency internal staff and resources. The purchasing staff must be cognizant of the existing labor contract that addresses issues of subcontracting work inside or outside of the agency.

The purchasing staff and agency management should review the subcontracting requirements of the current OCSEA contract. If the union desires to offer a proposal to meet the service needs of an agency, care should be taken to perform an "apples to apples" comparison to insure fairness to all parties.

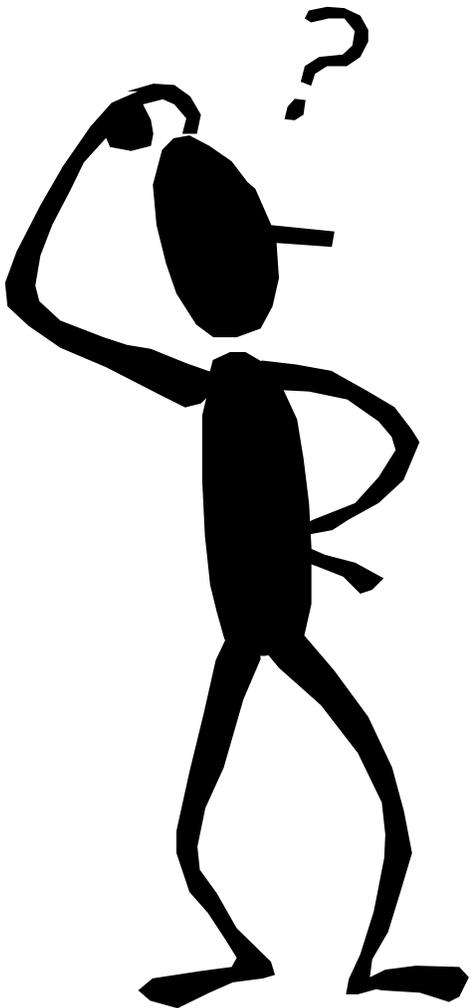
The purchasing staff and agency management should consider these, as well as any other relevant criteria, when making a decision to use internal resources or to outsource. If the decision is made to use internal resources, the purchasing staff may continue to be involved in any outside purchases necessary to accomplish the project. The decision to use internal resources or to outsource should be made **prior** to any actual procurement efforts being initiated with private businesses.





Required State Resources

Chapter 2



Ohio Penal Industries

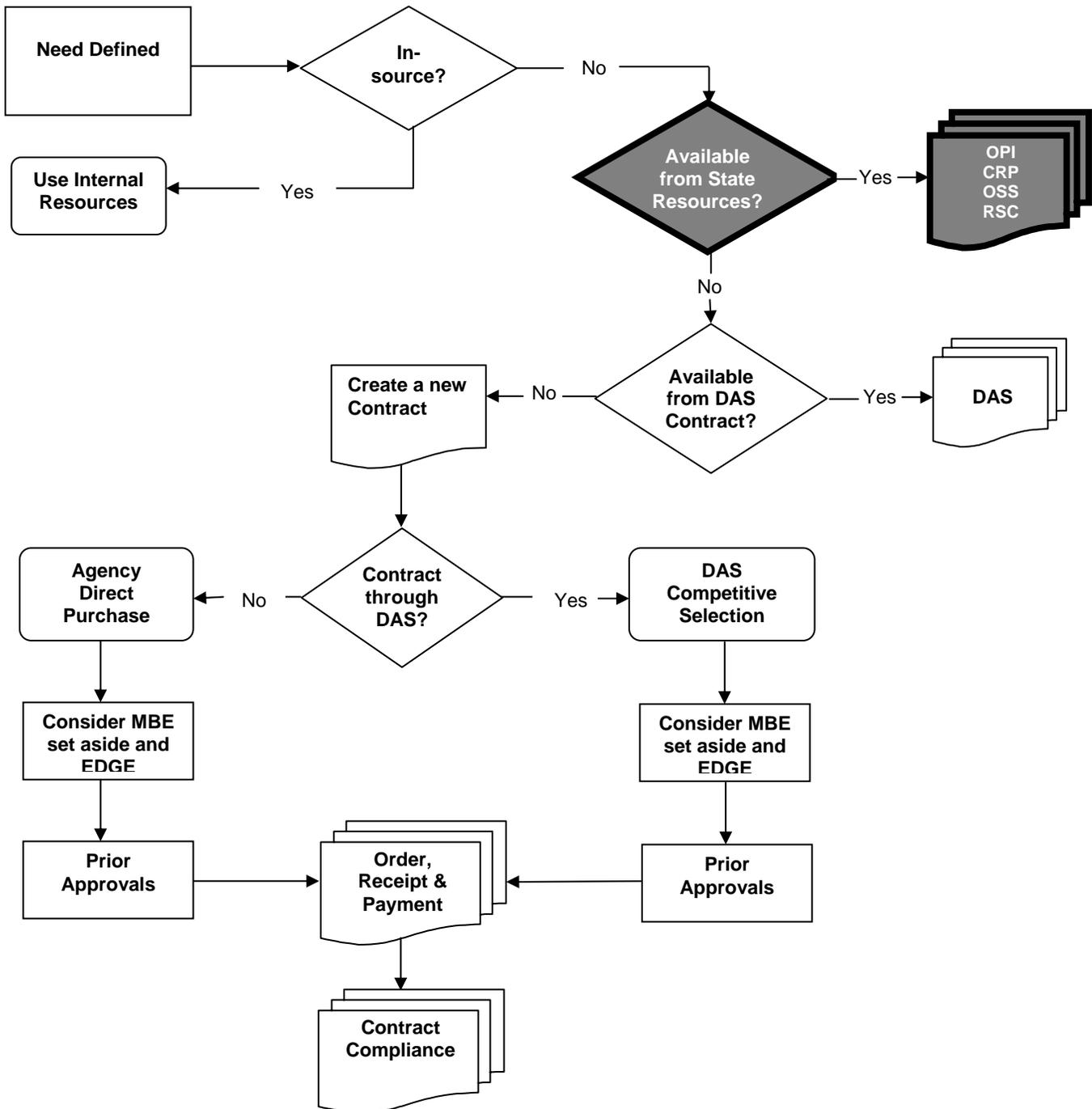
*Community Rehabilitation Program
(State Use)*

DMH - Office of Support Services

Rehabilitation Services Commission

2.0 Overview

Before an agency may proceed with purchases of certain types of supplies or services, they must first consider availability from State resources. These sources of supply are defined by law and are described in this Chapter.



2.1 State Resources

The Ohio Revised Code (ORC) requires that certain state organizations receive first consideration on certain types of supplies and services. Agencies must first check whether these organizations have the **capability** of meeting their need, either through existing contracts, or new contracts that can be created to meet the need:

Department of Rehabilitation and Corrections (DRC)

- Ohio Penal Industries (OPI)
- Laboratory Services Division

Department of Administrative Services (DAS)

- Community Rehabilitation Programs (CRP), currently administered through OIH, Inc.

Department of Mental Health (DMH) Office of Support Services (OSS)

- Food Services Division/Central Warehouse
- Pharmacy Services Division

Rehabilitation Services Commission (RSC)

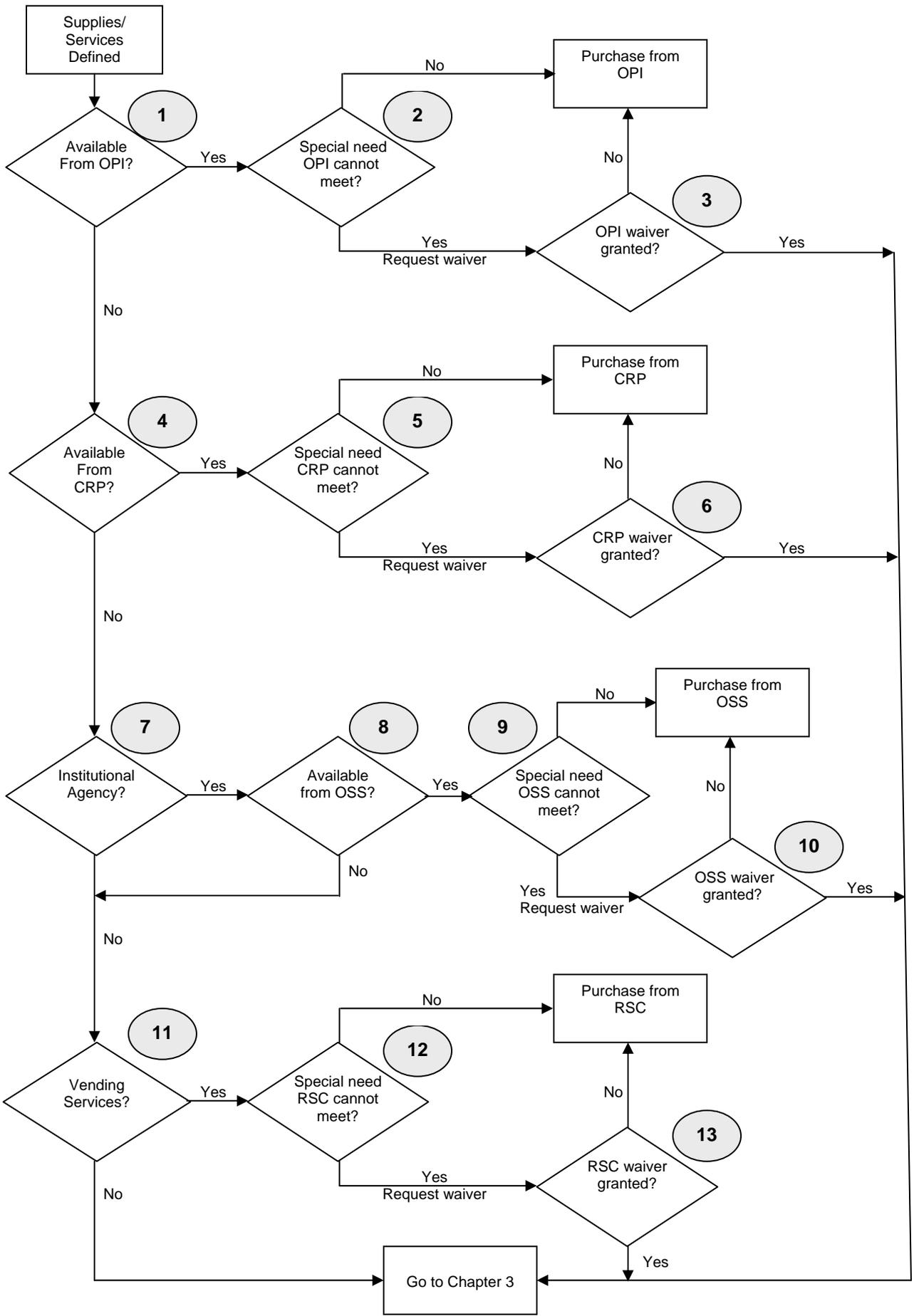
- Bureau of Services for the Visually Impaired, Business Enterprise Program (BEP)

Thirteen questions

For simplicity, the process can be reduced to thirteen questions that are summarized below and in the corresponding flow chart.

No.	Questions	If yes ...	If no ...
1	Available from OPI?	Go to 2	Go to 4
2	Special need OPI cannot meet?	Request waiver, go to 3	Purchase from OPI
3	OPI waiver granted?	Go to Chapter 3	Purchase from OPI
4	Available from CRP?	Go to 5	Go to 7
5	Special need CRP cannot meet?	Request waiver, go to 6	Purchase from CRP
6	CRP waiver granted?	Go to Chapter 3	Purchase from CRP
7	Are you an institutional agency?	Go to 8	Go to 11
8	Available from OSS?	Go to 9	Go to 11
9	Special need OSS cannot meet?	Request waiver, go to 10	Purchase from OSS
10	OSS waiver granted?	Go to Chapter 3	Purchase from OSS
11	Are you procuring vending services?	Go to 12	Go to Chapter 3
12	Special need RSC cannot meet?	Request waiver, go to 13	Purchase from RSC
13	RSC waiver granted?	Go to Chapter 3	Purchase from RSC

If a waiver is granted in any of these cases, the next step is to check DAS sources, covered in Chapter 3.

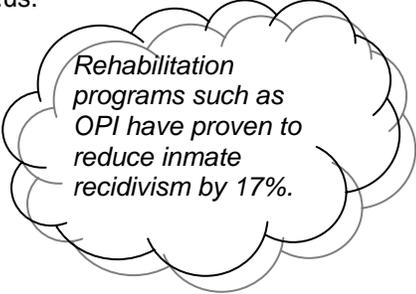


2.2 Ohio Penal Industries (OPI)

OPI, a division of the Department of Rehabilitation and Correction, was created to provide work-training programs for inmates housed at the various prison facilities. OPI offers a variety of products and services, such as furniture, seating, office systems, signage, auto repair and moving services.

State agencies must give first consideration to products and services offered by OPI. State law requires that state agencies purchase through OPI if OPI can meet the state agency need. In the event of an emergency or a special need, OPI may grant a waiver to the agency to purchase items elsewhere. Complete catalogs of the products and services are available directly from OPI, or on-line at www.opi.state.oh.us.

Agencies may purchase from OPI without dollar limitation, provided that approved funds are available to support the purchase. Purchases from OPI are not applied to an agency's annual cumulative threshold for Controlling Board.



Rehabilitation programs such as OPI have proven to reduce inmate recidivism by 17%.

Questions & Answers

Q: Are there any dollar limitations when buying from OPI?

A: No, agencies may purchase without dollar limitation provided that sufficient funds are available. Purchases from OPI will not be applied to your cumulative annual threshold for Controlling Board.

Q: What if an agency needs a product that is similar to that offered by OPI, but wants to buy from another source?

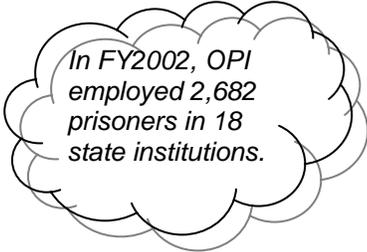
A: The agency must purchase the product from OPI unless agency petitions and receives a written waiver to procure such items elsewhere. Payments on purchase orders not accompanied by this waiver could be denied.

Q: May an agency request that State Purchasing competitively bid an item that is similar to one offered by OPI?

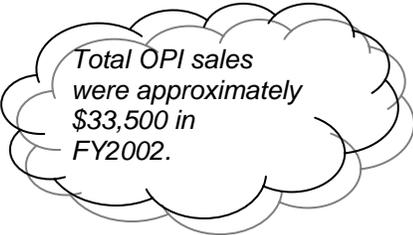
A: Yes, if the request is accompanied by a written waiver from OPI.

Q: What form is used to make a purchase from OPI?

A: The agency should use the OBM-7219. See Appendix 3 for a sample form.



In FY2002, OPI employed 2,682 prisoners in 18 state institutions.



Total OPI sales were approximately \$33,500 in FY2002.

For more information, contact:

Ohio Penal Industries (OPI) Design Center
1221 McKinley Avenue
Columbus, OH 43222
Telephone: (800) 237-3454
Fax: (614) 752-0303
www.opi.state.oh.us

Fiscal Services: opi.fiscal-services@odrc.state.oh.us

Inside Sales: opi.sales@odrc.state.oh.us

Delivery/Shipping: opi.distribution@odrc.state.oh.us

Order Status: opi.orderstatus@odrc.state.oh.us

Warranty & Product Repair Service: opi.warranty-repair@odrc.state.oh.us

Legal reference: ORC § 5147.07

2.3 Community Rehabilitation Program (State Use Program) and OIH, Inc.

Ohio's Community Rehabilitation Program (CRP), previously the State Use Program provides vocational training and job opportunities for persons with severe disabilities. Legislation was passed in July, 2005, that placed the program under the Department of Administrative Services, Office of State Purchasing.

DAS is in the process of writing new policies and procedures to provide direction to agencies when doing business with the Program. Pending completion of these new policies and procedures, the program will continue to be administered through the State Use Committee and OIH, Inc., formerly known as Ohio Industries for the Handicapped. Agencies will continue to place their orders directly with OIH. When policies and procedures have been completed, agencies will be able to contract directly with the work centers, as well as, with OIH.

State law requires that agencies purchase through the Community Rehabilitation Program if the work centers can meet the agency need. In the event of an emergency or a special need, the agency may be granted a waiver to purchase items elsewhere.

In FY2004, the SUP provided 1.36 million work hours for Ohioans with severe disabilities.

Questions & Answers

Q: Are there any dollar limitations when buying from OIH/CRP?

A: No, agencies may purchase without dollar limitation provided that sufficient funds are available. Purchases from SUP will not be applied to your cumulative annual threshold for Controlling Board.

Q: How do I buy services through SUP?

A: If you are presently using OIH to perform a service, then you must continue using OIH unless a written waiver is obtained to buy the services from another source. If you are not currently using OIH for the service, you must obtain quotes from DAS/SUP first. If you determine SUP is competitive and within your budget capabilities you must proceed to contract with SUP. Services are purchased using a purchase order (ORDE) ADM-0523 (see Appendix 3 for a sample form).

Q: How do I buy State Use Program products?

A: All products may be purchased directly from OIH using a purchase order (ORDE) ADM-0523 (see Appendix 3 for a sample form) or a State of Ohio payment card.

Q: How do I find State Use contracts on the web?

A: To browse the entire catalog, go to www.oih.org. To find specific products or services: (1) Go to www.ohio.gov/procure; (2) select "Find It Fast" on the left navigation bar; (3) select "Doc/Bid/Sched #"; (4) enter "SUP"; (5) click on the "Find It Fast" button.

Office supplies required for purchase through SUP are available through contractors on the MAC043P contract.

For more information, contact:

Office of Procurement from Community Rehabilitation Programs

4200 Surface Road
Columbus, OH 43228-1395
Telephone: (614) 752-9772
Fax: (614) 752-9788
kay.devault@das.state.oh.us

2,736 Ohioans with severe disabilities received wages as a result of the SUP in FY2004.

OIH, Inc.
4795 Evanswood Drive, Suite 102
Columbus, OH 43229-6281
Telephone: (614) 846-4877
Fax: (614) 846-9523
www.oih.org

Total program sales were \$32,500,850 in FY2004.

Legal reference: ORC § 4115.31 through 4115.35

2.4 Office of Support Services (OSS)

The Office of Support Services, a division of the Department of Mental Health, provides institutional agencies with various supplies and services. These institutional agencies include the Departments of Rehabilitation & Correction, Youth Services, Mental Health, Mental Retardation & Developmental Disabilities and various local mental health facilities.

Central Warehouse stocks a variety of items such as frozen meats, frozen foods, canned goods and cleaning supplies. Central Warehouse buys these items in bulk and delivers to agencies in smaller volumes using a fleet of state-owned trucks.

Pharmacy Service Center purchases large volumes of all types of pharmaceuticals and other medical supplies. Their staff of pharmacists repacks in quantities requested by the agency. This division also offers a variety of pharmacy and laboratory services to agencies.

The agencies listed above are required to purchase through the OSS if they can meet their need. Catalogs of products and services are available from each division upon request. In the event of an emergency or a special need, the OSS may grant a waiver to the agency to purchase items elsewhere. Other agencies may purchase from the OSS at their option.

Questions & Answers

Q: What if an institutional agency needs a product that is similar to that offered by the OSS, but wants to buy from another source?

A: The agency must purchase the product from the OSS unless agency petitions and receives a written waiver to procure such items elsewhere. Payments on purchase orders not accompanied by this waiver could be denied.

Q: When can I expect to have my products delivered by the OSS?

A: The OSS maintains a fleet of trucks that make routine deliveries to agencies. Contact the OSS for information as to when deliveries will be made to your agency.

Q: What procedures does an agency follow when purchasing from the OSS?

A: Contact the OSS for a current price list and ordering instructions. Advise OSS of any special or emergency delivery needs.

Q: What form does an agency use to make purchases from the OSS, Central Warehouse?

A: Purchases may be placed using the ADM-7219. See Appendix 3 for a sample form.

For more information, contact:

Central Food Warehouse
3201 Alberta Street
Columbus, OH 43204-1200
Telephone: (614) 752-0026
Fax: (614) 752-0030

Medical Complex
2150 W. Broad Street
Columbus, OH 43223-1200
Telephone: (614) 752-0116
Fax: (614) 752-0102

www.mh.state.oh.us/reference/oss.html

Reference: ORC § 5119.16

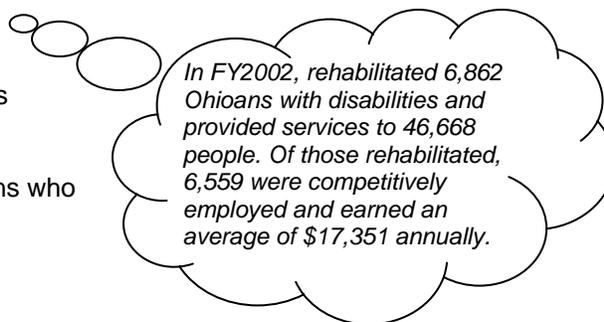
2.5 Rehabilitation Services Commission (RSC)

The Ohio Rehabilitation Services Commission (RSC) provides services to individuals with severe disabilities to achieve their goal of employment. As a result, these Ohioans enjoy independent and self-sufficient lives, contribute to their communities and enrich the state's workforce.

RSC provides vocational rehabilitation (VR) services to help people who have emotional, physical and mental disabilities to become employed and independent. Employment is RSC's highest priority.

RSC is comprised of three bureaus:

- Bureau of Vocational Rehabilitation (BVR)
Provides vocational rehabilitation and other services
- Bureau of Services for the Visually Impaired (BSVI)
Provides vocational & rehabilitation services Ohioans who are blind or who have visual impairments
- Bureau of Disability Determination
Assists people with Social Security benefits



BSVI, through its Business Enterprise Program (BEP), assists people who are blind or have a visual impairment by creating employment in food service areas. BEP provides Ohioans with opportunities to operate cafeterias, snack bars, convenience stores and vending locations throughout the state. Whenever any state agency determines a need for vending or concession services in their facility, they must first contact RSC to determine if such services can be provided through the Business Enterprise Program. If RSC determines that the potential exists, provisions will be made to install and operate the vending facility within the agency. If RSC determines that it is not practicable to operate a vending facility within the agency, the agency will be granted a waiver to procure their needs for other sources. The Departments of Rehabilitation & Correction and Youth Services are exempt from this requirement.

Questions and Answers

Q: If we want to obtain vending or concession services, do we have to contact RSC first?

A: Yes, Ohio law requires that RSC be given first consideration for vending and concession services in state owned or leased buildings.

Q: Who is responsible to provide utilities, hookups and equipment for the vending facility?

A: The agency is responsible to provide all electrical, plumbing and other requirements necessary for the installation and operation of the facility. RSC will provide the equipment and an adequate initial stock of suitable articles to be vended.

Q: When do we contact RSC to discuss a vending or concession facility?

A: Law requires that RSC be contacted prior to the acquisition, lease, rental or renovation of any property.



For more information, contact RSC at:
Ohio Rehabilitation Services Commission
Business Enterprise Program
Ben Green, Assistant Director
400 E. Campus View Blvd. SW5B
Columbus, OH 43235-4604
1-800-282-4536, Ext. 1264 (Ohio only)
(614) 438-1229
Fax: (614) 438-1277
www.state.oh.us/rsc/VR_services/bsvi/bep/bep.asp

O.R.C. §: 3304.28 – 3304.33



DAS Contracts

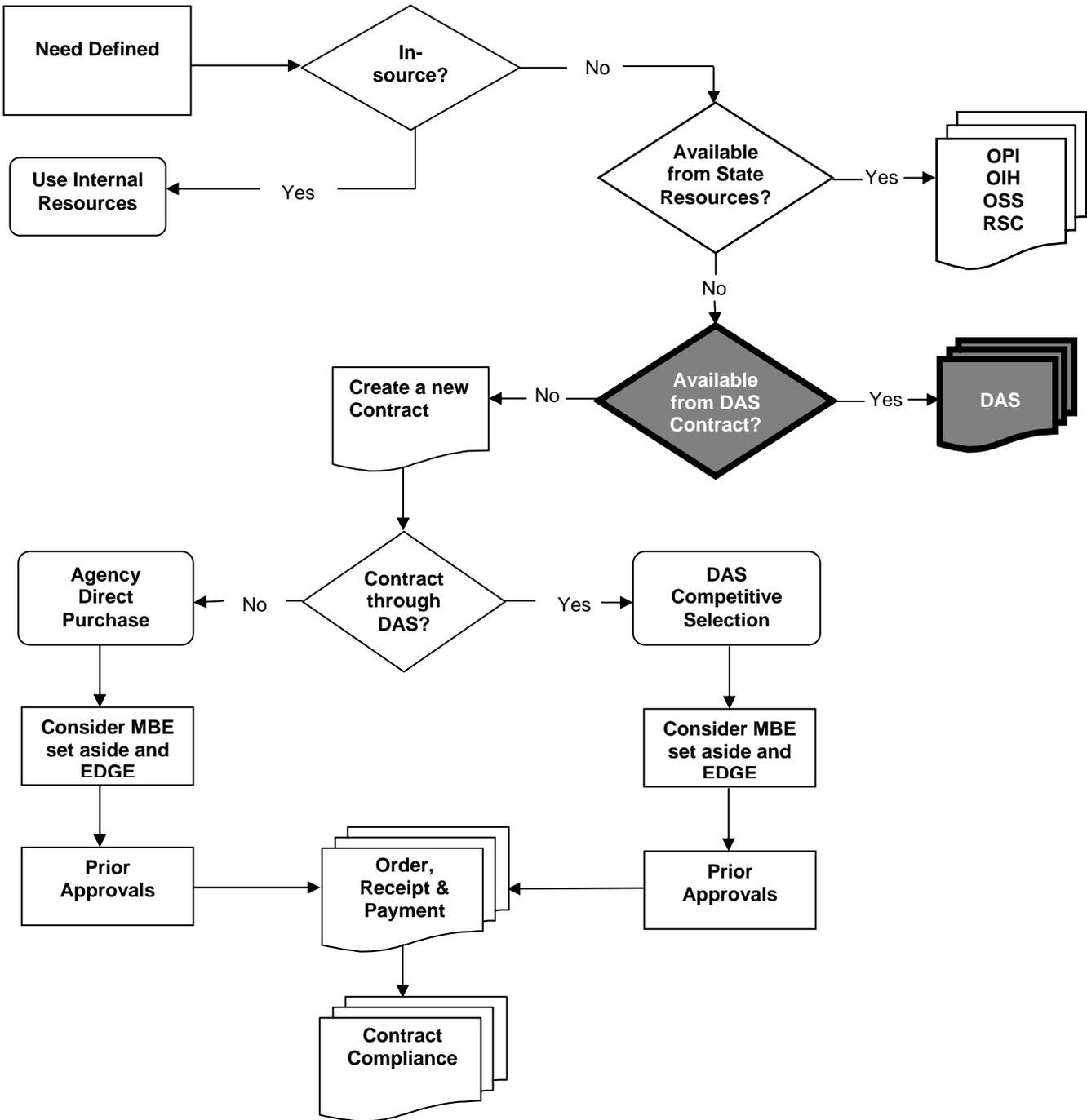
Chapter

3



3.0 Overview

You have now determined that the need is not available from any of the required state resources and have obtained necessary waivers to consider other methods of procurement. Unless your agency is exempt from DAS procurement, you must now consider making the purchase from existing DAS term contracts. This Chapter will discuss these term contracts and when you must purchase from the contract.



3.1 DAS Contracting Offices

The Ohio Revised Code (ORC) authorizes DAS to oversee and/or make purchases of supplies, services and construction for use by most state agencies. Law does provide exemptions from DAS procurement authority for some organizations under certain conditions. These exempted agencies will be discussed later in this Chapter. For agencies not exempted, the ORC requires that DAS receive next consideration on various supplies, services and construction.

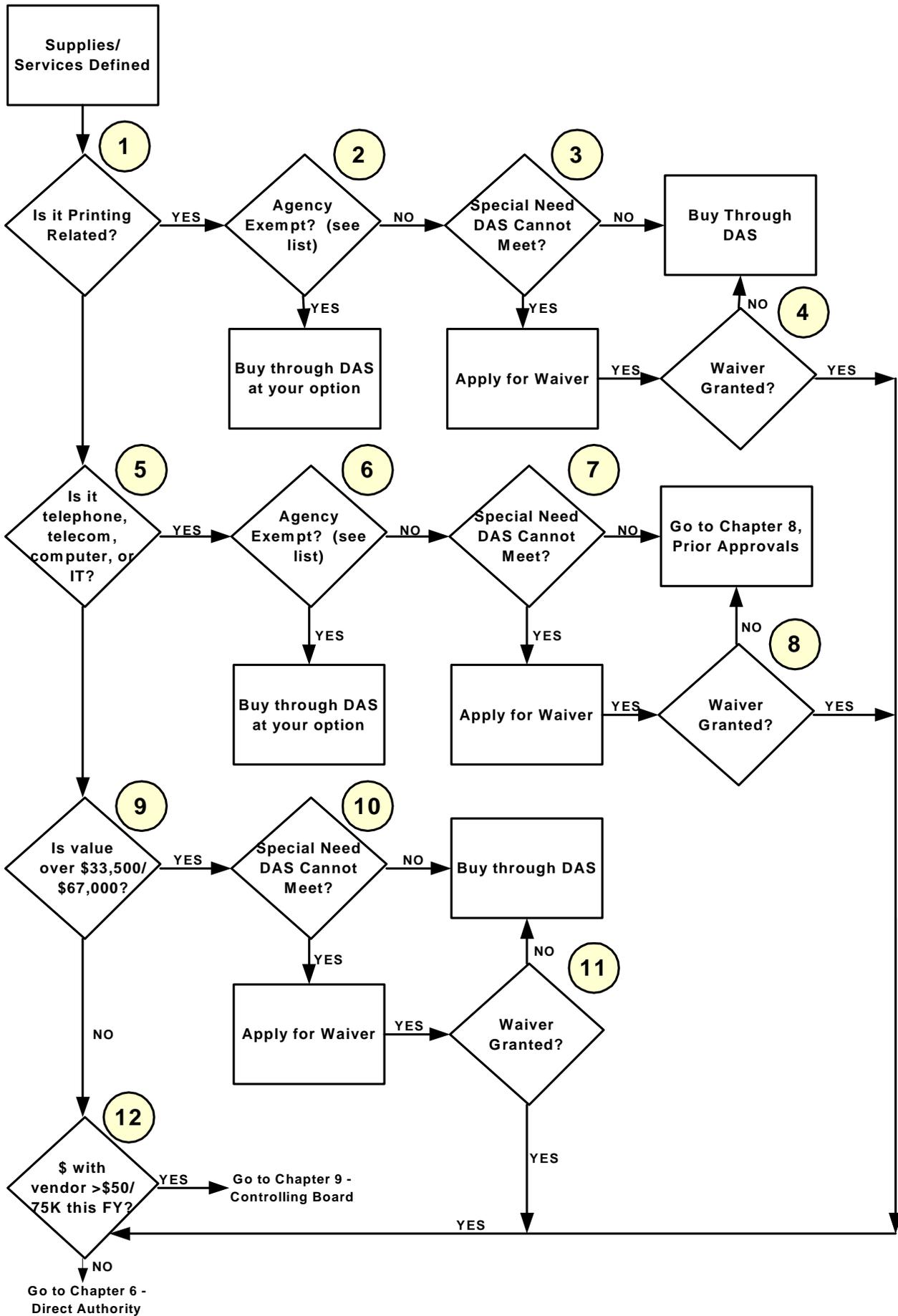
DAS is comprised of four major procurement divisions: State Printing & Mail Services, Office of Information Technology, Office of the State Architect and State Purchasing. These divisions maintain contracts for a variety of supplies and services to include, but not limited to: printing and mailing services, computers and software, food, medical supplies, consulting services, janitorial and housekeeping services, vehicles, copiers, maintenance and many more product and service areas.

This Chapter will provide instruction in making purchases of printing, data and telecommunications and various types of supplies and services. Guidance for construction needs will be discussed in Chapter 11.

Twelve questions

The determination of procurement authority can be reduced to twelve questions that are summarized below and in the corresponding flow chart. This chart should help determine **who** creates the contract.

No.	Questions	If yes ...	If no ...
1	Is it printing-related?	Go to 2	Go to 5
2	Is your agency exempt (see list)?	Buy through DAS at your option	Go to 3
3	Special need DAS cannot meet?	Apply for waiver, go to 4	Buy through DAS
4	DAS waiver granted?	Go to 12	Buy through DAS
5	Is it telephone, telecom, computer or IT?	Go to 6	Go to 9
6	Is your agency exempt (see list)?	Buy through OIT at your option	Go to 7
7	Special need OIT cannot meet?	Apply for waiver, go to 8	Go to Chapter 8
8	OIT waiver granted?	Go to 12	Go to Chapter 8
9	Is the value over \$33,500/\$67,000 threshold?	Go to 10	Go to 12
10	Special need that DAS cannot meet?	Apply for waiver, go to 11	Buy through DAS
11	DAS waiver granted?	Go to 12	Buy through DAS
12	\$ with vendor >\$50/75K this fiscal year?	Go to Cont. Bd. (Chapter 8)	Go to Chapter 6



3.2 Requirements Contracts

To assist agencies in meeting their needs, DAS maintains a number of requirements contracts for many types of supplies and services. Requirements contracts are term contracts that are effective for an extended period of time, usually one to three years. Agencies may purchase any dollar amount from a requirements contract without the need for any further competitive process, providing that approved funds are available to cover the purchase.

DAS maintains several categories of term contracts. Some term contracts are mandatory. Some give the agency the option of purchasing from the contract or using another method, such as direct purchase authority. The types of mandatory requirements contracts are listed in section 3.2.1. Other optional term contracts are listed in sections 3.2.2 and 3.2.3.

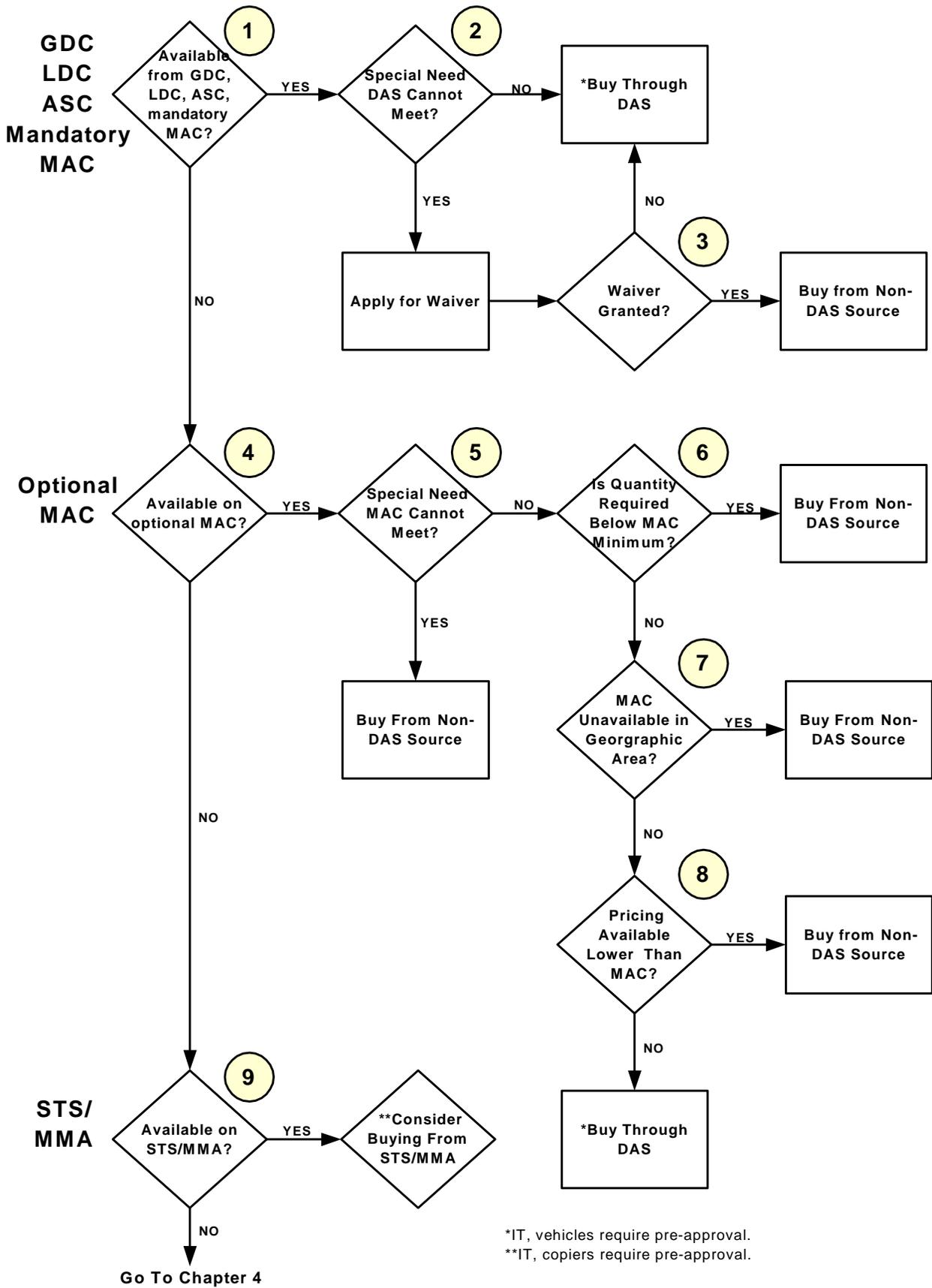
Nine questions

For simplicity, the process can be reduced to nine questions that are summarized below and in the corresponding flow chart.

No.	Questions	If yes ...	If no ...
1	Available on GDC, LDC, ASC, mandatory MAC?	Go to 2	Go to 4
2	Special need DAS cannot meet?	Apply for waiver, go to 3	Buy through DAS*
3	DAS waiver granted?	Buy from non-DAS source	Buy through DAS*
4	Available on optional MAC?	Go to 5	Go to 9
5	Urgent needs that MAC cannot meet?	Buy from non-DAS source	Go to 6
6	Is quantity required below MAC minimum?	Buy from non-DAS source	Go to 7
7	MAC unavailable in your geographic area?	Buy from non-DAS source	Go to 8
8	Pricing available that is lower than MAC?	Buy from non-DAS source	Buy through DAS*
9	Available on STS or MMA?	Consider buying from STS or MMA**	Go to Chapter 4

* Telecom, IT-related items and vehicles require pre-approval. See Chapter 8.

**Telecom, IT-related items and copiers require pre-approval. See Chapter 8.



3.2.1 Mandatory Term Contracts

The following types of requirements contracts are awarded to a single contractor per specific item. These mandatory contracts have been awarded under the premise that all state agencies that purchase these supplies or services will purchase from the designated contractors. Failure to make purchases from these contracts may place the state in breach of contract. The types of contracts are distinguished by their availability to agencies.

➤ General Distribution Contracts (GDC's)

- Contain popular items utilized by many agencies
- Available to all agencies
- Examples: vehicles, gasoline, cut size paper, clothing

Agencies may find GDC's on the State Procurement web site by following this path:

www.ohio.gov/procure (State Procurement home page)

Select "Current Contracts"

Under "Search by Contract Type," use right down arrow to select "GDC"

On "Search for GDC" page, further refine your search, or click on "Search" to view all contracts.

➤ Limited Distribution Contracts (LDC's)

- Address specific needs of multiple named agencies
- Available to only named agencies
- ◆ Examples: trash removal, housekeeping, food service

Agencies may find LDC's on the State Procurement web site by following this path:

www.ohio.gov/procure (State Procurement home page)

Select "Current Contracts"

Under "Search by Contract Type," use right down arrow to select "LDC"

On "Search for LDC" page, further refine your search, or click on "Search" to view all contracts.

➤ Agency Specific Contracts (ASC's)

- Address specific needs of a given agency
- Available to a single agency
- Examples: elevator maintenance, laundry services

Agencies may find contracts specific to their agency on the State Procurement web site by following this path:

www.ohio.gov/procure (State Procurement home page)

Select "Find It Fast"

Under Step 2, type in three-digit agency CAS code

Click on "Find It Fast"

3.2.2 Optional Contracts

DAS maintains a number of optional supply and service contracts known as State Term Schedules (STS's) and Master Maintenance Agreements (MMA's). These schedules and agreements are price solicitations that include multiple suppliers for similar types of supplies or services. All agencies may purchase any dollar amount from a STS or MMA, provided that approved funds are available to cover the purchase.

➤ GSA-based STS's

Many STS contracts are based upon the federal government's Supply Schedule Contract Program, administered by the General Services Administration (GSA). These are known as **GSA-based STS's**. Contractors under the federal program have met rigorous qualification criteria in order to supply goods and services to the federal government under pricing, terms, and conditions negotiated in advance. The federal schedule does not obligate the federal government to purchase any goods or services, but is a convenient way to do so should the federal agency choose.

State term schedules operate in a manner very similar to federal schedule contracts. The federal schedules frequently offer goods and services that may be of interest to state agencies, so it is often in the state's best interest to rely upon these federal GSA schedules as the basis for its state term schedules. The state does not participate directly in federal GSA contracts, but rather uses them as a foundation and template, inserting some additional terms and conditions favorable to the state of Ohio.

When shopping from a STS, agencies are encouraged to compare the offerings of multiple manufacturers or their named distributors on similar items. There are occasions where the agency may be able to obtain better pricing under the terms of the STS and agencies are encouraged to do so. In particular, discounts may be obtained for major purchases exceeding the maximum order limitation (MOL). DAS will assist the agency in securing additional discounts for these purchases. Depending upon the size of the purchase, DAS may recommend issuance of a special bid to take advantage of potential lower pricing due to market conditions.

➤ **Non-GSA based STS's**

Other STS's are not based upon GSA, but rather on most favored pricing for customers who are similarly situated as the state of Ohio. Such contracts are known as **non-GSA based STS's**, or State and Local Government contracts (S&LG's).

As with other STS's, agencies are encouraged to compare the offerings of multiple manufacturers or their named distributors on similar items. Agencies are encouraged to request quotations and/or negotiate to obtain the most favorable pricing on these schedules. In particular, discounts may be obtained for major purchases exceeding the maximum order limitation (MOL). DAS will assist the agency in securing additional discounts for these purchases. Depending upon the size of the purchase, DAS may recommend issuance of a special bid to take advantage of potential lower pricing due to market conditions.

Agencies may find STS's on the State Procurement web site by following this path:

www.ohio.gov/procure (State Procurement home page)

Select "Current Contracts"

Under "Search by Contract Type," use right down arrow to select "STS"

On "Search for STS" page, further refine your search, or click on "Search" to view all contracts.

The web search function does not distinguish between GSA and non-GSA based STSs. One can determine this by opening the document itself. For non-IT STSs, the distinction can be found in the title on page one of the contract document. For IT-based STSs, the distinction can be found by viewing the terms and conditions.

➤ **Master Maintenance Agreements (MMA's)**

A Master Maintenance Agreement (MMA) is an optional contract available for maintenance and service of equipment that is no longer covered under a manufacturer's warranty. MMA's are available for computer hardware, software, copiers, vending machines, and other equipment. Services may include remedial maintenance calls and preventative maintenance inspections. MMA's are not to be used to furnish consumables, relocate equipment, or repair damage due to intentional abuse by the customer. Other limitations and exclusions apply.

Agencies may find MMA's on the State Procurement web site by following this path:

www.ohio.gov/procure (State Procurement home page)

Select "Current Contracts"

Under "Search by Contract Type," use right down arrow to select "MMA"

On "Search for MMA" page, further refine your search, or click on "Search" to view all contracts.

When using a STS or MMA, agencies should avoid directing significant amounts of business to a limited number of vendors or suppliers. As stated previously, agencies are encouraged to compare prices and use competition whenever possible.

3.2.3 Other Requirements Contracts

Multiple Award Contracts (MAC's) are contracts that include more than one supplier for same or comparable supplies or services. MAC's may be either mandatory or optional. Agencies should check the contract language

to verify whether use of a particular MAC is mandatory or optional. Mandatory MAC's, such as MAC043 for office supplies, have been awarded under the premise that all state agencies, that purchase these supplies or services, will purchase from one of the designated contractors, although the state offers no assurance of minimum quantities to any single MAC contractor.

The two types of MAC's are distinguished by their waiver procedures. Unless stated otherwise in the contract, MAC's are optional use contracts.

Mandatory Multiple Award Contract (specifically stated as mandatory):

- Lists multiple suppliers for similar types of supplies or services
- Agencies may purchase from any of the listed sources
- Available to all agencies
- All exceptions require a waiver
- Example: office supplies

Optional Multiple Award Contract (all MAC's unless otherwise noted):

- Lists multiple suppliers for similar types of supplies or services
- Agencies may purchase from any of the listed sources
- Available to all agencies
- Contains some exceptions that do not require a waiver
- Examples: firemen's protective clothing, eyeglasses, cameras & accessories

Optional MAC's do not require a waiver for the following exceptions:

1. Urgent requirements: when the ordering agency requires delivery of the supplies or services prior to the times stated in the MAC, the agency shall require the contractor, by mail (if time permits) or telephone (confirmed in writing), to state the best delivery that can be met to satisfy the needs of the agency. If the contractor is unable to provide accelerated delivery, the agency may procure the required supplies or services from another source.
2. Small requirements: when the contract includes a minimum order limitation, agencies are not required to make the purchase from the contractor for needs below this limit. The contractor is not required to accept an order for less than the minimum order limitation from the agency. However, if the contractor accepts an order of less than the minimum order limitation, the contractor is obligated to perform according to all terms and conditions of the contract.
3. Geographic area: when the contract defines geographic areas of coverage, the agency shall place orders with contractors serving the geographical areas in which the agency is located. If the agency is located outside of the geographical area, the agency is not required to use the MAC.
4. Lower pricing: when an agency finds that identical supplies or services to those included in the MAC are available from another source at a price lower than that of the MAC, the agency may procure the supplies or services pursuant to their direct procurement authority. When comparing the supplies and services listed in the MAC with other sources, the agency shall consider warranties, transportation costs, delivery terms and any other related items to insure a fair cost comparison is being made to the items listed in the MAC.

When ordering from all MAC's, the agency should compare pricing from all listed contractors for the required supplies or services. MAC prices should be considered not-to-exceed figures, and agencies may negotiate and accept better prices than those listed on the MAC if available.

Agencies may find MACs on the State Procurement web site by following this path:

www.ohio.gov/procure (State Procurement home page)

Select "Current Contracts"

Under "Search by Contract Type," use right down arrow to select "MAC"

On "Search for MAC" page, further refine your search, or click on "Search" to view all contracts

3.3 DAS Office of State Printing and Mail Services

The Office of State Printing and Mail Services processes or produces printing orders for the executive branch of state government. All state government organizations are required to forward their printing needs through State Printing except the following:

- ◆ General Assembly;
- ◆ Ohio Arts Council;
- ◆ Capitol Square Review and Advisory Board;
- ◆ Bureau of Workers' Compensation;
- ◆ State-supported institutions of higher education.

State Printing purchases paper and a wide variety of printed goods from term contracts, one-time bids, and informal price quotations. Delivery of products varies from same day to a few weeks for large or complex orders. State Printing also provides forms management, design services, reprographics management and invoice verification and payment services. Seven State Printing copy centers are located in Columbus at these locations:

❖ Rhodes Tower at 30 E. Broad Street, 29th Floor.....	614-644-8555
❖ Riffe Center at 77 S. High Street, 19th Floor	614-728-2680
❖ Department of Natural Resources at 2045 Morris Road, Building I.....	614-728-6807
❖ Department of Education at 25 S. Front Street, B-1 level.....	614-955-9950
❖ Attorney General's Office at 150 E. Gay Street, 25 th Floor.....	614-387-2894
❖ Department of Job & Family Services at 255 E. Main Street.....	614-387-2893
❖ DAS General Services at 4200 Surface Road.....	614-644-6385

To place an order with State Printing:

- Step 1:** Prepare an unencumbered Print Order (ADM-0515) for copy center orders. Include camera-ready copy, film (negatives), electronic media or a previous sample.
- Step 2:** Prepare an encumbered Print Order for commercially produced printing orders. If you do not know whether a job is an in-house or commercial order, contact your State Printing specialist.
- Step 3:** Agencies enter the Print Order (ADM-0515) into CAS, creating the encumbrance. After the document is accepted, the agency forwards the forms to State Printing. State Printing will accomplish modifications and cancellations to the Print Order as necessary.

Purchases of certain types of reprographic equipment require **pre-approval** from State Printing. For more on pre-approvals, see Chapter 8.

For more information, contact:

State Printing and Mail Services
4200 Surface Road
Columbus, OH 43228-1395
Telephone: (614) 644-7550
Fax: (614) 644-5799

www.state.oh.us/das/gsd/prt/prt.html

Legal Reference: ORC §125.31 through 125.76, 125.91 through 125.98, 149.13

3.4 Office of Information Technology, Investment and Governance Division, Acquisition Management

The Office of Information Technology (OIT) is authorized to make contracts for, operate, and superintend telephone, telecommunication, computer services, and some professional services for state agencies. The following organizations are exempted from this authority:

- ◆ Adjutant General;
- ◆ General Assembly;

- ◆ Bureau of Workers' Compensation;
- ◆ Institutions administered by boards of trustees.

The Office of Acquisition Management issues contracts for computing and telecommunication products and services. The State Procurement web site allows complete electronic transmission of State requirements (both RFPs and ITBs), receipt of inquiries from vendors, posting of responses and amendments, and support to other agencies through posting of bid term contracts and State Term Schedules. The web site is fully functional for all data processing and telecommunications RFPs and ITBs.

Purchases of telecommunications equipment, data processing equipment or services, and software require **pre-approvals**. For more on pre-approvals, see Chapter 8.

Should circumstances warrant an exception to the above DAS authority, agencies may apply for a waiver known as a **Release and Permit (R&P)**. For more on R&P's, see Chapter 8.

Legal Reference: ORC Chapter 125; OAC 123:5-1-08

3.5 DAS Office of State Purchasing

The DAS Office of State Purchasing serves as the centralized procurement authority for the purchase of supplies and services used by most state agencies. Procurement Services includes State Purchasing, the Competitive Sealed Proposal (CSP) Office, and Cooperative Purchasing (Co-op).

In addition to exemption for offices of the statewide elected officials listed in section 1.1, the following organizations are exempted from this authority:

- ◆ Legislative branch;
- ◆ Judicial branch;
- ◆ Boards of elections;
- ◆ Capitol Square Review and Advisory Board;
- ◆ Adjutant General;
- ◆ Emergency Management Agency under a declared emergency;
- ◆ Department of Rehabilitation and Correction Ohio Penal Industries;
- ◆ Bureau of Workers' Compensation.

State agencies not listed above may be exempt from DAS authority if the amount of the purchase does not exceed the direct purchase threshold. Effective through January 31, 2005, the direct purchase threshold is \$33,500 for supplies and \$67,000 for services purchased from a vendor within a fiscal year. For purchases below this threshold, agencies may contract through DAS or create their own contract. For more on direct purchase authority, see Chapter 6.

Purchases of facsimile equipment, copiers, duplicators, and vehicles require **pre-approvals**. For more on pre-approvals, see Chapter 8.

Should circumstances warrant an exception to the above DAS authority, agencies may apply for a waiver known as a **Release and Permit (R&P)**. For more on R&P's, see Chapter 8.

Questions & Answers

Q: How does an agency purchase printing from OPI?

A: All orders for Ohio Penal Industries must be directed to State Printing with a Printing Project Order (ADM-0515). See Appendix 3 for a sample form.

Q: How long will it take to get my order?

A: Copy center orders are usually delivered in three days or less. Commercial work usually takes two to six weeks for production depending on the complexity of the project. Some commercial work can be produced within a few days. However, the general rule is the shorter the production time, the higher the cost.

Q: Can I get a waiver to “go direct” for printing needs?

A: In rare circumstances, State Printing may grant a waiver for direct purchase. These circumstances usually involve emergency conditions, and are granted on a case-by-case basis.

Q: Does State Printing do printing work on other media besides paper?

A: Yes, State Printing contracts some promotional printing for items such as coffee cups, key chains, and tote bags. Contact your printing specialist for more information.

Q: What are the limitations regarding purchasing copier equipment?

A: State Printing’s approval is required for purchases of black and white copier equipment if the equipment can produce 65 or more impressions per minute. For color machines, State Printing’s pre-approval is required if the equipment can produce 20 or more color copies per minute. For more on pre-approvals, see Chapter 8.

Q: What are the copy limitations on agency walk-up or large production copy equipment?

A: Reproduction services may not exceed five thousand impressions per order and no more than one thousand copies of any item consisting of multiple pages.

Q: How does an agency make a purchase from a term contract?

A: Step 1. Locate item on term contract.

Step 2. Contact supplier to confirm availability of item(s); call DAS if not available.

Step 3. Prepare a Purchase Order (ADM-0523) and enter into CAS (refer to OBM/CAS Manual).

Step 4. Upon approval in CAS, distribute order to supplier.

Q: Does an agency have to use a Purchase Order for all contract purchases?

A: Purchases from DAS competitively bid contracts (GDC’s, LDC’s, ASC’s and MAC’s) in the amount of \$2,500 or less or purchases from a STS of \$1000 or less may be made using the payment card. Purchases of \$1,000 or less may be placed using a Debit Voucher, Payment Card or ORDE unless the contract states otherwise. Most other purchases above \$1,000 must be placed on a Purchase Order (ADM-0523, ORDE). Some agencies have a higher limit; check with your agency’s business office to see if your agency’s limit exceeds \$1,000. See Appendix 3 for a sample form.

Q: Are agencies responsible for freight costs on contract items?

A: Generally, all shipments are F.O.B. Destination with most having freight prepaid by the contractor. Some contracts and many small dollar orders may require that the agency pay freight.

Q: The contract expires soon. May a Purchase Order still be submitted against the contract?

A: Purchase orders must be received by the vendor prior to the expiration date of the contract. Unless the ORDE is for a quarterly purchase, delivery may not exceed thirty (30) days after expiration of the contract. Purchase orders, for other than quarterly deliveries, will be rejected by CAS after the expiration date.

Q: May an agency place “confirming orders” with contract vendors?

A: This is not recommended. If for any reason, the order should be denied and product has been received, the person who authorized the purchase may be personally liable to pay for the purchase.

Q: A non-term contract item is being bought from the contract vendor, may it be added to the same Purchase Order?

A: Non-term contract items may **not** be included on the same Purchase Order with term contract items. These must be purchased under your direct purchase authority.

Q: An agency purchases the same non-term contract commodity/service routinely. What are its options?

A: Agencies should contact DAS. If possible, DAS may bid the item and add it to a term contract, or establish a new contract if necessary.

Q: Occasionally our agency receives contract surveys from State Purchasing. Is it necessary to respond to these and what is their purpose?

A: Surveys are issued to customer agencies to determine usage and potential changes to the contract. This information is provided to bidders as part of the Invitation to Bid. These surveys may also be used to determine if an agency procures sufficient quantity to warrant placing items on the contract or to obtain

updated requirements. Failure to respond may result in the agency being eliminated from the contract, inappropriate items being bid or failure to receive competitive pricing.

Q: *May an agency buy a contract item from a non-contract vendor?*

A: If an item is available from the term contract it must be purchased from the contract unless the item is listed on an optional use contract. If an agency fails to utilize the contract, the state could be determined to be in breach of contract and could be held liable to reimburse the contractor. Further, the agency person responsible for making the purchase could be held financially responsible to reimburse the state for the improper purchase. On certain GDC term contracts, it is possible to purchase contract items from a non-contract MBE. Special language will be included in the contract to permit these types of purchases.

Q: *How does an agency obtain copies of term contracts?*

A: Agencies are encouraged to view and/or download contracts directly from the State Procurement website. The address is www.ohio.gov/procure.

Legal reference: ORC § 125.01 through 125.11, 125.17, 125.19; OAC § 123:5-1-01 through 123:5-1-10



Creating a New Contract Through DAS

Chapter

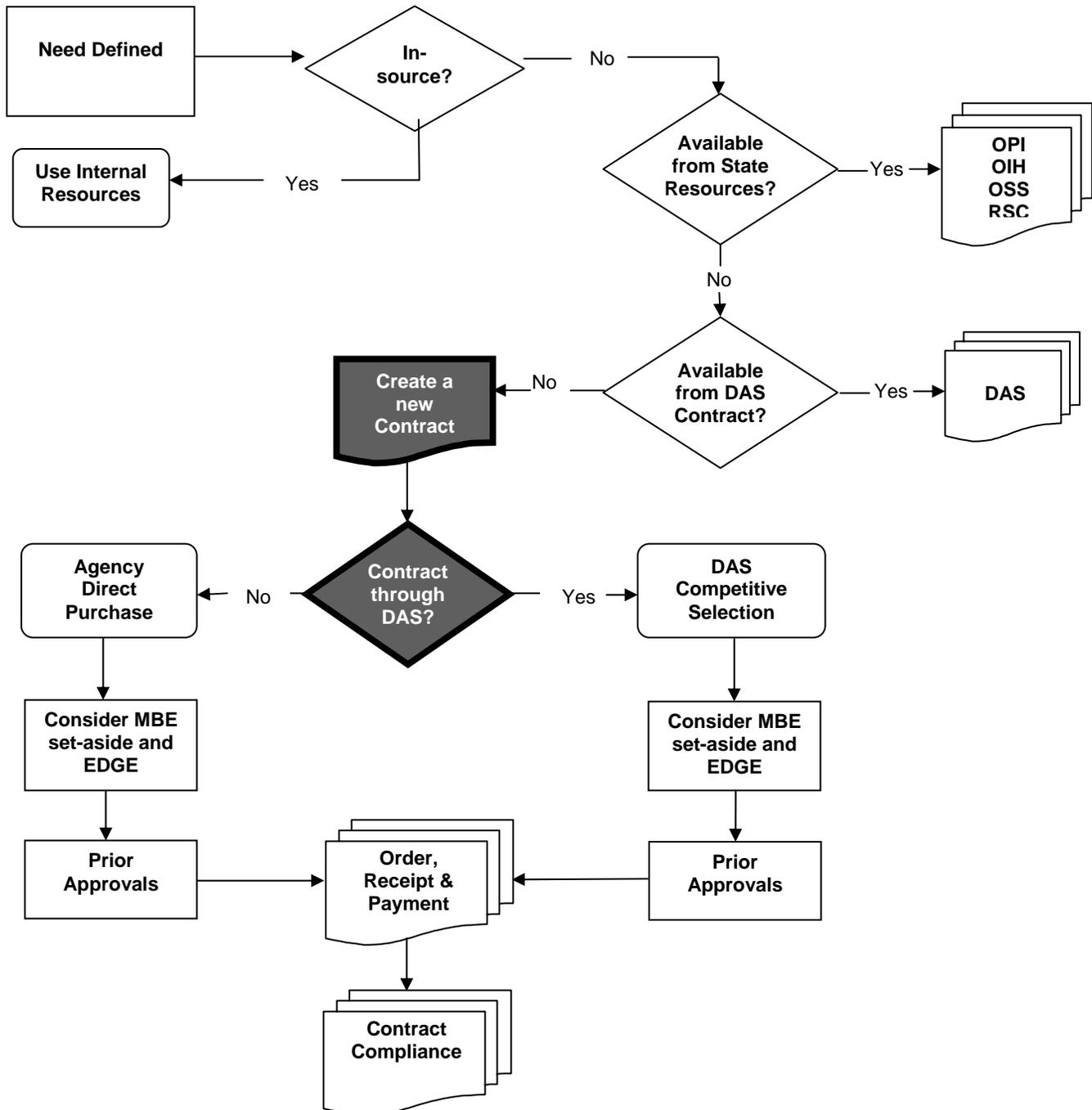
4



4.0 Overview

By now you have determined that no mandatory contract fits your specific need. Furthermore, either no optional contract meets your need, or you believe that a better value is available with a new contract. This chapter will address the questions that arise when creating a new contract, including:

- Who ...** is authorized to create the new contract?
- What ...** specifically is the product or service to be purchased?
- When ...** will the process be completed?
- Why ...** choose one procurement method over another?
- How ...** to begin a bid or request for proposal?



4.1 Who is Authorized to Create a New Contract

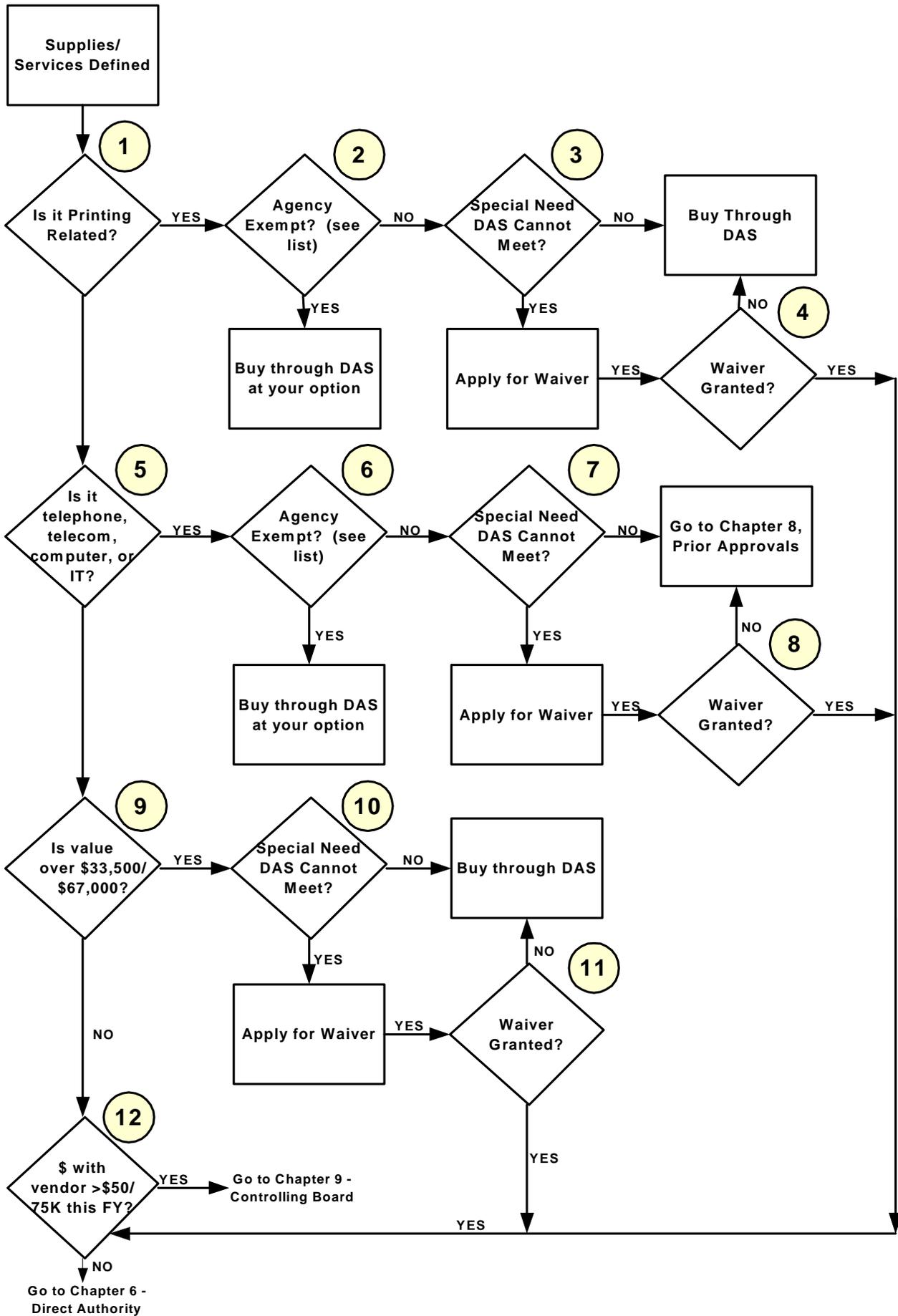
When the value of the purchase exceeds \$33,500 for supplies and \$67,000 for services, law requires that DAS review the request and make a determination as to whether or not DAS can make the purchase. If DAS determines that it is not practicable or advantageous for DAS to make the purchase, the agency will be granted a Pre-Approval and/or Release & Permit to make the purchase under their direct authority. The Pre-Approval and Release & Permit processes are explained in detail in Chapter 8.

It is best to involve DAS in the new procurement at the first stages of development. This will reduce the potential for unnecessary delays in drafting specifications and determining the best method to make the purchase.

Twelve questions

The determination of procurement authority can be reduced to twelve questions that are summarized below and in the corresponding flow chart. This chart should help determine **who** creates the contract.

No.	Questions	If yes ...	If no ...
1	Is it printing-related?	Go to 2	Go to 5
2	Is your agency exempt (see Section 4.1.1)?	Buy through DAS at your option	Go to 3
3	Special need DAS cannot meet?	Apply for waiver, go to 4	Buy through DAS
4	DAS waiver granted?	Go to 12	Buy through DAS
5	Is it telephone, telecom, computer or IT?	Go to 6	Go to 9
6	Is your agency exempt (see list)?	Buy through OIT at your option	Go to 7
7	Special need OIT cannot meet?	Apply for waiver, go to 8	Go to Chapter 8
8	OIT waiver granted?	Go to 12	Go to Chapter 8
9	Is the value over \$33,500/\$67,000 threshold?	Go to 10	Go to 12
10	Special need that DAS cannot meet?	Apply for waiver, go to 11	Buy through DAS
11	DAS waiver granted?	Go to 12	Buy through DAS
12	\$ with vendor >\$50/75K this fiscal year?	Go to Cont. Bd. (Chapter 8)	Go to Chapter 6



4.2 What: Describing the Purchasing Need

It is now time to conduct research and develop specifications that will best describe the need and enable you to obtain the correct item at the correct price and at the correct time. The following procedures, although not all-inclusive, are offered to help guide you through the process.

The first consideration is to the type of specifications that will best describe the need. There are three basic types of specifications: **design, performance or combination**. **Design** specifications set the requirements for the item to be purchased by detailing the characteristics of the item. To fully describe the need, design specs may be very lengthy. Care must be taken to insure that required features have been adequately referenced. Should a feature be overlooked it may not be possible to do an objective evaluation of offers. Design specs could also be written so tightly that they may unfairly preclude other vendors from offering their supplies or services; i.e., patent infringements. A more widely used specification is the **performance specification**. These specs describe the capabilities of the supplies or services or performance requirements and deliverables. This provides more flexibility in considering other types of supplies or services. The third type of specifications is a **combination** of the first two. This type of spec provides a basic description of the need and includes performance requirements. Other types of specifications include brand name or equal, qualified products lists and samples.

Design specifications are more commonly used when purchasing supplies through an ITB process. RFPs typically utilize performance specifications. For more on specifications, see Chapter 6. Also, agencies may refer to Appendix 2, Ohio Administrative Code Section 123:5-1-10 for more detailed descriptions of these specifications.

4.3 When: Timetables

A frequent question is how long it takes to create a new contract. **When** it will be completed depends upon what procurement method is being used, among other factors.

DAS contracts are often created through either an Invitation to Bid (ITB) or a Request for Proposal (RFP) process. One-time ITBs are for a definite quantity, definite delivery procurement. Standard ITBs are used for bidding indefinite quantity term contracts such as GDCs, MACs, LDCs, and ASCs.

One variation of the ITB is the reverse auction. A reverse auction is similar to an ITB in that award goes to the lowest responsive and responsible bidder. However, a reverse auction determines the lowest price in a separate step, after bidders have been pre-qualified for responsiveness and responsibility. Because of pre-qualification, the reverse auction process takes slightly longer than that of an ITB.

The timetables for State Term Schedules (STSs) and Master Maintenance Agreements (MMAs) vary widely, depending upon the amount of negotiation, complexity of the offering, the willingness of the vendor to accept the state's standard terms and conditions, and the competitiveness of pricing offered.

DAS ITBs, reverse auctions, and RFPs involve the following phases, with estimated lead times listed below:

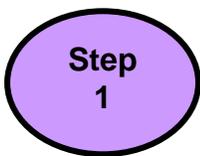
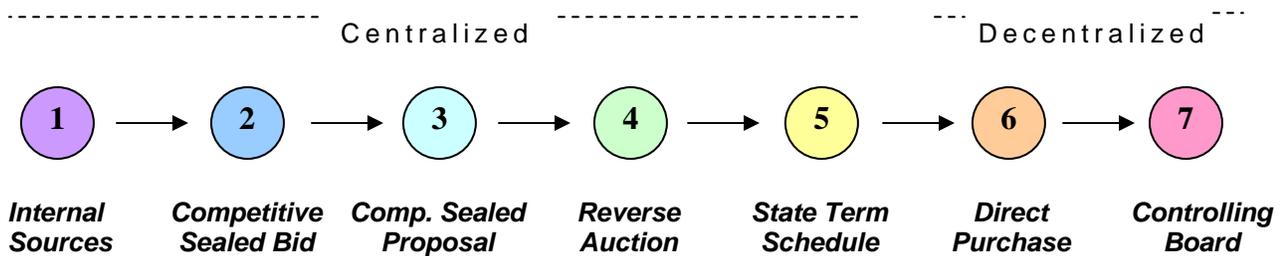
Phase	DAS ITB	DAS Reverse Auction	DAS RFP
Determination of need	Agency-driven	Agency-driven	Agency-driven
Vendor and market research	15-30 days	15-30 days	15-30 days
Development of requirements	15-30 days	15-30 days	30-90 days
Notification/advertisement	15-30 days	15-30 days	15-90 days
Bidder or offeror conference (opt.)	1 day	1 day	1 day
Acceptance of bids/ proposals/qualifications	1 day	1 day	1 day
Evaluation	5-60 days	5-30 days	15-90 days
Auction preparation and event	n/a	15 days	n/a
Award	3-10 days	1-3 days	3-10 days
Mobilization	Contract-driven	Contract-driven	Contract-driven
Delivery	Contract-driven	Contract-driven	Contract-driven
Minimum total lead time	60 days	75 days	90 days

The notification and advertisement requirement of fifteen days changed in October 2001. DAS has the authority and discretion to reduce notification time if it is determined that such notification will not adversely impact potential bidders or offerors.

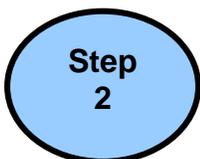
4.4 Why/How: Procurement Methods

The choice of procurement method is a critical decision in purchasing a supply or service. While in some cases Ohio law dictates which method must be used, other circumstances allow discretion on the part of the procurement professional. This section describes **why** and **how** certain methods are used.

In general, agencies must first consider centralized procurement methods before attempting the purchase directly under their own authority. There are five centralized procurement methods and two overall categories of decentralized methods, as explained in the following summary and flow chart.



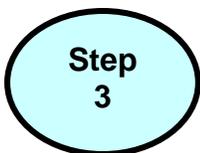
State Resources. Prior to DAS making a purchase, the agency must first determine if the supply or service is available from State resources. If so, law requires that agencies must first purchase the item from Ohio Penal Industries (OPI) or from the State Use Program administered through DAS. Institutional agencies are required to purchase certain food and pharmaceutical items from the Department of Mental Health, Office of Support Services, Central Pharmacy and Warehouse. All agencies who are planning to install food or vending services for employees or the general public must first contact the Rehabilitation Services Commission (RSC) programs for visually impaired. DAS may not proceed with the purchase of supplies or services offered by these sources unless the agency obtains a waiver from these sources. Finally, the agency must determine if the need can be fulfilled from an existing DAS contract. See Chapters 2 and 3.



CSB. Once a determination is made that state resources cannot fill the need, DAS will consider making the purchase through Competitive Selection. The preferred method of Competitive Selection is to issue an Invitation to Bid (ITB) to accept Competitive Sealed Bids (CSBs). Types of contracts resulting from ITB methods include:

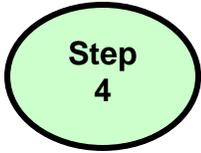
- One Time Purchases for needs that are agency specific and will only be purchased once;
- Term Contracts that reflect repetitive purchases of one or more agencies over a period of time (i.e. 1-3 years); and
- Multiple Award Contracts (MACs) that list more than one supplier of similar items.

Price is a primary factor for these bids, and contracts are awarded to the lowest responsive and responsible bidder.



CSP. If DAS determines that price should not be the primary consideration in awarding the contract, DAS may issue a Request for Proposal (RFP) to solicit Competitive Sealed Proposals (CSPs). The RFP is a second form of Competitive Selection that allows factors such as experience, performance, etc., to be scored directly and used to determine the awardee. Contracts are awarded to the vendor

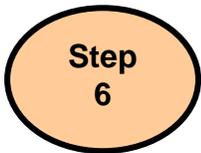
offering the best value to the state. Technology and professional services are areas where RFPs are frequently utilized.



Reverse Auction. When DAS determines that use of the ITB or RFP will not result in the best value for the state, DAS may use a third form of Competitive Selection known as reverse auction. A reverse auction is a real-time purchasing event that is conducted over the Internet. Interested bidders submit responses in a manner similar to those in an ITB, with the exception that no prices are included. Those bidders whose products or services meet the specifications are invited to the reverse auction event. During the event, bidders may submit multiple prices electronically over a short time period, with the lowest cost winning. Reverse auctions are often advantageous for items of definite quantity and definite delivery. Price is a primary factor in the award. This is a new process and procedures are being drafted for its application.



STS/MMA. The State Term Schedule (STS) and Master Maintenance Agreement (MMA) are utilized when DAS determines that use of the ITB, RFP or reverse auction is not in the best interest of the State. The STS and MMA are contracts negotiated directly with a manufacturer or service provider or their authorized agent. Upon accepting the state's terms and conditions, companies may offer their federal General Services Administration (GSA) pricing or, if they do not hold a federal GSA contract, may offer their best available commercial pricing. Unlike the above listed contracts, STS and MMA contracts are not mandatory use contracts. Examples of STS contracts include computers, copiers, carpet, hardware items and heavy equipment. Examples of MMAs include maintenance for copiers and computer hardware.

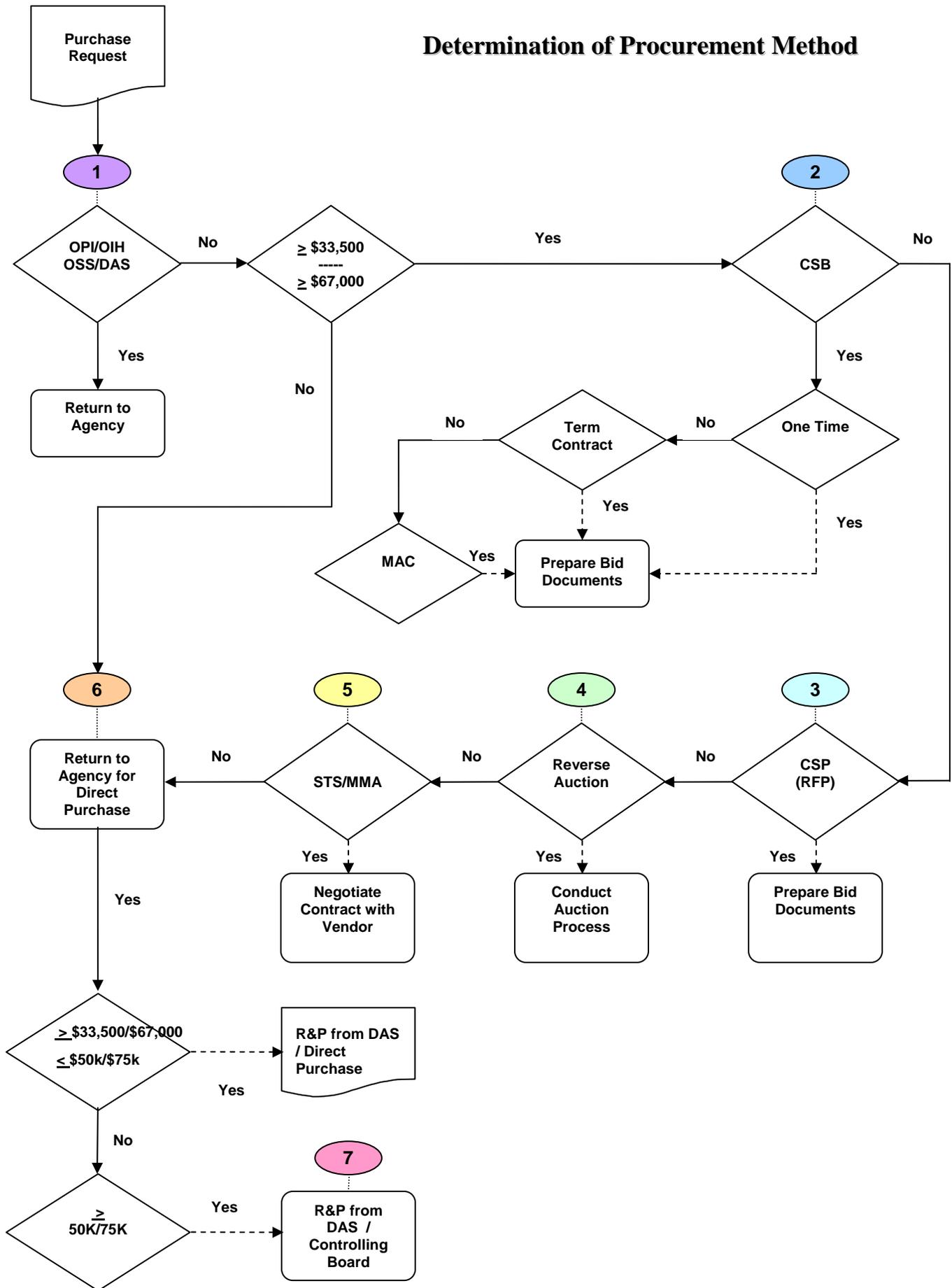


Direct Authority. Agencies may make purchases of supplies up to \$33,500 and services up to \$67,000 per purchase. Requests above these limits must be forwarded to DAS. If DAS determines that it is not possible or not advantageous to make the purchase, the agency will be given a Release and Permit. The agency may then make the purchase under their direct authority. The agency is required to follow guidelines for competitive selection when they make direct purchases. See Chapter 6.



Controlling Board. When direct purchases exceed the cumulative annual threshold, agencies must seek approval from the state's Controlling Board to make any further purchases. The cumulative annual threshold means any agency purchases under Step 6 above with a particular vendor in one fiscal year. For institutional agencies (Departments of Rehabilitation & Correction, Youth Services, Mental Health and Mental Retardation & Developmental Disabilities) this dollar threshold is \$75,000 per fiscal year. For all other agencies the dollar threshold is \$50,000. See Chapter 8, section 8.9.

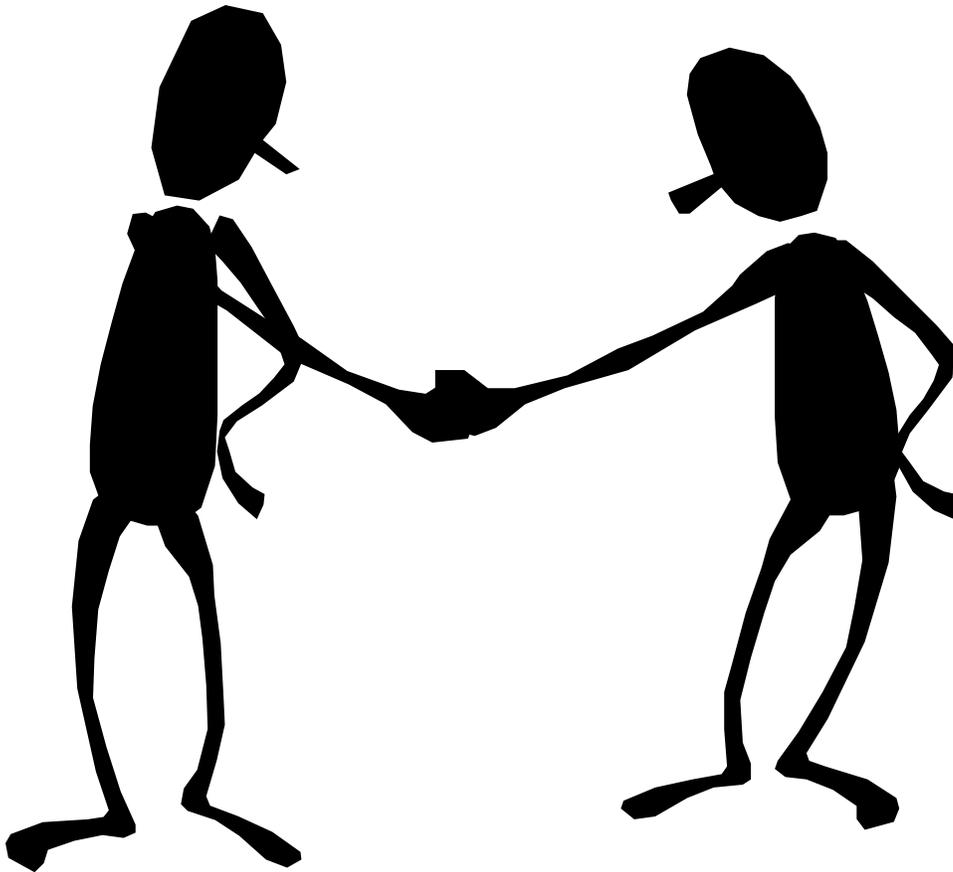
Determination of Procurement Method





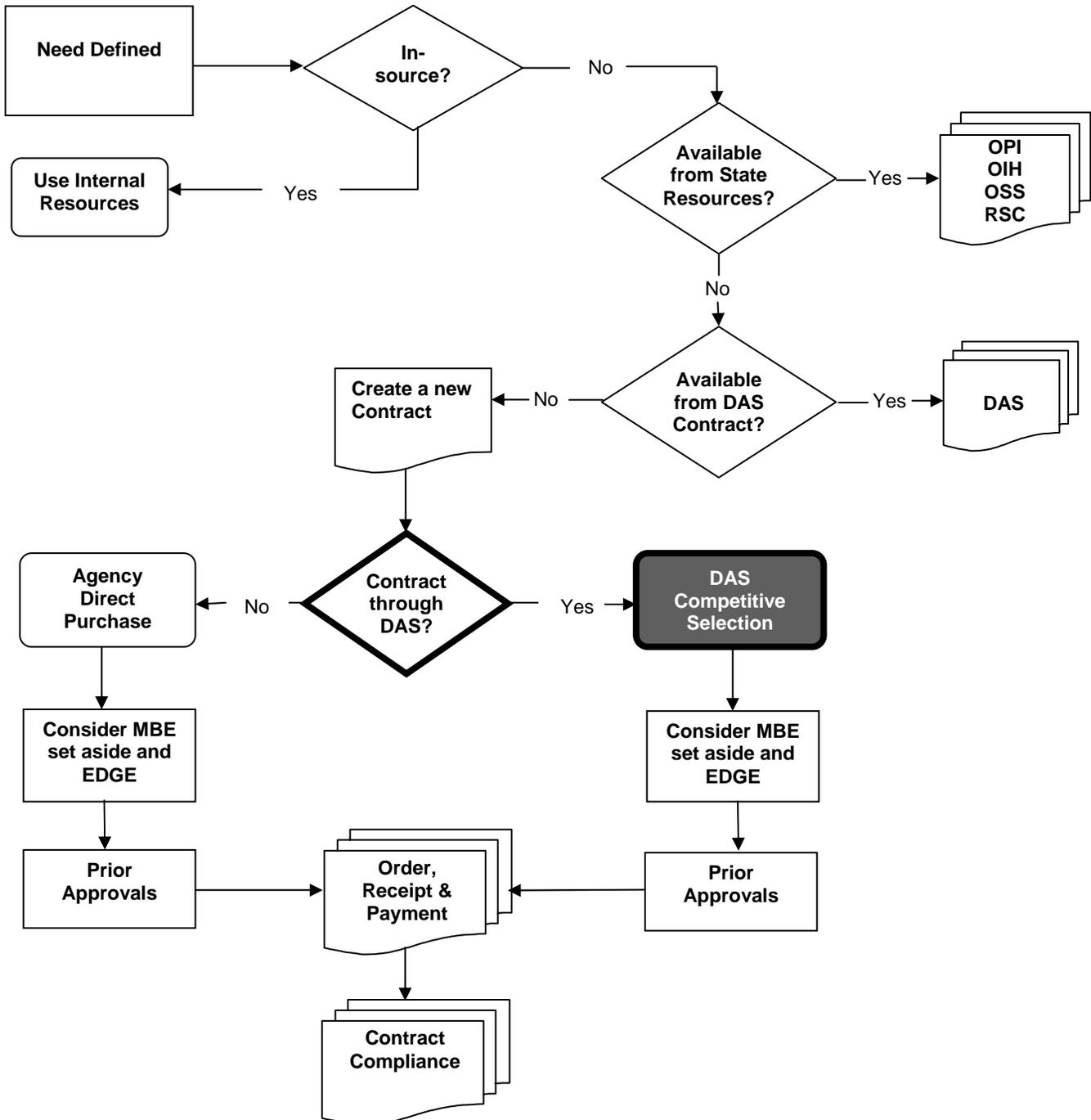
Competitive Selection Through DAS

Chapter
5



5.0 Overview

Competitive Selection is the process DAS uses to make purchases on behalf of agencies. Two methods of bidding are considered within the definition of Competitive Selection; Competitive Sealed Bids and Competitive Sealed Proposals. This chapter provides an overview of the competitive selection processes used by DAS to create and award new contracts. The process differs depending upon the procurement method used. DAS follows the hierarchy of procurement methods that is shown in Section 4.4 of this handbook. When developing bidding documents, DAS will work closely with the agency from beginning to end. Staff will review specs with the agency to ensure their needs will be met. Once bids or proposals have been opened, staff will involve the agency in the evaluation and award process prior to finalizing the contract.



5.1 Requisitions

When requesting a One-Time Purchase Bid, the agency must use the General Requisition (ADM-0500). The requisition should include all funding information that will be used to pay for the purchase. It is recommended that the agency reserve these funds in CAS as doing so will eliminate any time delays when awarding the contract.

Requests for term contracts may be submitted using a memo signed by an authorized representative of the agency. It is not necessary to reserve funds for a term contract.

Additional recommendations that the agency should consider when preparing their requisition include:

- Submit in typed format.
- Agency contact person and phone number placed in upper right hand corner.
- Requisition number must begin with zero (0).
- Estimated cost, most current.
- Ship to/Bill to address.
- Indicate if you want this as a minority business enterprise (MBE) set aside bid.
- Proper class and item numbers, refer to NIGP Codes.
- Complete specifications. Copies of catalog pages may be included.
- Additional vendors—names, address, city, state, zip, contact person, e-mail address.
- Requisition signed by authorized agency representative.
- If assembly (construction) is required as part of the purchase, include prevailing wage schedules.

DAS will review specifications and edit as necessary to remove restrictive requirements (agency will be advised of any changes). The specifications will be typed in bid format and notices will be e-mailed to registered bidders. Final determination of specifications will reside with DAS.

Requisitions may be delayed for a number of reasons. Following is a list of the most common reasons:

- Insufficient definition of need
- Failure to sign requisitions
- Failure to provide NIGP codes
- Estimated dollar amount not shown
- Requisition number not beginning with "0"
- Failure to list contact person and phone number
- Suggested vendors not provided by agency
- Overly-restrictive specifications: sole source, brand specific
- Failure to provide suggested manufacturer's name and model number

5.2 The Bid Process

The competitive sealed bid process includes the following steps:

1. Create **Invitation to Bid (ITB)**.
2. Advertise bid opportunity.
3. Open bids.
4. Evaluate bids.
5. Award contract.

5.2.1 Creating the ITB

The ITB is created in consultation with the user agency. Typically the process begins by the agency completing the requisition or memo. For term contracts the agency may be requested to complete an Agency Survey Letter (Form ADM 3284, see Appendix 3). DAS writes the ITB based upon this information. A standard ITB contains the following sections:

1. Instructions to Bidders. This section includes the date, time and location for submission of bids. It describes the process used in answering vendor questions, how to get DAS announcements regarding the ITB, and information about addenda to the ITB.
2. Contract Terms and Conditions. This section contains the general legal provisions that will govern the contract. Additions or deviations from these general provisions are contained in the Special Terms and Conditions section, discussed below.
3. General Overview. This section describes the nature of the supplies, equipment and services that the state seeks under the ITB.
4. Certified Statements. By signing the bid form, bidders certify that the information contained in their bid is accurate and complete, including several specific statements. For example, bidders must certify that they qualify for an in-state preference, that they have not submitted their bid in collusion with another bidder, and that they have not been subject to government action within the last seven years.
5. Special Terms and Conditions. This section contains special and specific legal provisions that will govern the contract, based upon the specific scope of work. Other provisions are contained in the Contract Terms and Conditions section.
6. Specifications. This section gives a detailed description of what the selected vendor must provide the state under the contract.

In addition to the standard sections of the ITB described above, each ITB has a number of attachments. The following are the most common attachments that are included in almost every ITB:

- Cost Summary. This attachment is the sheet all vendors must use to clearly identify all costs the state will have to pay for the supplies, equipment and services the vendor will deliver.
- W-9 Form. The W-9 is a federal form that must be submitted to allow the state to track and report payments to the vendor.
- Additional Attachments. Each ITB is unique and may have various attachments, in addition to those listed above, that are unique to the types of supplies, equipment and services covered by the particular ITB.

5.2.2 Advertising the Bid Opportunity

Once a particular supply or service need is fully defined and incorporated into an ITB, DAS advertises the bid opportunity to the vendor community in several ways.

DAS maintains a database of vendors registered for particular supplies or services. These vendors are differentiated by commodity codes created by the National Institute of Governmental Purchasing (NIGP). When the code for the bid opportunity matches the vendor's code, the system tags the vendor for notification. Notice of bid opportunities will be e-mailed to these vendors.

Bid opportunities are also posted on the following DAS web sites:

State Purchasing and Acquisition Management:..... www.ohio.gov/procure
 State Printing:www.gsd.das.state.oh.us/printing/sealed_bids.html
 State Architect's Office:<http://www.state.oh.us/das/gsd/sao/pba.html>

Bids may be advertised for any number of days determined by DAS.

During the advertisement period, prospective bidders may contact DAS for inquiries and clarifications. All questions are to be submitted at least five working days prior to the bid opening date. On occasion these inquiries may require the ITB to be modified. If so, State Purchasing will issue an **addendum** that details the changes. It is the responsibility of prospective bidders to keep current on any addenda and consider these changes in their bid submittal.

Some bids include a pre-bid conference or site visit. Such events will be specified in the ITB.

5.2.3 Opening the Bids

Sealed bid responses are opened at the time and day specified in the ITB. A representative from the Auditor of State certifies all bids that have been opened. Bids are available for public inspection immediately. Any bids that arrive after the opening date and time are considered late and are not opened or evaluated.

5.2.4 Evaluating the Bids

Bid responses are evaluated to determine compliance with all specifications and ability of the bidders to perform the contract. During the evaluation period, bidders are not allowed to initiate contact with the contract analyst. On occasion, the analyst may contact a bidder for clarification.

If potential awardee's price exceeds the agency estimate by more than ten percent, the agency is contacted for approval to award, rebid or cancel.

5.2.5 Awarding the Contract

Once the bids have been evaluated, a contract is awarded to lowest responsive and responsible bidder.

For all one-time purchases, a Purchase Order (ORDE), ADM-0523, is used as the contract and is entered into CAS by DAS upon award. Once CAS approvals are completed, DAS faxes and mails the Purchase Order to the vendor and agency (agency may review and approve contract award upon request).

When delivery is completed and proper invoice received, agency issues a voucher to initiate payment to contractor.

The evaluation and award process for term contracts is the same as for one-time bids with the exception that all purchase orders are issued directly by the using agency. DAS will provide the agency with the contract agreement that will list the awarded supplies or services, the contractor(s), pricing and all terms and conditions of the purchase agreement.

Questions & Answers

Q: *How long does the one-time bid process take?*

A: Agencies should allow a minimum of 30 calendar days for completion.

Q: *Why should the agency list additional vendors on the General Requisition?*

A: These companies may have assisted you in preparing your specification, but may not be registered with DAS. Listing them on the General Requisition or memo will assist in their receiving a copy of the bid notice.

Q: *What if the award will exceed my budgeted dollar amount?*

A: DAS will contact an agency if the award amount exceeds the estimated cost by more than ten percent. The agency will then have the option of awarding the contract, rebidding the purchase request, or canceling the request.

Q: *Will agencies be guaranteed of receiving a specified brand?*

A: State law mandates that DAS award to the lowest responsive and responsible bidder meeting or exceeding requirements as set forth in the bid. Specifying one brand, no equivalent, is considered sole source, which

may not be able to be competitively bid. Under certain circumstances, DAS may consider a “brand specific” bid, provided that a sufficient number of distributors are available. Such requests require approval of the administrator of the appropriate office of DAS. Sole source requests that cannot be bid and will exceed the annual cumulative dollar threshold will require Controlling Board approval.

5.3 The Request for Proposal (RFP) Process

Whenever the competitive sealed bid process is not possible or advantageous to the state, DAS is authorized to make purchases through competitive sealed proposals. In this process, award is made to the **offeror** whose proposal is determined to be most advantageous to the state, taking into consideration factors such as price and the evaluation criteria set forth in the RFP. The request for proposal process includes the following steps:

1. Create the RFP.
2. Advertise proposal opportunity.
3. Open proposals.
4. Evaluate proposals.
5. Award contract.

5.3.1 Creating the RFP

The RFP is created in consultation with the user agency. Typically the process begins by the agency contacting and meeting with DAS. DAS writes the RFP based upon this information. A standard RFP contains the following sections:

1. Executive Summary. This section provides summary information about the RFP, such as purpose, background, objectives, overview of the project and key dates.
2. Structure of the RFP. This section provides information about the RFP structure, information provided in attachments and any additional material that may have a bearing on the project. The structure of the RFP depends on the project and will vary based on the project’s requirements. The structural changes from one RFP to another usually are contained in the attachments to the RFP. For example, a project that requires the delivery of custom-developed intellectual property will have a terms and conditions attachment that heavily focuses on ownership of that property. Similarly, if the people the vendor assigns to a project are critical to the project’s success, the RFP will usually include personnel profile summary forms as attachments. Also, the nature of the project may affect the requirements for the proposal’s contents. For example, if part of the project includes the delivery of some pre-existing items, such as software, the special provisions attachment may be modified to require inclusion of demonstration copies of the software in the proposals.
3. General Instructions. This section includes the date, time and location for submission of proposals. It describes the process for answering vendor questions, how to get DAS announcements regarding the RFP, and information about amendments to the RFP.
4. Evaluation of Proposals. This section tells vendors how the proposals will be evaluated. Generally, the evaluation is organized in the same order as the requirements for proposals, provided in an attachment to the RFP. Depending on the structure of the RFP and the evaluation process, points may be assigned to each section required in a proposal submitted in response to the RFP. Many times, points also are assigned for specific elements within each section of a proposal.
5. Contract Award. This section is an overview of the contract award process and the contents of the contract.

In addition to the usual five parts of the RFP described above, each RFP has a number of attachments. The following are the most common attachments that are included in almost every RFP:

- Work Requirements and Special Provisions Attachment. This attachment describes what the vendor must do to accomplish the work, or deliver the required supplies that may be unique to the particular project. This attachment also may cover the required qualifications of a vendor, such as:

- the amount of experience the vendor must have providing the supplies, equipment and services described;
 - the qualifications and experience of personnel to be assigned to the project; and
 - amounts acceptable/required for subcontractor involvement.
- Detailed Scope of Work/Deliverables Attachment. This attachment describes the services to be performed or supplies to be purchased. If the state has developed specifications or drawings for the project, they may be included or incorporated here by reference. Other items addressed in this attachment may include:
 - specific tasks and sub-tasks to be accomplished;
 - parameters and restrictions on performance;
 - time for completion of work (if not otherwise specified);
 - supplies, equipment and services the contractor must provide; and
 - a list of state-furnished materials, such as state plans, reports and other resources.
 - Requirements for Proposals Attachment. This attachment covers the proposal format, profiles, staffing plan, profile summaries and work plans that must be provided in the responses to the RFP. This section also provides a list of all elements to be evaluated and a description of the level of detail that vendors must provide for each element in their responses.
 - W-9 Form. The W-9 is a federal form that must be submitted to allow the state to track and report payments to the successful vendor.
 - Cost Summary. This attachment is the form all vendors must use to clearly identify all costs the state will have to pay for the supplies, equipment and services the vendor will deliver.
 - Terms and Conditions. This attachment contains the legal provisions that will govern the performance of the project by the selected vendor.
 - Contract. This attachment is normally a one-page document for the vendor and the state to sign that incorporates by reference all the relevant documents for the project, such as the RFP and the selected proposal. It does not contain any detailed terms and conditions, as many contracts do, because all those provisions are contained in the RFP
 - Additional Attachments. Each RFP is unique and may have additional attachments unique to the types of supplies, equipment and services covered by the particular RFP.

5.3.2 Advertising the Proposal Opportunity

Once a particular supply or service need is fully defined and incorporated into a RFP, DAS advertises the proposal opportunity to the vendor community in several ways.

DAS maintains a database of vendors registered for particular supplies or services. These vendors are differentiated by commodity codes created by the National Institute of Governmental Purchasing (NIGP). When the code for the bid opportunity matches the vendor's code, the system tags the vendor for notification. Notifications will be sent through e-mail to these vendors.

Proposal opportunities are always available in the "Selling to the State" section of the State Procurement web site.

RFP's may be advertised for any number of days determined by DAS.

During the advertisement period, prospective offerors may **not** contact the responsible Acquisition Management analyst directly. Rather, questions are addressed through the on-line inquiry process only. Answers to all inquiries are posted on the State Procurement web site at www.ohio.gov/procure.

On occasion these inquiries may require the RFP to be modified. If so, Acquisition Management will issue an **amendment** that details the changes. It is the responsibility of prospective offerors to keep current on any amendments and consider these changes in their proposal submittal.

Some RFP's include a pre-proposal conference or site visit. Such events will be specified in the RFP.

5.3.3 Opening the Proposals

Competitive sealed proposals are typically opened at 11:00 A.M. on the day specified in the RFP. Any proposals that arrive after the opening date and time are considered late and are not opened or evaluated. The names of the offerors are tabulated, but otherwise the contents of the proposals are not disclosed. In order to ensure a fair and impartial evaluation, proposals are not available for public inspection until after the award of the contract.

5.3.4 Evaluating the Proposals

The evaluation team usually consists of members from both DAS and the client agency. The committee also may include outside consultants and other people with special expertise or with a particular interest in the outcome of the project, such as the client agency's own clients or constituents.

During the evaluation phase, offerors may not initiate any communication with the evaluation team. However, DAS may initiate discussions with offerors in order to further assess their responsiveness. Offerors may be required to provide a written clarification of specific items in its response. If products are required by the RFP, a product demonstration also may be considered. DAS also reserves the right to interview vendors to gather additional information. Evaluators may not reveal to offerors any information or tentative conclusions on the relative merits of proposals during this phase.

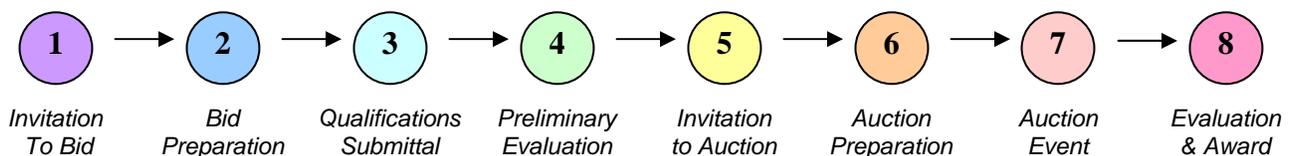
The evaluation team uses both the evaluation criteria and process defined in the RFP to recommend a vendor for award. Each evaluator reviews and scores the proposals on an individual basis. After all proposals have been scored, the evaluators meet to discuss the reasoning for their evaluations. A DAS analyst chairs the discussions and records the scores of each evaluator. In most evaluations, a consensus score is then determined, recorded, and used as the score for awarding the contract.

5.3.5 Awarding the Contract

Once the evaluation committee recommends a proposal and the client agency approves the recommendation, DAS processes the contract and notifies all offerors of the outcome. The client agency then will receive approval to process a purchase order for the selected vendor. The selected vendor may begin work upon receipt of the purchase order.

5.4 The Reverse Auction Process

Reverse auction is a purchasing process in which offerors submit bids in competing to sell services or supplies in an open environment via the internet. The auction itself is an invitation-only, timed event that is open to bidders who have been pre-qualified. The reverse auction process includes the steps listed below:



- | | | | |
|----------|--|----------|--|
| 1 | DAS posts the procurement opportunity on its web site | 5 | Only those who are pre-qualified are invited to the auction event |
| 2 | Q&A are done electronically on the web site | 6 | Auction vendor connects bidders to auction system; performs training |
| 3 | Bidders submit qualifications summary, without their price | 7 | Bidders submit progressively lower prices electronically until lowest bid is submitted |
| 4 | DAS reviews submittals to determine responsiveness | 8 | DAS reviews submittals for responsibility, starting with the lowest price, until award |

Reverse auction is a competitive selection process newly authorized under ORC 125.072, enacted through House Bill 120 in 2001. DAS may conduct reverse auctions at its discretion when it is determined to be advantageous to the state.

5.5 Expedited Purchases through DAS

With the approval of Am. Sub. House Bill 120, DAS is no longer required to advertise bid opportunities for a minimum of fifteen calendar days. Agencies may be able to use DAS for expedited purchases that require a quick turnaround. In the event that your agency requires an expedited purchase, contact your DAS procurement representative.



Direct Purchase Authority

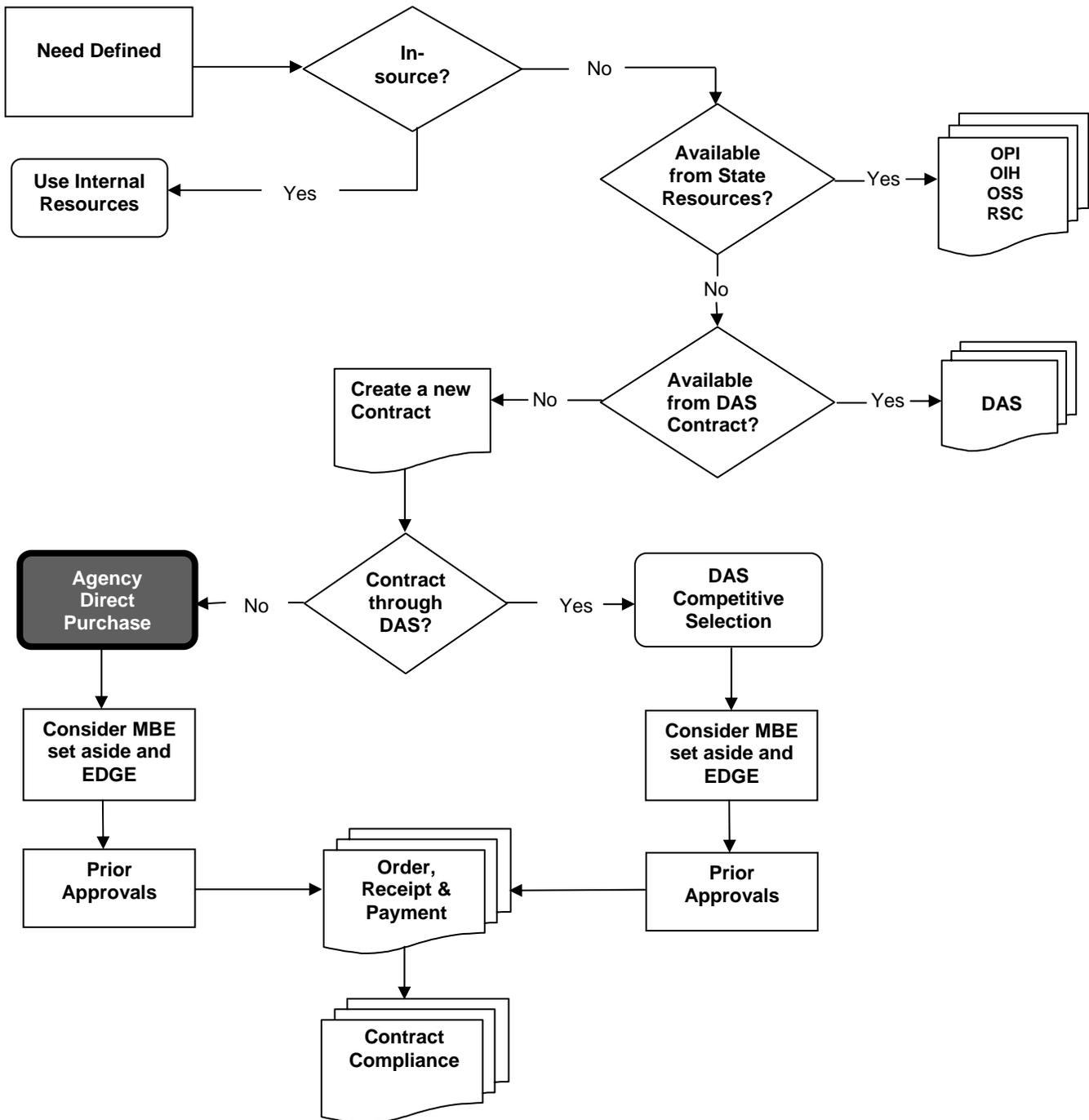
Chapter

6



6.0 Overview

You have determined that your need is not available from any state resources or from any DAS contracts and that the value of your need does not exceed \$33,500 for supplies or \$67,000 for services. You are now ready to make the purchase under authority granted directly to the agency in the Ohio Revised Code. Once an agency has determined that it is operating within its authority to create a new contract, it may proceed using Direct Purchase Authority. Should there be any questions concerning authority, please refer to Chapter 4.



6.1 Ethics and the Purchase Requisition

Prior to either making the purchase directly, the agency must prepare specifications that clearly describe the need. Clear and concise specifications are critical to success of the purchase. If written incorrectly, the need will not be met and the agency will have spent time and money needlessly.

One common pitfall is permitting a local and/or favorite vendor to have a key role in writing the specification. The vendor's description may very clearly outline their product, but may also exclude other vendors from offering their items to the agency. This creates an unfair advantage, is contrary to Ohio laws for competitive procurement and could lead to allegations of favoritism. The agency should seek information from multiple sources and then prepare a specification that provides all interested bidders with an opportunity to supply the need.

Ethical conduct means that all potential vendors are given a fair and equal opportunity to offer their supplies and services to the agency. Any action on the part of the agency, indicating that a particular vendor is being treated differently than others, gives rise to unethical conduct by the agency. Innocent lunches, small gifts, tickets to sporting events all could lead to accusations of impropriety toward the agency and possible violation of Ohio's ethics laws.

Proper ethical conduct is a crucial element of a successful purchasing program. Anything less is not acceptable to the purchasing professional. In Ohio, all employees involved with any aspect of the procurement process, to include their spouses, are subject to the ethics laws found in Ohio Revised Code. Employees should read and fully understand the requirements of these laws and how their conduct in the procurement processes could affect their professional and personal lives.

Remember: PERCEIVED unethical conduct can have the same impact as actual violations. As a purchasing professional you hold the trust of the public you serve. Don't place yourself, your agency and the state into a position of jeopardizing that trust.

The Ohio Ethics Law contains provisions restricting conflicts of interest that involve nepotism, post-employment, representation, influence-peddling, confidentiality, and supplemental compensation. Among other restrictions, the law provides that each public official and employee is prohibited from:

- Authorizing, or using his position to secure authorization of, a contract, for himself, a family member, or a business associate;
- Receiving any benefit from a contract entered into by his public entity;
- Hiring or securing any contract benefits for her spouse, parents, grandparents, children, grandchildren, or siblings, or any relatives living with her;
- Soliciting or accepting substantial and improper things of value, including gifts, or travel, meals, and lodging;
- Participating in matters where something of value will result for the public official or employee himself, his family, his business associates, or others with whom the public servant has a close tie that could impair his objectivity.

The Ohio Ethics Commission provides free advice and assistance to public officials and employees in Ohio. For any questions, please contact:

Ohio Ethics Commission
8 East Long Street, 10th Floor
Columbus, OH 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
www.ethics.state.oh.us

Questions & Answers

Q: Why is it important to contact more than one company?

A: This ensures competition. Laws for competitive bidding do not permit writing specifications that are directed to one manufacturer. Contacting multiple distributors for one manufacturer is not considered as competition. True competition is between two or more manufacturers.

Q: Why can't I accept an invitation to a sporting event from my neighbor who also sells products to my agency through my procurement office?

A: One who is involved in making purchases for his agency cannot accept anything of value from a supplier, whether it be a relative, a friend or business associate. Doing this is in violation of Ohio's ethics laws and carries stringent penalties.

Q: What if the invitation is offered to my spouse who isn't involved in my work?

A: Ohio's ethics law applies to the agency employees and their spouses as well.

Q: Is it true that I can accept anything under \$75?

A: The law prohibits a public employee from accepting "anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties." While the \$75 rule of thumb is sometimes used, it is possible that an item of lesser value could create an improper influence. It is best to contact the Ethics Commission

6.2 Specifications and the Purchasing Request

Once you have determined which type of specification to write (Chapter 4), you may proceed with creating the specification. The following is a sample checklist of topics that may be used to prepare specifications for Invitations to Bid. It should be noted that this list is not all-inclusive.

- What is it that you want your supplies or services to do?
- What special features, etc. do you need?
- "Conformance" to published standards: USDA, SNELL, ANEL, UL, ASTM, SAE, etc.
- Manufacturer's product number. If a manufacturer's number has been used, the manufacturer should be shown in the specification. Do not use the supplier's catalog numbers, which may differ between suppliers for the same item.
- Name - indicate actual name of item (for example "pump" or "electric motor").
- Model number (if repair parts, indicate model number being repaired).
- Size or dimensions (if size is critical indicate such and no exception to size is possible).
- Color - indicate shade of color or color number.
- Type of material - weight, gauge, thickness, finishes, etc.
- Quality of material - type of cloth and material blend, specification, and grade of lumber, type of metal/plastic.
- Quantity per package.
- Chemical analysis - by volume, weight or percent.
- Electrical - motor-phase cycle, voltage, current or horsepower.
- Accessories - required or optional.
- Warranty - standard factory or other, length of time, limited/unlimited.
- Assembled or knocked down (K.D.).
- Site visitation - (example: carpeting); contact person.
- Samples for evaluation - are samples necessary.
- Packing - standard or special.
- Delivery - realistic (confirm desired delivery with suggested sources).
- Inside delivery and installation.
- Building code compliance.
- Space limitations.
- Country of origin for item, foreign or domestic (see section 6.7).
- Features.
- Functions to be performed.
- Level of performance or production capacity.

6.3 Agency Direct Purchase Process

Agencies should consider the following when exercising their Direct Purchase Authority:

- To be used for items not available from term contract or other state sources (see Chapters 2 & 3);
- The need does not require pre-approval from DAS (see Chapters 3 & 8);

- Purchases for supplies, materials and equipment cannot exceed \$33,500 per purchase without DAS review and approval (Release and Permit, see Chapter 8);
- Purchases for services cannot exceed \$67,000 per purchase without DAS review and approval (Release and Permit, see Chapter 8);
- State Purchasing will bid supplies and equipment over \$2,500 and services over \$10,000 at the request of the agency.
- Agencies may not split purchases of similar goods or services to circumvent competitive bidding.
- Agencies should consider the minority set aside and EDGE programs (see Chapter 7).

Agencies should follow the guidelines of the most current version of the DAS Directive, summarized below (see Appendix 2):

- 1) Soliciting a minimum of three price quotes from different manufacturers is recommended.
- 2) If purchase is over \$500, the contract must be in writing and signed.
- 3) Award to lowest responsive and responsible vendor. Must provide reason for not awarding to low vendor.
- 4) Consider application of the domestic source end product and the in-state preference (Buy America & Buy Ohio). See Appendix 5.
- 5) Award approximately 15% of contracts to certified Minority Business Enterprises (MBE's) under set asides; award 5% of contracts to certified Encouraging Diversity, Growth & Equity (EDGE) participants.
- 6) The vendor must be able to meet the requirements of Contributions Disclosure [HB 300; OBM requirement ORC 3517.13(I) and (J) - Non-Competitive].
- 7) Direct purchases cannot exceed \$50,000/\$75,000 per department per vendor, per fiscal year without approval of the Controlling Board [OBM requirement ORC 127.16(B)(1) and (2)].

6.4 Terms and Conditions

Terms and conditions are a part of every contract issued by DAS and serve to protect the interests of both the State and the vendor. Agencies should consider adopting all or part of the DAS terms and conditions for inclusion in their direct purchases. The DAS terms and conditions used by State Purchasing for all ITB's are located under Appendix 5.

6.5 Membership Fees

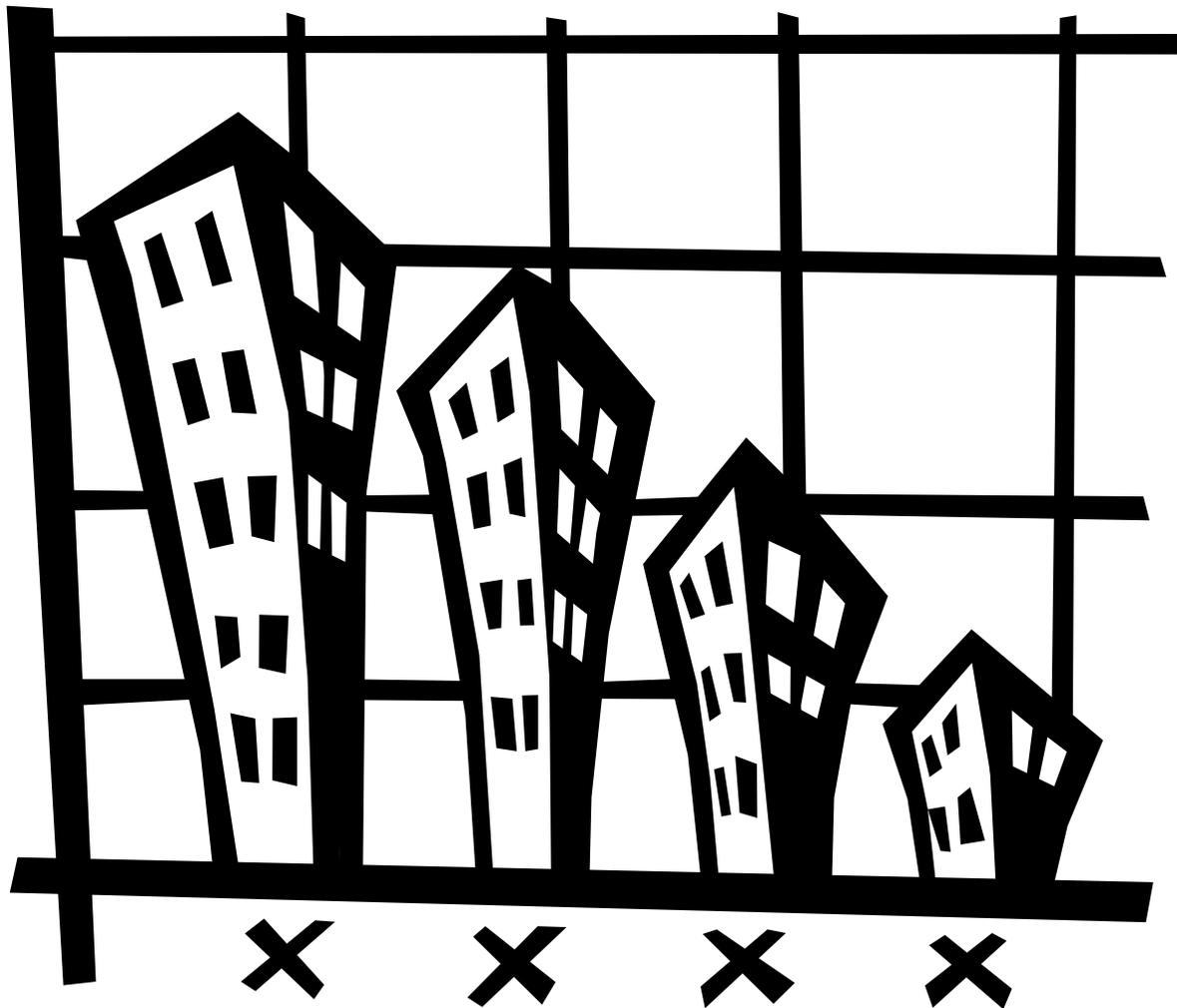
Fees for memberships in various organizations must be encumbered on an ADM-0523, Purchase Order if above \$1,000.

1. The agency must determine if the membership includes services as defined in Chapter 125.01 of the Ohio Revised Code.
2. If determined that the fee does not include services, the agency must enter the following statement in the description area of the purchase order: "The agency hereby certifies by the signature affixed hereon, that this membership fee includes no services as defined by ORC 125.01."
3. Controlling Board approval is not required as long as services are not part of the membership. If services are included in fee, such must be obtained through direct procurement authority with Controlling Board approval.



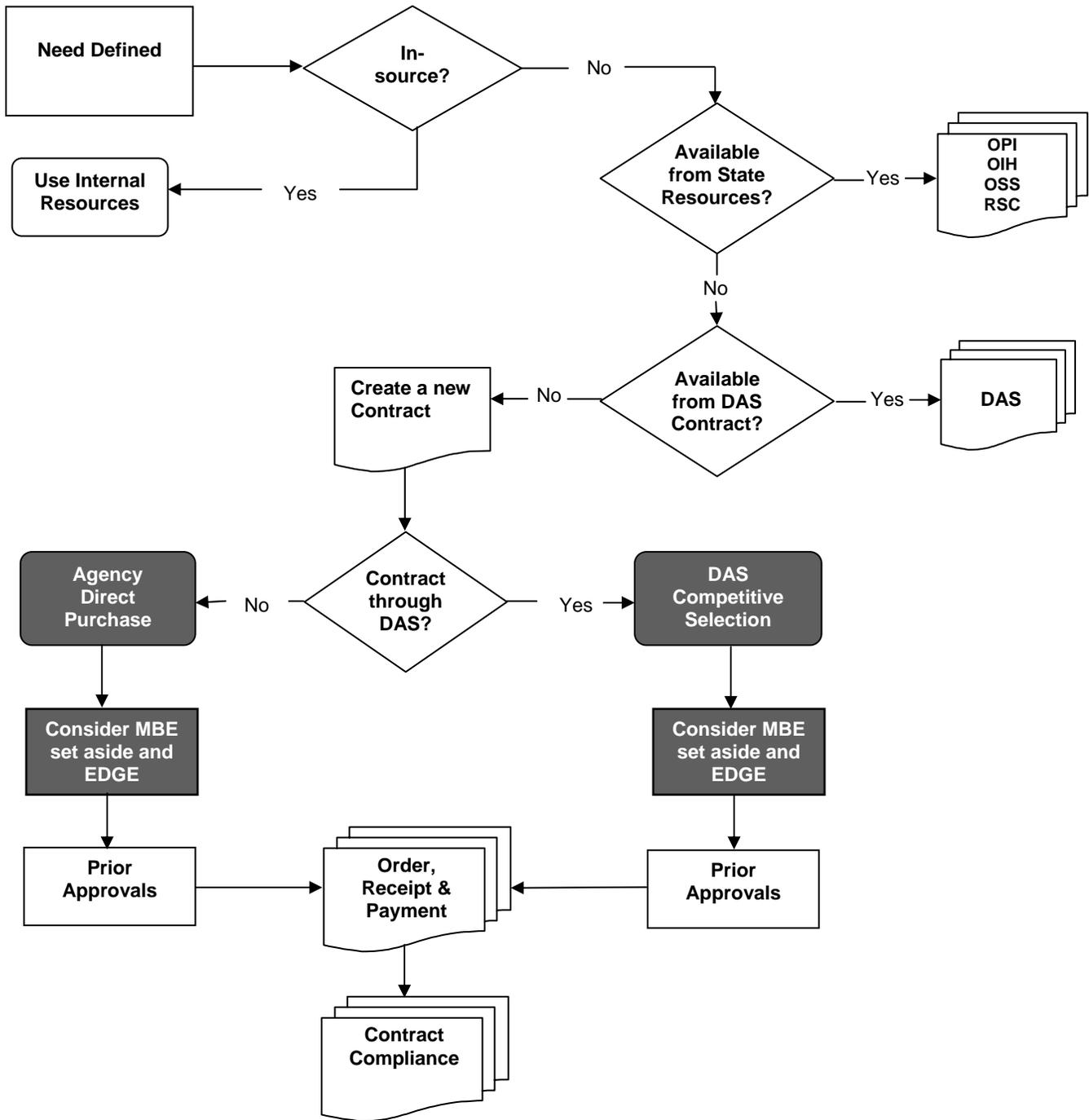
**Minority Business Enterprise (MBE)
and Encouraging Diversity, Growth
& Equity (EDGE) Programs**

**Chapter
7**



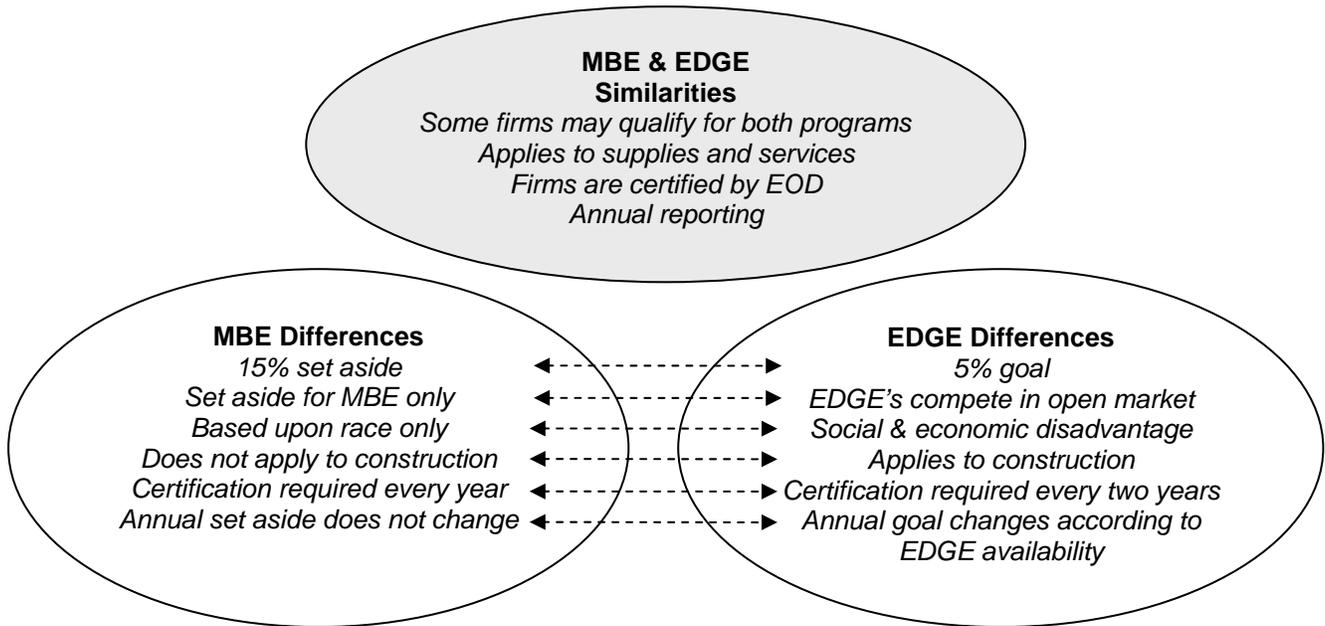
7.0 Overview

Whether the purchase will be made through DAS or made under the agency's direct purchase authority, consideration must be given to minority set aside and small business programs established by law and Governor's executive order. This Chapter will explain both programs and walk you through the each process.



7.1 Minority and Small Business Preferences

The Minority Business Enterprise (MBE) and Encouraging Diversity, Growth and Equity (EDGE) Programs allow government entities to consider certain social and economic factors in awarding contracts. The programs have both similarities and differences.



An overview of each program follows.

7.1.1 MBE Set Aside Overview

A Minority Business Enterprise (MBE) is an individual, partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens who are residents of Ohio, **and** who are members of one of the following economically disadvantaged groups:

- Blacks,
- Native Americans,
- Hispanics, and
- Orientals,

and who are certified by the Ohio Department of Administrative Services, State Equal Employment Opportunity (EEO) Coordinator.

A “set aside” is defined as a purchase selected for restricted competition among certified MBE’s only.

With few exceptions, state agencies are required to select a number of purchases, the aggregate value of which equals approximately 15% of the total goods and services purchased for the current fiscal year, for set aside competition. In order to reach the 15% goal, agencies may purchase from set aside contracts awarded by DAS and/or agencies may set aside their own procurements under direct purchase authority. Agencies exempt from this requirement are the legislative and judicial branches, boards of elections, and the adjutant general.

In light of developments across the country regarding set-asides, there has been some discussion about the legal foundation for Ohio’s program. The Ohio Supreme Court, in a lengthy review of minority set aside jurisprudence in 1999, concluded that Ohio’s MBE provisions for goods and services were constitutional. This ruling, combined with the Governor’s Executive Order 2000-03T, Policies & Procedures to Implement the MBE Program for State Purchases of Goods and Services, sets out a firm basis and commitment to achieving the letter and spirit of the law.

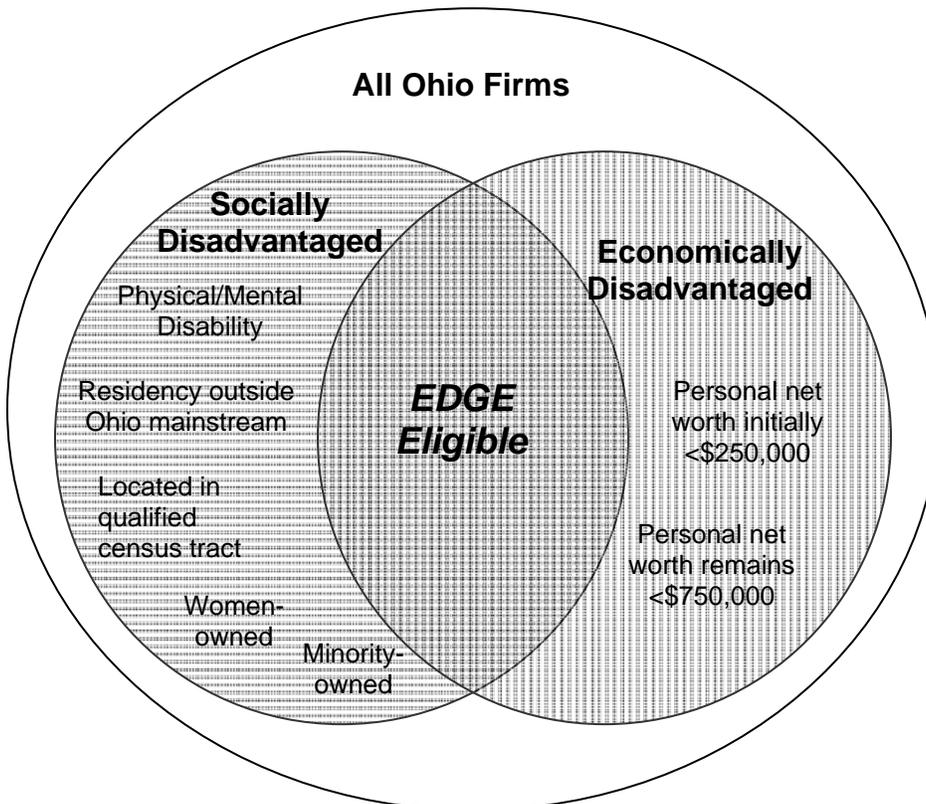
The DAS Equal Opportunity Division (EOD) administers and monitors the MBE program for state government. For more information, please contact EOD at 614-466-8380, or visit the web site at: www.state.oh.us/das/eod/index.htm.

7.1.2 EDGE Overview

EDGE is a contract assistance program designed to assist socially and economically disadvantaged businesses in Ohio. It was originally created by Executive Order 2002-17T in December 2002, and was codified in July 2003.

EDGE establishes goals for state agencies, boards and commissions in awarding contracts. The program applies to procurements of supplies and services, professional services, information technology services, and construction, architecture and engineering.

An EDGE participant must be a small socially and economically disadvantaged business enterprise owned and controlled by U.S. citizens who are Ohio residents. A business enterprise may qualify if the owner meets the criteria for both social and economic disadvantage:



Social Disadvantage

Those individuals who have at least one objective distinguishing feature that has significantly inhibited their business success, such as:

- race
- ethnic origin
- gender
- physical/mental disability
- long-term residency in an environment isolated from mainstream Ohio society
- located in a qualified census tract, or
- other objective relevant reason(s).

Economic disadvantage

- personal net worth of each owner must not exceed \$250,000 at program entry, **and**
- personal net worth of each owner must not exceed \$750,000 during program participation.

The principle behind EDGE is matching contractor **availability** with **utilization**. **Availability** means that a vendor is ready, willing, and able to perform the specified work. An example of an available vendor is one that bids on a state contract and has not been disqualified during the bid process. **Utilization** means that the state has contracted with the vendor to perform the specified work. By tracking both availability and utilization of EDGE participants, the state can determine whether these participants are obtaining a proportionate share of state contracts, and whether disparities exist.

To the extent that any agency of the State is authorized to make purchases, the agency shall establish procurement goals based on a percentage level of participation tied to some measure of percentage of contractor availability and eligible expenditures. For FY2004, the initial goal is **5%** of awarded contracts for supplies, services, and construction.

All of the following are possible ways that agencies can help meet their 5% goal:

- Purchasing from an EDGE vendor on a DAS contract;
- Awarding an open market contract to an EDGE vendor with no preferences;
- For purchases under the direct agency authority threshold, soliciting bids exclusively from EDGE vendors;

- Using an EDGE preference within a Request for Proposal (RFP) issued by the agency;
- Purchasing from a MBE set aside contract, when the MBE is cross-certified as an EDGE.

EDGE is **not** a set aside program. Agencies are not required to set aside certain contracts for EDGE participants only. Regardless of the procurement process used, any state business activity with an EDGE counts as utilization.

According to the executive order and new law, every cabinet-level state agency shall, within the constraints of statutory authority and as otherwise provided by law:

- Take appropriate steps to foster, support and encourage the participation of underutilized businesses and encourage such businesses to compete for construction contracts and the procurement of goods and services by including a participation goal for construction contracts and requests for proposals when subcontractors or sub-consultants are used.
- Review its projected annual procurements to determine, based on EDGE Program participant availability, which procurements will be designated as eligible for EDGE. Once participation goals are established, monitor and report program compliance to the Department of Administrative Services.
- Examine its internal agency procurement policies, procedures and practices and remove those elements that adversely impact small and minority-owned or women-owned businesses.
- Examine and eliminate all unnecessary barriers to equitable participation, including, but not limited to, the following items: bonding and licensing requirements, excessive experience requirements, massive procurements (unbundling contracts when practicable), use of proprietary specifications and other procurement-related requirements.
- Beginning on July 1, 2003, set an initial goal that approximately 5% of eligible direct expenditures in the areas of construction, architecture/engineering, professional services, goods and services, and information technology services be awarded to EDGE Program participants.
- Provide the Department of Administrative Services' Equal Opportunity Division with quarterly reports and annual projections on EDGE utilization.

More information on the EDGE program can be obtained at www.ohio.gov/das/eod/edge.

7.2 Achieving Program Goals through DAS contracts

When making a purchase through competitive selection, DAS is required to set aside a number of such purchases for MBE participation only, the aggregate value of which equals approximately 15% of the estimated total value of all purchases to be made through competitive selection in the current fiscal year. The DAS Offices of State Purchasing, State Printing, and Acquisition Management are each responsible for selecting their respective contracts for set aside, in cooperation with EOD.

DAS will also make available contracts awarded to EDGE's. Purchases from these contracts count toward EDGE goals.

7.2.1 Selecting Term Contracts for MBE Set Aside

Each year DAS selects certain term contracts to be set aside for MBE's only. The State Purchasing process is explained here as a guide to assist state agencies in selecting their own contracts for set aside. The full six-step process is described in State Purchasing Internal Procedure PUR-05. An abbreviated version of the procedure and its timetable follows.

- Organize term contracts. Not later than October 15th of the current fiscal year, State Purchasing prepares a listing of all term contracts that will be active in the approaching fiscal year. The list includes those contracts that will be expiring and may be rebid or renewed and those contracts that are continuing into their second or

third year of activation. Contracts are listed by effective date, open market/set aside/partially set aside status, and include a history as to which fiscal year(s) the contract was in a set aside status.

2. EOD first review. The list of active term contracts is forwarded to the EEO Coordinator by November 1st of the current fiscal year. EOD reviews the list, giving priority to those contracts scheduled to expire in the approaching fiscal year. EOD notes those contracts that are candidates for either partial or full set aside and prepares their supportive documentation for discussion and forwarding to State Purchasing by December 31st of the current fiscal year.
3. Documentation and history. Concurrent with submitting the list to EOD, contract analysts prepare documentation and history of their assigned contracts that will be expiring in the approaching fiscal year. The information assists State Purchasing management in the decision process with EOD to determine those contracts to be set aside.
4. EOD second review. EOD forwards their list of recommendations to State Purchasing no later than December 31st of the current fiscal year. EOD and State Purchasing meet no later than January 31st to review and discuss recommendations. At a minimum, factors considered in the selection process include:
 - a) Broker based or distributor based structure.
 - b) Number of qualified MBE's available to bid (minimum 2, 4+ preferred).
 - c) History of contract being set aside previously.
 - d) Impact upon state if set aside.
 - e) Impact upon MBE community if set aside.
 - f) Impact upon DAS and agency goals if set aside.A final listing of contracts recommended for set aside is prepared.
5. Final Listing. The final list of term contracts to be set aside is combined with all other term contracts that will active in the approaching fiscal year, including those from State Printing and Acquisitions Management. The MBE share as a percentage of the total is determined, and adjusted as necessary to attain the 15% goal. The final list receives the necessary DAS internal approvals no later than February 28th of the current fiscal year. The approved listing is then distributed to DAS management and contract analysts to permit them to begin work on the contract for the approaching fiscal year. The list is distributed to EOD and other interested parties, and available on the State Procurement and EOD web sites.
6. Adjustments to the Approved Listing. During the course of the fiscal year it may be necessary to make adjustments to the approved list. Some reasons for adjustments include a change of status from MBE to open market or vice-versa, new contract offerings, or cancellation of the contract. State Purchasing advises EOD when adjustments are necessary, and may select other contracts for set aside to offset any reductions so as to maintain the approximate 15% goal.

7.2.2 Selecting One-time Bids for Set Aside

Agencies may request DAS to set aside a one-time contract that will be awarded on their behalf. Additionally, DAS may decide that the particular purchase is a candidate for set aside. Following is the process that State Purchasing uses in selecting one-time bids for set aside. While the full process is described in State Purchasing Procedure PUR-06, an abbreviated version is included here.

1. Purchase Requisition. The agency forwards their purchase request to State Purchasing via the ADM-0500 requisition. The requisition contains specifications, funding information and other requirements of the agency. The agency may place a notation on the requisition to bid the procurement as a set aside purchase. The requisition is reviewed by the procurement manager and/or contract analyst(s). If requested for set aside, State Purchasing will generally honor the request. If not requested to be set aside, State Purchasing may select the request be set aside to assist in meeting the 15% goal for DAS. The agency will be notified of any such decision.
2. Suitability determination for set aside. State Purchasing may determine that it is not appropriate to bid the purchase as a set aside. Factors that may cause State Purchasing to bid the purchase to the open market rather than as a set aside include:
 - There are not sufficient qualified MBE's available to bid the purchase. Two or more bidders must be available to foster competition. The buyer will retrieve a list of certified MBE's from the EOD file.

- The size and nature of the purchase may not be conducive to the MBE community registered for the product or service area. For example, if the contract is too small or too large, or located in a distant area, competition may be limited.
- A significant number of other purchase requests for similar products or services have been selected for set aside. Issuing the new request to the open market will prevent a potential of selecting entire categories of products or services for MBE set aside.

State Purchasing discusses the above situations with EOD prior to making a final determination. Denial of an agency set aside request must be approved by the State Purchasing Administrator. In the event of a denial, the agency will be advised of the final determination and the reasons supporting the determination.

3. **Bid and Award.** If the set aside is approved, State Purchasing will complete preparation of the bid documents and issue formal notice of the intended purchase to registered MBE's. Bids will be opened on the specified date and the contract(s) awarded to the lowest responsive and responsible bidder following standard process. The contract award will consist of a State of Ohio Purchase Order (ORDE). State Purchasing will enter the ORDE into the Central Accounting System (CAS) as a MBE set aside purchase. Once funding is approved in CAS, State Purchasing will forward copies of the ORDE to the contractor and respective agency.

7.2.3 Finding DAS Contracts to Meet MBE Set Aside and EDGE Goals

Agencies are encouraged to purchase supplies and services from MBE and EDGE vendors on DAS contracts. Using the State Procurement web site, one can find contracts with MBE vendors by taking the following path:

www.ohio.gov/procure (State Procurement home page)

Select "Current Contracts"

Under "Search by Contract Type," use right down arrow to select "Set Aside (MBE) Contracts"

On "Search for MBE Contracts" page, further refine your search, or click on "Search" to view all contracts.

One can find contracts with EDGE vendors by taking the following path:

www.ohio.gov/procure (State Procurement home page)

Select "Current Contracts"

Under "Search by Contract Type," use right down arrow to select "EDGE"

On "Search for EDGE Contracts" page, further refine your search, or click on "Search" to view all contracts.

As part of the EDGE initial launch, all current MBE's will be cross-certified automatically as EDGE vendors. Later when a vendor's MBE certification is reviewed for renewal, EOD will determine whether the firm is qualified to maintain EDGE certification. Therefore, initially all MBE contracts will automatically qualify as EDGE contracts, and one can use MBE contracts to reach EDGE goals.

7.3 Achieving Program Goals through Agency Direct Authority

Agencies may choose to achieve MBE and EDGE goals through purchases made under their direct authority. Following are guidelines for both programs.

7.3.1 MBE Set Aside through Agency Direct Authority

In order to reach their 15% set aside requirement, agencies may choose to set aside some contracts that are created under their direct purchase authority. As guidance, agencies should consider following do's and don'ts for set asides:

- Do not arbitrarily set aside 15% of every contract.
- Do not arbitrarily select one entire contract area for set aside, i.e., all of the contracts for the purchase of shoes.
- Do consider contract incumbency or longevity (who has had the contract for the last 2 years).
- Do look for opportunities to encourage minority business growth. Look at past years and ask whether a set aside opportunity has ever been provided by your agency in that contract category.

- Do consider adverse impact on both minorities and non-minorities. In contract categories where set aside opportunity has never before been offered lies the potential for adverse impact to non-minorities who have held the contracts long term and to minorities who are seeking to “break into” heretofore inaccessible markets.
- Do consider industry standards.
- Do consider, where appropriate, dividing purchases or contracts into smaller contracts or multiple contracts.
- Do consider the pool of certified MBE’s in your various contract or purchasing categories.
- Do monitor quarterly and adjust your projections and selections as necessary.
- Do check the EOD web site for the latest listing of certified MBE’s, and for the list of DAS contracts set aside for the current fiscal year.

7.3.2 EDGE Compliance through Agency Direct Authority

Agencies may also choose to include EDGE goals in purchases made under agency direct authority. Some of the allowable methods to increase EDGE participation include:

- Soliciting direct quotations from a large number of EDGE’s;
- Including a point preference for an EDGE vendor in an agency-issued Request for Proposal;
- Including a point preference for using an EDGE subcontractor in an agency-issued Request for Proposal;
- Requiring an EDGE subcontracting goal on a construction or service contract;
- Purchasing from an agency-issued MBE set aside contract, when the MBE is cross-certified as an EDGE.

Agencies may obtain a current listing of EDGE firms at www.ohio.gov/das/eod/edge.

Choice of compliance method has an impact on reporting requirements, explained in the subsequent section.

7.4 EDGE Waivers

In the event that a particular contract requires EDGE subcontractor participation, responding vendors may request relief from the EDGE requirement if no EDGE vendors are available.

EDGE waivers are reviewed and processed by the agency awarding the contract, according to standard guidelines. The standard documentation for processing an EDGE waiver is the good faith effort log, which is to be included with the vendor’s bid or proposal. The good faith effort log demonstrates that the contractor has performed due diligence in attempting to secure EDGE participation for the contract. The contractor should record any contacts with EDGE’s on the log. The agency will review the documentation and render a waiver decision. The agency may request the assistance of the DAS EOD office to determine good faith.

Sample good faith effort log forms are available on the EDGE web site at www.ohio.gov/das/eod/edge.

7.5 Reporting

Agencies are required to submit to EOD a combined MBE/EDGE Annual Expenditure Plan outline. EOD will provide agencies with quarterly and annual reports relative to expenditures with both programs.

7.5.1 MBE Reporting

Agencies are required to report MBE expenditures to EOD on a quarterly and annual basis.

One point often confused is the distinction between *set aside* and *participation*. In a set aside bid, competition is restricted exclusively to MBE’s. Should an agency award a contract to an MBE through an open market bid, purchases with that MBE are reported to EOD as MBE participation, but not as set aside.

MBE goods and services participation spending, when verified by the agency, may be included in a section of EOD’s statewide report but cannot be part of the report’s statutory set aside goal achievement, since competition was not limited to MBE firms. Any spending with Ohio minority firms may become a part of the report’s appendix, and reported as other good faith efforts. For more information on MBE reporting, please refer to the EOD web site at www.ohio.gov/das/eod.

7.5.2 EDGE Reporting

The intent of EDGE reporting is to compare availability of certain types of firms vs. utilization of those same types. Reporting can be grouped into levels, from the simplest to the most comprehensive:

Level	When to use	Track Availability by	Track Utilization by
One	Direct expenditures under purchase authority threshold; all expenditures through DAS contracts	CAS report of total spending by agency	CAS report of EDGE spending by agency
Two	Agency ITB's or RFP's above direct purchase authority threshold	Bid or proposal tabulations, and \$ value of contracts awarded by these methods	EDGE spending on contracts awarded by these methods
Three	Agency contracts that utilize subcontractors	Agency spending on contracts of this type	Agency spending on EDGE subcontractors
Four	Agency contracts that utilize subcontractors, in which prime contractor has applied for a waiver of EDGE requirements	Contractor applying for waiver must provide good faith effort log showing available EDGE's contacted	Agency spending on EDGE subcontractors

For all EDGE reporting, forms are available on the EDGE web site at www.ohio.gov/das/eod/edge.

Questions & Answers

Q: Must agencies identify three (3) MBE's before a contract can be set aside?

A: No. Agencies have frequently used a "rule of three available bidders." However, the threat of at least one other bidder is sufficient to establish the presence of competition *whether or not the other bidder submits a response or bid*. Hence, a competition is established even when there is only one response. A single response from a bidder would not invalidate the set aside contract for want of competition.

It is recommended that at least two MBE's be identified and registered in the commodity code of the potential purchase. If only one MBE is available, the purchase would be considered sole source, and would require Controlling Board approval (see Chapter 8).

Q: Should "availability" be a factor?

A: Yes. There are at least three types of "availability." First, *available* can pertain to those potential contracts to be set aside for MBE competition only. Second, *available* can pertain to those MBE's identified as having *registered* in the trade, goods or services being solicited by the agency (as discussed in the preceding question). Third, *available* can pertain to those MBE's who *respond* to the bid solicitation and are subsequently determined to be responsive and responsible bidders by the agency.

As with every contract, the letting agency will determine this last type of availability. This latter type of availability or capability evaluation is separate and apart from the availability or MBE trade registration analysis done by the agency when determining which purchases to set aside for MBE competition.

Q: Is there a difference between "certified" and "registered"?

A: Yes. The Equal Opportunity Division *certifies* that applications to Ohio's MBE program, as outlined in ORC 125.081, have met the five basic requirements for participation: ownership, control, ethnicity, Ohio residency, and United States citizenship. Vendors may also become *certified* in the EDGE program.

At any time, vendors may *register* on the State Procurement web site to be notified of bid opportunities. *Registration* gives the vendor an electronic notice of an opportunity, regardless of certification status.

Q: Does the Equal Opportunity Division certify MBE's in particular areas of business?

A: Yes. Certificates issued to MBE's specify that the holder of the certificate is either a supplier of goods/services, or a construction prime contractor. EOD's publication of certified MBE's limits identification to those two basic categories and by NIGP code.

Q: Who will evaluate the qualifications of the MBE bidders?

A: OAC 123:2-15-01, Rule (B)(11) states, in part: "Any applicant desiring to bid on a contract awarded by any agency other than the department of administrative services must meet any pre-qualification requirements of that agency." Practically speaking, the bid specifications and the evaluation of capability process that agencies utilize for determining the ability of any open market bidder to perform on the contract will suffice for determining the qualifications of MBE vendors as well.

Q: From what source will agencies obtain registration lists of certified MBE's?

A: The EOD web site at www.state.oh.us/das/eod/mbecert.htm contains an updated list of certified MBE's. Agencies may download and print the listing, or search the list using various criteria.

Q: How will future EDGE procurement goals be set?

A: The initial baseline procurement goal will be 5 percent. After a year of program operation the initial agency goal will be reviewed by the Ohio Department of Administrative Services (DAS) with the agency and adjusted accordingly based on EDGE-contractor availability and eligible agency procurements.

Q: What is the difference between the EDGE program and the MBE program?

A: Both programs assist underutilized businesses in obtaining state government contracts. Underutilized businesses may be eligible for certification with the MBE and EDGE program. MBE certification is limited to members of four statutorily designated racial groups. MBE procurement involves sheltered market or set-aside contracts let by virtually all state agencies. EDGE certification is open to any Ohio-based small business that has been certified as socially and economically disadvantaged. EDGE procurement is limited to direct discretionary cabinet-level agency purchases and does not involve bidding credits, sheltered markets or set-aside contracts.

Q: How will EDGE goals and MBE set aside requirements be reconciled?

A: Underutilized businesses may be eligible for certification with both the MBE and EDGE programs. A business has an opportunity to obtain contracts through actively participating in both programs. When projecting MBE and EDGE procurements, agencies may realize that it is possible for the procurement to be made from a vendor under either program. Should this occur, the larger 15 percent MBE set aside requirement should be met first, and in doing so the 5 percent EDGE goal will be indirectly met. On the other hand, when possible, EDGE procurements should be made first from vendors that are EDGE-only certified to help both MBE and EDGE participants to be utilized by agencies.

Q: How will EDGE spending be tracked in the Central Accounting System (CAS)?

A: EDGE vendors will have a designator in CAS, similar to MBE vendors.

Q: How will the EDGE program be monitored?

A: The state EEO coordinator and agency EEO officers will be primarily responsible for program monitoring and accountability. Agency EEO officers or other designated personnel will be trained and given an enhanced role and responsibility for individual agency compliance. In addition to monitoring agency compliance and submitting reports to DAS, EEO officers will receive complaints, investigate disputes and review agency waivers. DAS will be responsible for overall program oversight and annual reports to the governor.

Q: How will EDGE disputes be resolved?

A: When possible disputes involving agencies and certified vendors will be mediated through the alternative dispute resolution process. Vendors or agencies that experience problems with utilization or compliance may file a complaint with DAS or the contracting agency EEO officer. Once received, the complaint or dispute will be reviewed, investigated and resolved or referred to alternative dispute resolution when appropriate. However, certification disputes must be appealed to the DAS Equal Opportunity Division, the division responsible for certification.

Q: How will EDGE waivers be granted?

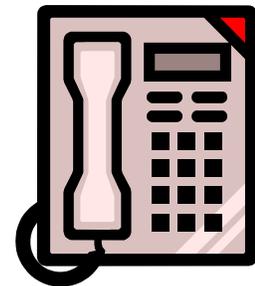
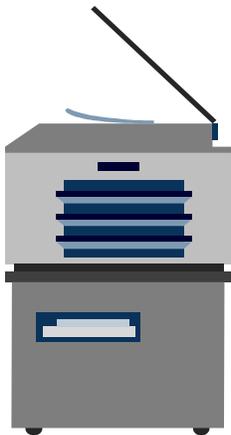
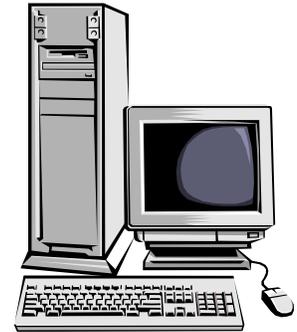
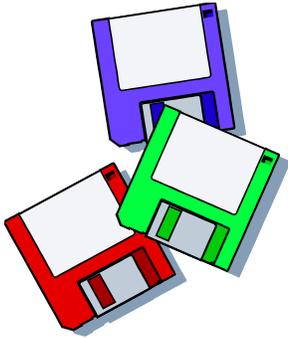
A: The contract-letting entity will be responsible for granting waivers. Contractors documenting a good faith effort to comply with the established participation goal, may request a waiver if they are unable to comply. The waiver process and necessary documentation to warrant the granting of a waiver will be uniform throughout the state and subject to review by the agency EEO officer and state EEO coordinator.



Prior Approvals

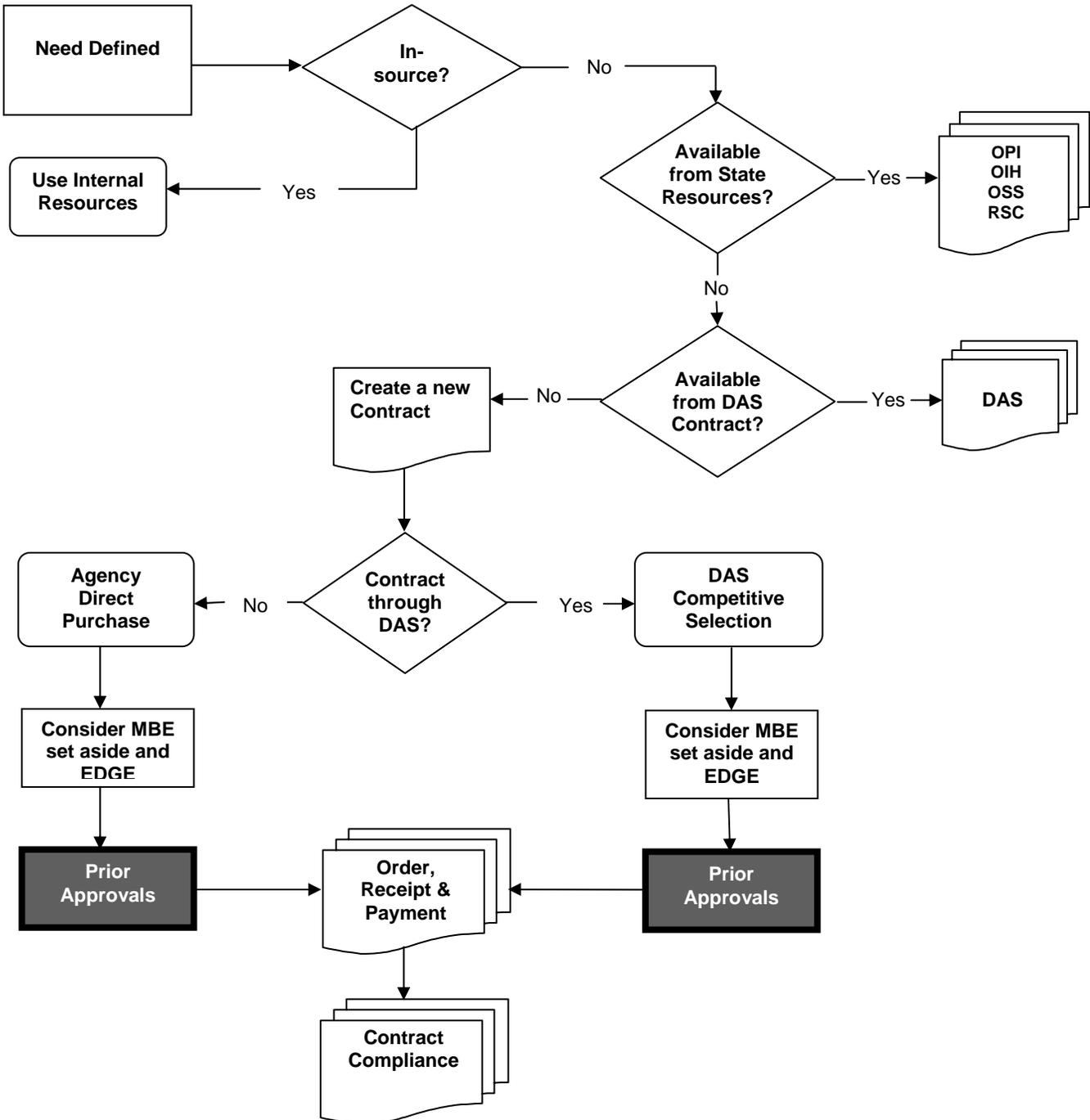
Chapter

8



8.0 Overview

The Ohio Revised Code places a responsibility upon DAS to superintend purchases of certain types of supplies and services; i.e. computers, software, telecommunications, copiers, fax's and vehicles. DAS is also responsible to make purchases of supplies and services above dollar limits described in Chapter 6 unless DAS determines that it is not practical or advantageous to make the purchase on behalf of the agency. This chapter will explain the procedures an agency must follow when seeking prior approvals and when DAS issues a release to allow the agency to make the purchase under their direct authority.



8.1 Types of Prior Approvals

Certain purchases require review and approval from designated agencies before completing the purchase. The need for prior approval may be triggered by the type of equipment or service, amount of purchase, or deviation from normal procedures. Types of prior approvals include **pre-approvals, release and permits, and Controlling Board approvals.**

A **pre-approval** is required prior to any purchase of:

- telecommunication services or equipment;
- facsimile;
- copier and duplicator;
- information technology (IT) solutions;
- data processing (DP) equipment/services;
- software;
- vehicles.

Agencies request a pre-approval from the appropriate office listed in this chapter. If request is approved a pre-approval number will be assigned to the using agency. Using agencies must enter the given pre-approval number field when entering their Purchase Order (ADM-0523) in CAS. Agencies can review pre-approval numbers through CAS inquiry QPREA01.

A **release and permit** is required when an agency anticipates that it will exceed its direct purchase authority threshold and/or cumulative annual threshold. Procedures for requesting a release and permit are included in section 8.7.

Controlling Board approval is required for a broad range of exceptions to standard procurement procedures. A brief overview is included in section 8.9.

8.2 Telecommunication Products

Office of Information Technology - Service Delivery (ITSD)
30 East Broad Street, 39th Floor
Columbus, OH 43266-0409
(614) 752-7230
www.ohio.gov/das/dcs/telecom/index.htm

Agencies requiring purchase of any telecommunication services, telephone or facsimile equipment must submit requests to OIT - ITSD for approval.

Requests are submitted on a Telephone Service Request, ADM-3807, directly to OIT-ITSD.

An approval from OIT-ITSD is only a release to procure the equipment. Standard purchasing guidelines must be followed in the procurement of approved equipment (i.e., term contracts, term schedules, competitive bidding, etc.)

8.3 Reprographic Equipment

State Printing
4200 Surface Road
Columbus, OH 43228-1395
(614) 644-7550
www.ohio.gov/das/gsd/prt/prt.html

For black and white copiers producing 65 copies per minute and above, and for color copiers producing 20 copies per minute and above, agencies are required to submit to State Printing requests providing justification for copying/duplicating equipment. This request should be submitted on a Reprographic Proposal and Permit Authorization Form (ADM-3311).

If the request is approved, State Printing will provide written authorization for the equipment purchase.

Prior to submitting a request for approval, the agency shall specify their needs and receive a list of equipment/vendors meeting these needs. The agency shall evaluate the equipment and provide costing information inclusive of all maintenance, supplies and services.

8.4 Information Technology (IT)

Office of Information Technology - Governance Division (ITGD)
30 East Broad Street, 39th Floor
Columbus, OH 43215
(614) 466-6920
www.ohio.gov/das/dcs/index.htm

Agencies are required to submit to ITGD requests, providing justification, for purchase of IT when the total cost exceeds \$25,000.

Agencies are assigned blanket pre-approval numbers for purchases totaling under \$25,000. Agencies should follow standard purchasing procedures when procuring computer equipment with the total cost under \$25,000.

If the request is approved, a pre-approval number will be assigned and entered into the Central Accounting System (CAS). Agencies will receive written notification from ITGD of this pre-approval and any necessary information required to prepare a purchase order.

Purchases of \$25,000 or more must use one of the following methods to procure:

- Purchase from a term contract or term schedule.
- Use competitive bid or competitive selection through DAS.
- Approve through the State Controlling Board.

For questions on placing an order or checking the status of a request ...

DAS/ITGD Acquisition Management
Acquisition Analyst
30 East Broad Street, 39th Floor
Columbus, OH 43215
(614) 466-6920

8.5 Office Copying Machines

State Purchasing
4200 Surface Road
Columbus, OH 43228-1395
(614) 466-0539
www.ohio.gov/procure

If an agency has a need to acquire an office-copying machine, there are **four** procurement options:

1. Outright purchase;
2. Rent month-to-month, not to exceed 60 months;
3. Lease To Purchase (LTOP), including an option to purchase after a period not more than 60 months;
4. Cost-Per-Copy Program.

If the copier desired has a capacity greater than or will be used for more than 85 copies per minute, the request and contractor proposal will be forwarded by State Purchasing to State Printing for approval and written authorization.

The agency will solicit proposals from State Term Schedule (STS) contractors, selecting one proposal that best meets the agency's needs. The proposal should include prices for all three options: purchase, rental, and LTOP. The agency will forward the proposal to State Purchasing for a pre-approval number before a purchase order is entered. In situation where a rental or LTOP is involved, the agency will also forward an Exhibit A signed by the STS contractor.

State Purchasing will review the documentation for accuracy and conformance to the STS procedures and then forward the request to State Printing for comparison with the cost-per-copy program. State Printing will contact the agency to discuss the cost-per-copy program and cost differences with the other three options. The final decision as to which option will be used rests with the agency. Once a final determination is made, State Purchasing will issue a pre-approval number to the agency. When using one of the first three options, the agency receives the pre-approval number and a Purchase Order (PO) can be entered into CAS. The PO is faxed and/or mailed to the contractor. If the Cost-Per-Copy option is selected, orders would be placed through State Printing.

The agency shall receive and inspect the copier to ensure the equipment conforms to what was ordered and is operational. When receiving and installation are complete, the agency will then sign Exhibit B, which is the document that confirms the receipt of the lease or rental copier equipment.

8.6 Vehicles

Fleet Management
4200 Surface Road
Columbus, OH 43228-1395
(614) 466-6607
www.ohio.gov/fleet/fleet.html

Following are procedures for the purchase and lease of vehicles, automobiles, or trucks. To define terms, a **lease** is considered to be three months or more of aggregate usage from a commercial renting/leasing company and must be submitted to Office of Fleet Management (OFM) for a pre-approval number: A **rental** is for less than three months and need not be submitted to OFM.

8.6.1 Motor vehicles purchased from state term contracts.

1. Submit a completed General Requisition (REQ) document to OFM along with all necessary documentation (vehicle purchase justification form, written justifications, etc.).
2. If the requested purchase is approved, OFM will assign a pre-approval number and enter the information into CAS (view on the QPREA02 Screen). OFM will assign a pre-approval number assigned.
3. State agencies will enter ORDE in CAS with all required codes and approvals.
4. If the requested purchase has been disapproved, OFM will either request additional information or return the REQ without a pre-approval number to the agency.

8.6.2 Motor vehicles purchased from non-contract vendors (\$33,500 in aggregate to be competitively bid).

1. Submit a completed General Requisition (REQ) document to the OFM along with all necessary documentation (vehicle purchase justification form, written justifications, etc.).
2. If the requested purchase is approved, OFM will forward the REQ to State Purchasing for the bid procedure.
3. State Purchasing will issue an Invitation to Bid (ITB). After State Purchasing awards the ITB, OFM will be contacted for a pre-approval number. State Purchasing will enter the ORDE in CAS with the required codes and approvals.
4. The OFM will send a pre-approval notice to the agency.
5. If the requested purchase has been disapproved, OFM will either request additional information or return the REQ without a pre-approval number to the agency.

8.6.3 Motor vehicles leased from commercial leasing companies (under \$33,500 in aggregate).

1. Submit a completed General Requisition (REQ) document to OFM along with all necessary documentation (vehicle purchase justification form, written justifications, etc.), including a copy of the unsigned lease agreement. Include the entire fiscal year's cost in the "est. cost" column.
2. If the requested lease is approved, OFM will assign a pre-approval number and enter information into CAS (view on the QPREA02 screen). Key in VEH as the approval unit. OFM will return the REQ with the pre-approval number assigned.
3. State agencies will enter ORDE with all required codes and approvals.
4. If the requested lease has been disapproved, OFM will either request additional information or return the REQ without a pre-approval number to the agency.

8.6.4 Motor vehicles leased from commercial leasing companies (\$33,500 in aggregate to be competitively bid).

1. Submit a completed General Requisition (REQ) document to OFM along with all necessary documentation (vehicle purchase justification form, written justifications, etc.). Include the entire fiscal year's estimated cost in the "est. cost" column.
2. If the requested lease is approved, OFM will forward the REQ to State Purchasing for bid.
3. State Purchasing will issue the Invitation to Bid. After State Purchasing awards the ITB, OFM will be contacted for a pre-approval number. State Purchasing will enter the ORDE with the required codes and approvals.
4. OFM will send a pre-approval notice to the agency.
5. If the requested lease has been disapproved, OFM will either request additional information or return the REQ without a pre-approval number to the agency.

8.7 Release and Permit

Referring to the diagram at the beginning of Chapter 4, when an agency's direct purchase amount exceeds \$33,500/\$67,000, the agency is required to forward their request to DAS to make the purchase under competitive selection. If DAS determines that it is not possible or advantageous for it to make the purchase, permission will be given to the agency to make the purchase under its direct purchase authority.

The waiver that authorizes the agency to seek Controlling Board approval or to make purchases that DAS cannot make is the **Release and Permit** (ADM-3252). DAS' authority to grant a Release and Permit is contained in Ohio Revised Code Sections 125.05 & 125.06 and Ohio Administrative Code Section 125:5-1-03.

Factors DAS will consider in granting a Release and Permit include:

- The demonstrated ability of the agency in terms of procurement and specialized knowledge pertinent to the procurement.
- The past experience of the agency in exercising similar authority.
- The degree of economy and efficiency to be achieved if authority is delegated.
- The availability of resources in DAS to make the purchase.
- The ability of DAS to complete the purchase under Competitive Selection.
- An emergency condition exists.

The agency should not proceed with the purchase until DAS has granted the Release and Permit. Whenever DAS grants a Release and Permit, the agency must make the purchase pursuant to Competitive Selection requirements or with Controlling Board approval. A copy of the approved Release and Permit, to include supportive documentation, will be retained by DAS.

If the request is approved, a release and permit number will be assigned to the using agency. Using agencies must enter the given release and permit number field when entering their Purchase Order (ADM-0523) in CAS. Agencies can review release and permit numbers through CAS inquiry QPREA02.

DAS may also grant special Blanket Release and Permits for certain personal services that cannot be bid by DAS. DAS will issue the Blanket Release and Permit prior to the beginning of the fiscal year(s) to which they apply. See Section 8.8.

Special Note: Agencies are cautioned against investing significant time in obtaining quotes and/or finalizing any contractual agreement with a vendor under the assumption that DAS will automatically grant the release & permit. Agencies should also guard against submitting a request for the release & permit citing an expedited need for DAS to grant the release & permit (i.e. trying to meet a Controlling Board deadline for submission). Law requires that DAS review each request to determine if such can be purchased through competitive selection. If DAS determines that formal bidding is possible, the request will be denied. The agency should contact DAS when the agency first determines that a need exists. If DAS determines, at that time, that it cannot procure the need through competitive selection, the agency will be granted the release & permit and may then proceed with using their direct authority to complete the purchase.

Questions & Answers

Q: *When should a Release and Permit be requested?*

A: DAS should be contacted when the agency has determined that they will be exceeding the \$33,500/\$67,000 DAS direct purchase limits. DAS will review the purchase request and make a determination if such can be purchased through competitive selection or if a Release and Permit should be granted to the agency. Agencies should not contact suppliers prior to DAS review. If it is determined that the purchase can be purchased through competitive selection, the request will be denied and the agency will have invested time and effort needlessly.

Q: *What if the purchase has been made and we now discover that a Release and Permit is necessary?*

A: Law requires DAS to determine that it is not possible or advantageous to make the purchase through Competitive Selection. If determined that DAS could have made the purchase through Competitive Selection, the purchase could be considered invalid. This may require the agency to return the item and/or may leave the person authorizing the purchase personally responsible to pay for the purchase. The only exception would involve an emergency condition.

Q: *When will purchase be considered an emergency purchase?*

A: The Revised Code defines that an emergency exists when there is an immediate need for supplies or services that cannot be met through normal procurement methods and lack of which would create a serious threat to the health or safety of a person or to the functioning of state government. The failure to properly plan is not considered to fall within the definition of an emergency situation. With few exceptions, only true emergency requests will be considered for a release and permit.

Q: *How long does it take to obtain a Release and Permit?*

A: With the exception of an emergency, the process generally takes a minimum of ten (10) business days from the date the request is received. Agencies should be mindful to include all relative information to support the request as failure to do so will result in return of the request and will delay receipt of the Release and Permit. Depending upon the purchase, some requests may require additional time for review.

Q: *How do I make a request for a Release and Permit?*

A: Complete the ADM-3252, Request for Release and Permit form. Instructions for completing the form are listed on the reverse side of the document. Include all detained information and complete all areas of the form, as requested. Additional pages may be attached. Forward the documents to the R&P Coordinator located at the Office of State Purchasing or Acquisitions Management. When the review is completed, the ADM-3552, noting the final determination of your request, will be returned. For some Controlling Board and Special Blanket Release and Permits, a Release and Permit Notification may be used in lieu of the ADM-3252.

Q: May the request be faxed to DAS?

A: Release and Permit requests may be forwarded in their original form or faxed to DAS. DAS is also considering electronic submission and will advise when the feature is available. Agencies must include all supportive documentation or the request will be returned. If the request is an emergency, call the R&P Coordinator for instructions.

Q: Why does a Release and Permit have to be obtained for Controlling Board Requests?

A: The Controlling Board requires that all requests to be placed on the agenda requesting a waiver of competitive selection be accompanied by a Release and Permit from DAS, if so required by DAS. If not attached, the request will not be placed on the Controlling Board agenda. It is important to involve DAS early into your purchase as the Controlling Board Request must include the Release and Permit or you will be delayed in obtaining Controlling Board approval.

Q: I need to make a purchase involving a repair to our public building. How do I obtain a Release and Permit?

A: The Office of State Purchasing is not authorized by law to make purchases related to the construction, re-construction, alterations, or similar repairs to a public building (see Chapter 11). Agencies should contact the DAS State Architect’s Office at (614) 466-4761.

8.8 Blanket Release and Permit

Certain types of purchases may exceed the agency direct purchase authority thresholds, but are not required to be purchased through DAS. DAS issues a **blanket release and permit** to cover these types of purchases.

At the beginning of each biennium, DAS determines that it is not possible or advantageous for it to make purchases of certain types of personal services and other specialized items. These items are described in the Object of Expense Codes as published by OBM, State Accounting. This blanket release and permit does not waive the necessity for any additional reviews or approvals as required by law or other DAS policies.

The current blanket release and permit is in effect through June 30, 2007. The following procedures have been established to enable agencies to process the ADM-0523 purchase order (PORE/ORDE) in CAS.

The blanket release and permit number is comprised of the agency’s three digit alphanumeric CAS code, followed by a hyphen and 06/07. For example:

- DAS-06/07 (Department of Administrative Services)
- OBM-06/07 (Office of Budget and Management)

The supplies/services affected are defined by the following object and sub-object codes:

<u>Object</u>	<u>Sub-Object</u>	<u>Description</u>
120	All	Non-residential community treatment services
150	All	Medical purchased personal services
155	All	Legal purchased personal services
160	01, 95 only	Accounting/auditing purchased personal services
175	All	Research purchased personal services
180	01, 95 only	Administrative management and supportive services, purchased personal services
190	All	Advertising purchased personal services
195	All	Training – purchased personal services
296	All	Expenses for Wards of the State
299	01, 02, 05,13	Other payments, interest, insurance, licenses, permits, petty cash, discounts, delinquent payments

Agencies may view the actual blanket R&P on the State Procurement website (www.ohio.gov/procure) ; click on “What’s New” and then on “Announcements”.

The blanket release and permit should be used on all PORE/ORDE's utilizing these object codes. If Controlling Board approval is required, due to exceeding the annual dollar threshold, the agency must make a written notation on the Controlling Board request of the object codes utilized and the Release and Permit number assigned. Controlling Board staff will verify this information prior to scheduling any request. No further release and permits will be required from DAS.

For object codes not listed, release and permit approvals are necessary from DAS. Telecommunication charges and utility payments and services are to be acquired in accordance with Section 9.30, Ohio Revised Code. Release and permits are not necessary for these services.

8.9 Controlling Board

The State Controlling Board is a legislative body comprised of three members of the House of Representatives, three members of the Senate, and a president representing the Director of the Office of Budget and Management. The Controlling Board provides oversight to ensure that funds appropriated by the legislature are used appropriately, consistent with the original legislative intent.

The Controlling Board has the authority to waive competitive selection. Agencies must seek Controlling Board approval when the cumulative amount to be spent with a single vendor will exceed \$50,000 per fiscal year and purchase does not follow competitive selection. For institutional agencies, the cumulative amount cannot exceed \$75,000 per fiscal year. For these purchases, the agency must obtain a release & permit from DAS.

For purchases of supplies exceeding \$33,500 or for services exceeding \$67,000, but do not exceed the cumulative annual threshold noted above, agencies must still seek a release and permit from DAS only. For more on releases and permits, see Section 8.7.

For more on Controlling Board procedures, please consult the Controlling Board manual, which may be downloaded from the following location: www.ohio.gov/obm/Information/controllingboard/TotalDoc.pdf



Ordering, Receipt and Payment

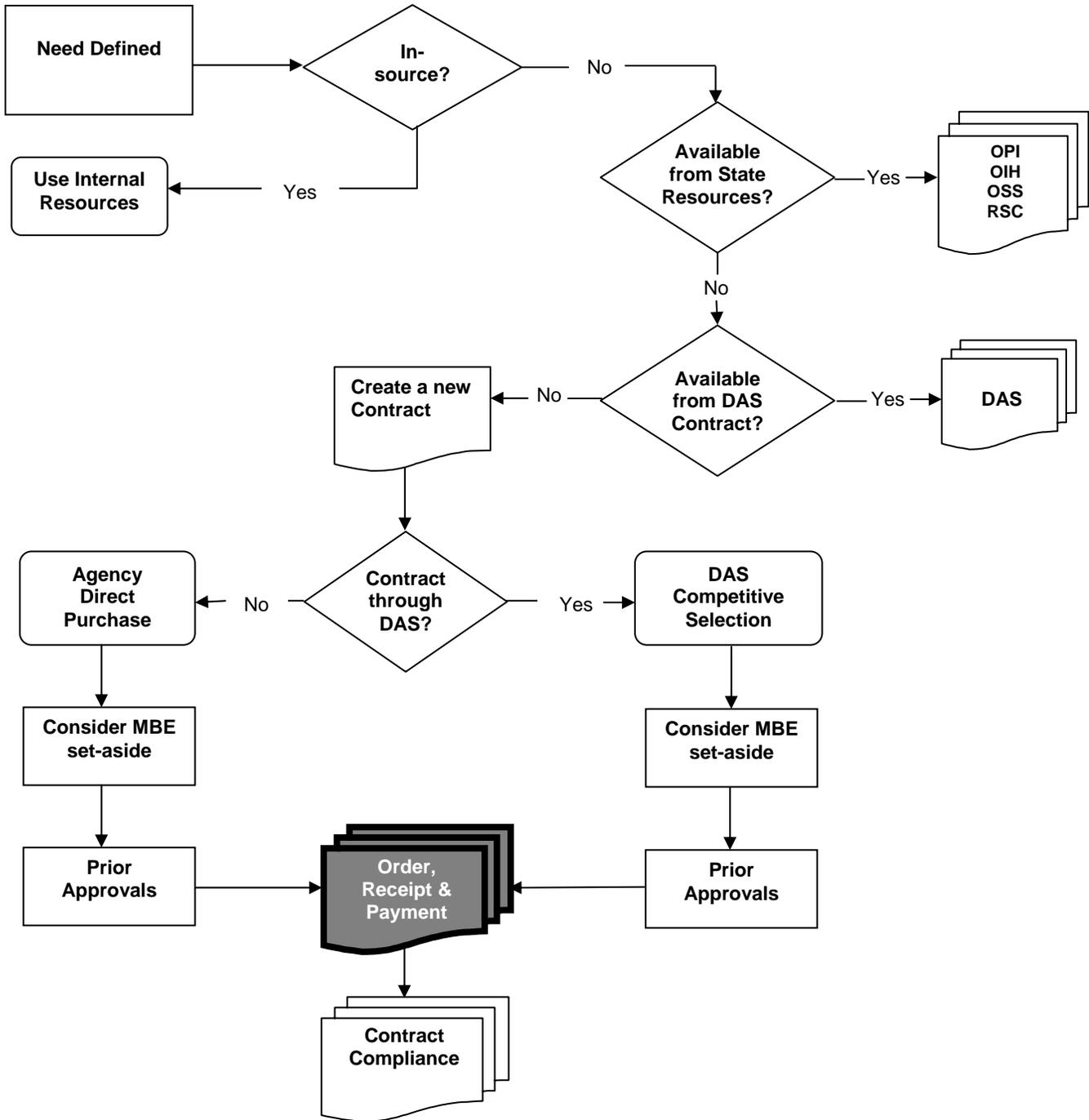
Chapter

9



9.0 Overview

The determination has been made as to what supplies and services are to be ordered and from whom. This Chapter will assist the agency on selecting the proper forms for placing orders, how to receive items ordered and process invoices for payment to the vendor.



9.1 Office of Budget and Management Manuals

The Office of Budget and Management (OBM) publishes many documents that agencies will find helpful for ordering, receipt, and payment for goods and services. Among the documents referenced in this chapter are the *Information-Action Manual (or I-AM)*, *CAS Manual Procedures*, and the *Payment Card Manual*. Agencies are encouraged to visit the OBM web site at www.ohio.gov/obm/information/Manuals/Manuals.asp for more information.

In addition to on-line manuals, OBM's State Accounting Training Unit offers free courses in various aspects of the Central Accounting System (CAS). State Accounting announces quarterly course offerings on the OBM web site and mails descriptions and applications to each agency's chief fiscal officer. The classes are general in nature (not agency-specific) and follow the material found in *CAS Manual Procedures*. In addition to the regular quarterly classes, ad hoc classes may be scheduled. Agencies are encouraged to visit the updated course listing at www.ohio.gov/obm/Information/CASTraining/CASTraining.asp.

9.2 Making Purchases from DAS Term Contracts, STS's, MMA's or MAC's

If the goods or services are being purchased from a DAS Term Contract, State Term Schedule, Master Maintenance Agreement or Multiple Award Contract, use the following guidelines:

- Cost greater than \$1,000 (\$2,500 for term contract or MAC after July 1, 2002) – prepare an encumbering document (ADM-0524) ORDE in CAS and forward copy to the vendor.
- Cost is less than \$1000/\$2500, encumbering document is not required when using a payment card or debit purchase. When using a payment card, it is recommended you follow the procedures set in place by your agency business office. If internal procedures permit, you may contact the vendor directly and place a phone order. Again no encumbering document is necessary.

9.3 Purchases from Other Sources

If the supplies or services are *not* being purchased from a Term Contract, State Term Schedule, Master Maintenance Agreement or Multiple Award Contract, then use the following guideline:

- Cost is less than \$500 – prepare an encumbering document and send a copy to the vendor, which in turn generates the order, unless the purchase qualifies as a debit (see list below). Also, if the purchase is under \$1,000, you may use a payment card to order the goods/services via a telephone call.
- Cost above \$500 - contact the vendor directly and place an order with or without a payment card. Again, internal agency procedures may require an encumbering document, so check with your fiscal office for instructions.

9.4 Receipt of Supplies and Services

Once supplies and/or services have been provided, the ordering office will receive a delivery receipt for those supplies or services. The delivery receipt should be dated and kept until an invoice is received. The received invoice should be compared to the delivery receipt and encumbering document, if applicable, to determine if the invoice is proper. A proper invoice must match the encumbering document in all respects (item description, quantity, delivery information, unit costs, etc).

Agencies are responsible for ensuring prompt payments to vendors conducting business with the State of Ohio. An agency's responsibility to make prompt payment begins with receipt of a proper invoice, as defined by OBM Rule 126-3-01(A)(4-5). If the invoice is improper, then the vendor should be contacted immediately, both verbally and in writing, in order to correct the discrepancies. OBM Rule 126-3-01(B)(4)(b) details the action to take upon receiving a defective or improper invoice.

9.5 Payment Methods for Supplies and Services

The most common methods of payment for goods and services are:

- Debit Voucher
- Non-Debit Voucher
- Payment Card
- Electronic Data Interchange (EDI)
- Interstate Transfer Voucher (ISTV)

A brief description of each payment type follows.

9.5.1 Debit Voucher

A **debit voucher** is a payment method that is used when a disbursement does not require or reference an encumbrance. You may use a debit voucher to pay for goods and/or services for the following:

1. Utility services including gas, electric, telephone, water and sewer, and land lines used with data systems.
2. Travel expense reimbursement for state employees and board and commission members.
3. Postage and related payments.
4. Gasoline, oil, and other automotive-related expenses on credit card, except non-emergency repairs or tire replacement.
5. Purchase of equipment, materials, and supplies not available on term contract costing \$500 or less.
6. Payments of less than \$500 for personal services for tasks not covered by state term contract.
7. Payments of less than \$500 from operating appropriations toward services, labor and materials for construction improvements or repairs to buildings or equipment (\$1000 or less if the payment references a term contract, term schedule, or multiple award contract).
8. Debt service payments including both principle and interest.
9. Subsidies (i.e., Higher Education, TANF, Community Mental Health Centers, Energy Credits, etc.).
10. Payments for subscriptions to periodicals (i.e., *Wall Street Journal*, *Gongwer*, *Business Week*, etc.).
11. Court ordered settlements, judgments, or negotiated grievances settlements.
12. Routine refunds.
13. Tuition reimbursement.
14. Prompt pay interest on late payment of invoices.
15. Petty cash replenishment vouchers.

9.5.2 Non-Debit Voucher

A **non-debit voucher** is a payment method used for reimbursement of non-state vendors and when an encumbering document is required or used for budgeting purposes. These vouchers will reference an "ORDE", "COME", or "CNTE" which is used for procurement of contract and non-contract goods and services. Contract goods and services include those purchased through General Distribution Contracts, Multiple Award Contracts, Limited Distribution Contracts, State Term Schedules, Master Maintenance Agreements, Bid, RFP, Controlling Board approved purchases and OIH.

9.5.3 Payment Card (P-card)

The **payment card** is a method for both the ordering and payment of certain goods and services, regardless of whether the purchase is from a DAS contract. It is designed primarily for small purchases of tangible materials, equipment, supplies and approved services. Use of the card is meant to simplify and streamline the acquisition process and lower overall transaction costs.

All cardholders have limits that are defined by their agency (within OBM guidelines) and enforced at the point of purchase by payment card control features. Limitations are established for spending amounts per transaction, monthly spending limits and number of transactions that can be made per day. Controls limiting usage with certain merchant categories of vendors are also placed on the payment card (e.g. merchants classified by Visa as gas stations are prohibited). Limits for most users are \$1,000 per purchase. On July 1, 2002, these limits increased to \$2,500 for purchases from term contracts or multiple award contracts.

The Payment Card Program does not affect procurement regulations or an agency's internal regulations for purchasing. All purchases made with federal moneys must meet requirements set forth by the federal grantor.

The Statewide Payment Card Administrator of the Ohio Office of Budget and Management (OBM) manages the statewide program. Each participating agency has a Payment Card Administrator to manage its card program. The executive staff of each agency determines the level of participation in the program and the number of cards issued. All payment cards issued shall have the written approval of OBM.

OBM maintains an on-line payment card manual to help agencies through the process. The manual is located at the following address: www.ohio.gov/obm/Information/PaymentCard/manual/index.asp.

9.5.4 Electronic Data Interchange (EDI)

EDI is a method of payment that is established prior to the ordering process. EDI payments are only for vendors who have been pre-approved. If the amount of payment is greater than \$1,000 then an encumbering document is required. If the payment is less than \$1,000 then the EDI payment is processed as a debit through CAS. On July 1, 2002, this payment threshold increased to \$2,500 for purchases from DAS term contracts and multiple award contracts. The Office of Budget and Management maintains an on-line CAS EDI operating manual, training manual, and a list of EDI trading partners on its web site. Agencies are encouraged to visit the following address for more information: www.ohio.gov/obm/Information/Ecommerce/EDILinks.asp.

9.5.5 Interstate Transfer Voucher (ISTV)

ISTV is the method of payment between state agencies. The ISTV can reference an encumbering document or be processed as a debit ISTV. The various encumbering documents used for ISTV's are as follows:

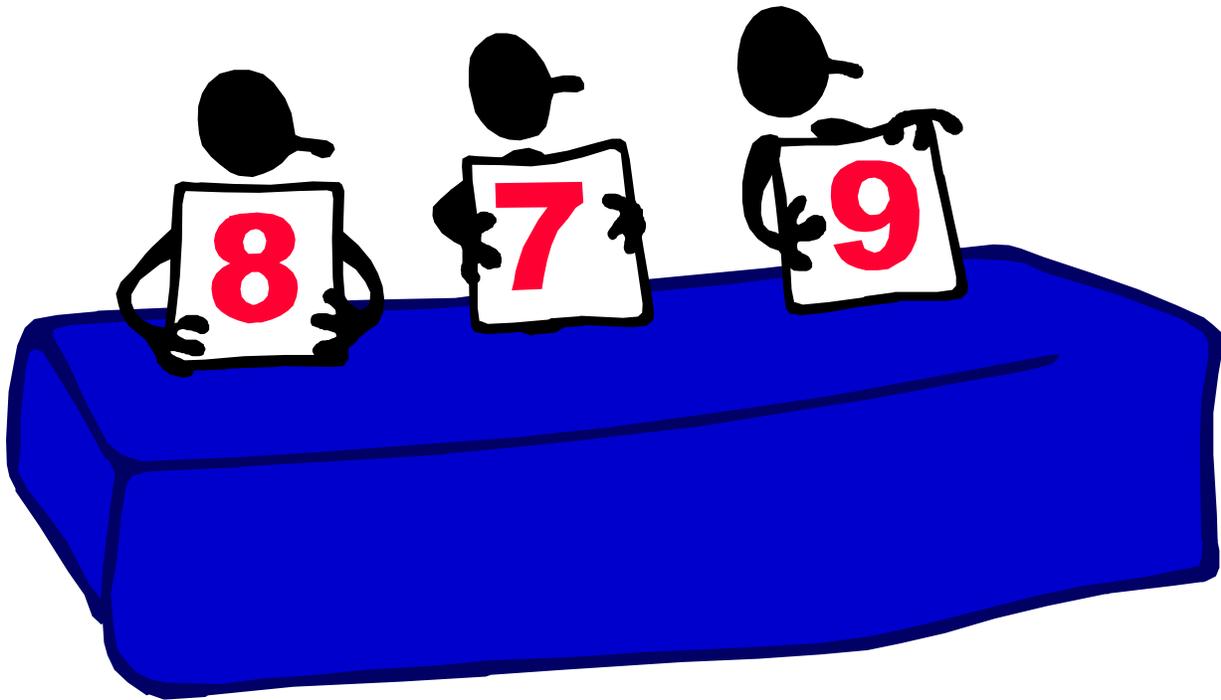
1. Interdepartmental Purchase Order / OISE (OBM 7219) – used to encumber recurring intra-state agency expenditures and goods and services from State of Ohio agencies with the exception of State Printing (See #3).
2. Forms Distribution Order and Invoice / OISE (ADM 204) – used for the purchase of State of Ohio forms and miscellaneous office supply items from Forms Distribution and for purchasing surplus (salvaged) property from the Office of State Surplus.
3. Printing Project Order – PPO (ADM 515) – used when requesting printing services from the Office of State Printing.

SPECIAL NOTE: These processes, procedures and forms are subject to change effective July 1, 2006, with the implementation of OAKS Financials.



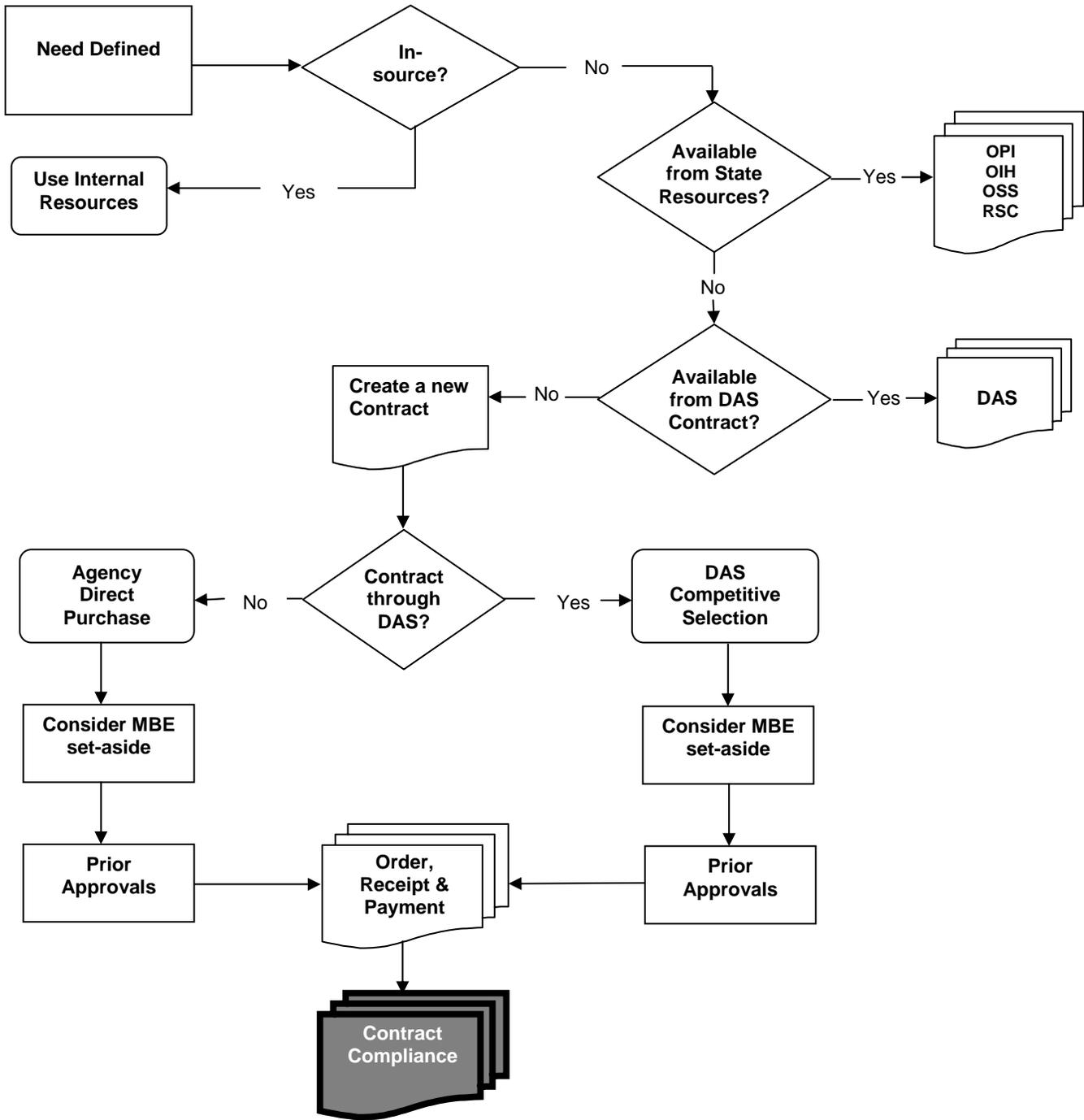
Contract Compliance

Chapter 10



10.0 Overview

The contract has been awarded to the vendor, orders have been issued and the agency is expecting the vendor to deliver in accordance with the terms, conditions and specifications of the contract. There are times, however, when vendors deliver the incorrect supplies or services or may fail to meet delivery schedules of the agency. In this Chapter, you will learn about procedures and forms to be used to alert DAS to such situations and remedies available to the State to resolve non-compliance issues.



10.1 Contractor Performance

A contract is awarded with the expectation that both the contractor and the State of Ohio have entered into the agreement in good faith, and that both parties will perform their respective duties and obligations in accordance with the contract specifications, terms and conditions and at the quoted price. Occasionally, situations arise when the contractor does not perform and the agency may suffer damages as a result. Typical non-performance issues include, but are not limited to:

- Missing a scheduled delivery date and time.
- Providing items that are not a part of the contract.
- Providing inferior merchandise.
- Unauthorized substitutions.
- Alteration of the contract pricing.
- Damaged shipments.
- Unauthorized use of sub-contractors.
- Unauthorized assignment of the contract to another contractor.
- Inadequate staffing levels.
- Unqualified workers.
- Late or failed delivery.
- Late worker arrivals or no-shows.

The state has several remedies available to resolve non-performance issues with the contractor. The agency should refer to the contract terms and conditions to view these remedies. DAS, however, may not usually exercise these remedies until/unless the contractor has been provided with an opportunity to cure the deficiency. When a default occurs, the agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the agency must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue. If the agency's efforts fail to resolve the issues, the agency should then notify DAS. The mechanism to notify DAS is the Complaint to Vendor (CTV) form.

10.2 Vendor Performance Survey

As indicated in Section 10.1, the agency should contact the vendor and attempt to resolve the issue prior to filing a Complaint to Vendor. This initial effort will generally result in improved relations between the vendor and the agency and will not bring DAS into the situation when not merited. Although the issue has been resolved to the satisfaction of the agency, DAS would still like to be notified of the situation. Agencies can notify DAS by completing the Vendor Performance Survey form. This form can be completed online and forwarded to State Purchasing electronically. State Purchasing will review the issue(s) and retain this form in the vendor's file. If State Purchasing sees a pattern building of non-compliance issues with the vendor, State Purchasing will contact the vendor to discuss the situation and attempt to resolve prior to formal CTV's being filed. If the vendor continues to meet the requirements of the contract, State Purchasing will take more formal corrective action up to and including cancellation of the contract and debarment of the vendor. The Vendor Performance Survey form may also be used to notify State Purchasing of positive performance by the vendor which will be noted in the vendor's file.

When evaluating a vendor for a responsible determination, State Purchasing will review the vendor's file and consider all surveys and CTV's that have been filed by the agency. If State Purchasing determines that the vendor is not responsible, the vendor will be disqualified and the award denied. Thus is it very important for the agency to complete these forms, timely. The survey may be located by clicking "Forms" on the State Procurement Website of at the following address: <http://www.procure.ohio.gov/pdf/vsurveyform.pdf>

10.3 The Complaint to Vendor (CTV)

The Complaint to Vendor (CTV) is used by agencies to formally notify DAS of non-performance by a contractor under a state term contract. The CTV should only be used after all attempts to resolve the issue have failed. DAS uses all legal remedies to resolve the compliance issues on behalf of the agency. The CTV may be used by DAS in evaluation of the contractor on future bids. If DAS determines that past performance of the contractor is

unacceptable, DAS may disqualify the contractor and deny future awards. It is, therefore, very important that the agency provide complete and accurate details of the non-performance issue.

Upon receipt at DAS, the CTV will be logged in and assigned to the appropriate contract analyst or buyer. The analyst/buyer or assistant will review the CTV to determine the extent of the problem as well as contract language to determine that the non-performance is covered. The analyst/buyer will then contact the agency to validate the complaint and determine if the situation has been resolved. If resolved, the issue will be closed and the CTV retained in the file for future reference. If the issue still exists, the analyst/buyer or assistant will contact the contractor to discuss the issue and establish a date to cure. A written confirmation of this discussion and the cure date will be mailed to the contractor and agency.

The analyst/buyer or assistant will contact the agency to confirm if the contractor resolved the issue on the agreed upon cure date. If resolved, the CTV will be closed and retained the file for future reference. If not resolved, the analyst/buyer or assistant will contact the contractor to discuss reasons for their missing the cure date. It is possible that another cure date may be established with mutual agreement of the agency. Any additional cure dates will be confirmed in writing. If the contractor fails to meet this cure date, the contract will be cancelled, immediately. Should it be determined, however, that the contractor is unable to fulfill the contractual obligations, the analyst/buyer or assistant will advise management that the contractor has defaulted on the contract. In either situation, DAS will seek legal remedies set forth in the contract terms and conditions.

Note: Resolutions to complaints vary even though the problem may be the same for several agencies. Factors such as force majeure, agency budgets, quality of product substitution if needed, ambiguity in the contract itself and acceptance of the agency must be considered.

10.3.1 Completing a Complaint to Vendor Form (ADM-3289)

- Include the proper agency phone numbers of the end user.
- Include the Purchase Order and Requisition Numbers.
- If contract purchase, include contract and index numbers.
- Include description of the item or copy of the Purchase Order.
- State specifically the nature of the problem and contacts with vendor, making sure to indicate vendor contact person. (Use additional pages if necessary)
- Include any documents (i.e., letters, test results).
- Mark the appropriate boxes that correspond to your complaint.
- If using the multi-color form, mail the white copy to the vendor, retain the pink copy for your files, and mail remaining copies to DAS.
- If using a form downloaded from the Internet, mail one copy to the vendor, mail two copies to DAS, and retain one copy for your files.

10.4 CTV Procedures for Late Delivery, Wrong Items, Damages, Quantity/Service Problems

Following are procedures that DAS uses for CTV's of various types. Agencies may wish to use these as models for their own contract compliance.

First:

- Phone vendor regarding complaint.
- Phone agency to advise sender of conversation with vendor. Work to find an acceptable resolution to both parties.
- Once acceptable resolution determined, send letter to vendor indicating such and time frame for resolution.
- Follow up with agency 1-2 days after scheduled resolution date to verify completion.
- If resolved, close CTV.

Second:

- Notify vendor of failure to resolve complaint within established time frame.
- If extension is requested, call the agency to see if one is acceptable. If it is, notify the vendor and warn them that another failure will result in default and cancellation of the contract.

- Send a second letter to the vendor regarding extension approval, terms for completing the deadline and possible consequences for failure.
- Telephone the agency one to two days after agreed upon completion date.
- If resolved, close the CTV.

If vendor still fails to comply:

- Send a letter notifying the vendor of default and subsequent cancellation.
- Issue a release and permit to the agency allowing procurement of the item elsewhere.
- Send a letter to the vendor assessing a penalty if applicable.

10.5 Procedures for Non-Performing Vendors

First:

- Call agency to verify number of attempted contacts.
- Initiate three attempts to reach vendor through the Contract Compliance Unit of the respective DAS office.
- Send certified letter to vendor indicating failure to act in responsive/responsible manner. Indicate number of unsuccessful attempts made to reach vendor. Notify vendor of completion deadline and indicate the result will be default and subsequent cancellation of the contract if they fail to comply.
- Telephone agency one to two days after deadline to determine vendor's compliance.
- If resolved, close CTV.

Second:

- Initiate release and permit (R&P). Have agency get pricing information from three vendors.
- Issue R&P for lowest dollar amount.
- Send letter to vendor indicating cancellation of contract, issuance of R&P, and assessment of penalty if applicable. Also advise the vendor of ineligibility status until full reimbursement has been completed.
- Close the CTV.

10.6 Procedures For Vendor Price Increase, Substitution Or Removal Request

First:

- Contact vendor regarding procedures for the above requests, i.e.:
 1. Send written request to buyer.
 2. Fill all orders received prior to issuance of addendum.
- Send letter to vendor confirming above procedures, advising of default and the issuance of R&P to agency if the vendor fails to fill outstanding orders.
- Call agency to verify compliance.
- If resolved, close CTV.

Second:

- Issue R&P allowing agency to purchase off contract upon receipt of appropriate documentation.
- Send letter to vendor indicating default, subsequent cancellation of order and assessment of penalty if applicable.

10.7 Sample Letters

Attached are sample letters relating to contract compliance:

- CTV Confirmation Letter
- Second Chance Letter
- Cancellation Letter
- Non-Responsive/Responsible Letter
- Pricing/Substitution Letter

10.8 Suspension and Debarment

On July 1, 2005, law was signed that now gives DAS authority to suspend or debar a non-performing vendor from doing business with the state of Ohio. This law became effective on October 1, 2005. DAS is currently writing policies and procedures for suspension and debarment and will publish upon completion.

Questions & Answers

Q: *Why should an agency file a Complaint To Vendor?*

A: Knowledge of vendor complaints enables DAS to provide better products and services to state agencies. Complaint To Vendor files are the primary source DAS uses to protect agencies against poor vendor performance. CTV files also assist the buying staff when awarding future contracts.

Q: *When is it necessary to file a Complaint to Vendor Form (ADM-3289)?*

A: Failure to meet delivery date
Unsatisfactory merchandise/unauthorized substitution
Unsatisfactory performance on a service
When the vendor does not perform according to the purchase order or contract, agencies should first attempt to resolve the problem directly with the vendor. If, after a contact has been made, a delivery date has been agreed upon, and the time frame has been exceeded or other issues can't be resolved, issue a CTV. It is important to settle contract disputes quickly. Issue a CTV and contact procurement supervisors or buyers in an emergency.

Q: *How does an agency acquire CTV Forms?*

A: Forms are available from DAS Forms Distribution, or on line at the State Purchasing web site.

Q: *May we continue to do business with a vendor who has been debarred?*

A: No. Any vendor who has been debarred by the federal government or the state of Ohio is not eligible to participate in any business transactions during the period of debarment.

Q: *Does the DAS offer assistance for direct purchases and/or contracts approved by the Controlling Board?*

A: No, DAS is only responsible and may assist agencies for purchases and/or awards completed by its procurement offices. Problems arising from direct procurement shall be handled directly by the ordering agency or its central office.

Q: *What if vendor fails to meet delivery date and agency needs items immediately?*

A: Contact DAS procurement supervisors or buyers. Agency should attempt to resolve problem with vendor by initiating contact with the vendor. If the agency is unable to resolve the situation, then submit a Complaint to Vendor Form (CTV). Upon receipt of the CTV it will be reviewed by DAS, assigned to a staff member, and logged in for processing. The responsible staff member will contact the vendor for response to the CTV and then will work with the agency and the vendor for an adequate resolution.

CTV CONFIRMATION LETTER

(Date)

(Mr./Mrs.)
(company name)
(Address)
(CITY, STATE ZIP)

Subject: P. O. No.: (Insert #) Bid/Contract No.: (Insert #) (Insert #)

Dear Mr./Ms.:

As you are aware, the Office of State Purchasing is in receipt of a Complaint to Vendor (CTV) from the (agency name) regarding (non-delivery/wrong items/etc.) of the above order. According to (person) of the (agency) (define problem and indicate contract terms and spec's which apply).

Per (company's staff person's name) (date) conversation with (name) of our office, the above situation must be resolved by (date). (Company) is advised that the original terms and conditions of the contract still apply to this order. Should you fail to (description of problem resolution) by this date, you will be found in non-compliance of the contract. This will result in cancellation of the order, as well as, DAS initiating procedures to cancel the contract. Should this occur (company name) may be responsible for any additional costs the agency incurs in procuring the (item/s) from another supplier or the re-bidding and/or re-award of this contract.

Should you have any questions regarding the above information, please contact (person) at (phone number).

Sincerely,

Name
Title

(INITIALS)/(typist initials)

c: (Name), Procurement Manager
(Name), Purchasing Standards Analyst
(Name), Agency contact person
File
CTV File

SECOND CHANCE LETTER

(DATE)

(Mr./Ms.)
(Company name)
(address)
(city, state zip)

SUBJECT: P.O. No.: (insert #) Bid/Contract No.: (insert #) (insert #)

Dear :

We have received notification from (person name) of the (agency name) regarding (company name)'s failure to meet the (date) deadline given to (company name) in our letter dated (date of first letter). As indicated in our letter, should (company name) fail to resolve the problem by the above date, (company name) would be found in non-compliance of the contract and cancellation would take place.

We have spoken with (person name) of the (agency name) regarding (company name)'s request for an extension until (date) to complete this order. The agency has agreed to this request, however, should (company name) not meet this new date, the contract will be canceled immediately. During this period (company name) must comply with the original terms and conditions of this contract. If cancellation would occur the agency would be permitted to procure the item from another source, forwarding any additional costs incurred to (company name) for reimbursement. (company name) will be ineligible to receive future awards until the additional costs have been received by the agency.

Should you have any questions regarding the above information, please contact (person) at (phone number).

Sincerely,

Name
Title

(INITIALS)/(typist initials)

c: (Name), Procurement Manager
(Name), Purchasing Standards Analyst
(Name), Agency contact person
File
CTV File

CANCELLATION LETTER

(Date)

(Mr./Mrs.)

(company name)

(address)

(city, state zip)

Subject: P. O. No.: (Insert #) Bid/Contract No.: (Insert #) Index No.: (Insert #)

Dear

Due to (company name)'s continued failure to (problem) the above order in a timely manner, we are forced to cancel the contract, effective immediately. (Name) spoke with (company's staff name) on (dates) and informed (company name) should (company name) fail to meet the agreed upon completion date, no further extensions would be provided and immediate cancellation would take place.

Per (agency contact), the above order(s) were not completed as agreed upon and the agency can no longer continue to await resolution by (company name). Therefore, the above contract was canceled and the agency given the approval to procure the item from another supplier. In doing so they have incurred an additional cost of (\$ amount). Please remit payment for this amount to the Treasurer, state of Ohio, at the above address. Until full reimbursement of these additional costs have been received, (company name) will be ineligible to receive future awards.

Should you have any questions regarding the above information, please contact (person) at (phone number).

Sincerely,

C Scott Johnson, Director
Department of Administrative Services

(INITIALS)/(typist initials)

c: (Name), Procurement Manager
(Name), Purchasing Standards Analyst
(Name), Agency contact person
File
CTV File

NOT RESPONSIVE / RESPONSIBLE LETTER

Date:

(address)
(city, state zip)

SUBJECT: P.O. No.: (insert #) Bid/Contract No: (insert #) (insert #)

Dear name:

The Office of State Purchasing is in receipt of a Complaint to Vendor (CTV) from the (agency name) regarding (non-delivery/wrong item/etc.) of the above order. According to (person) of the (agency), numerous unsuccessful attempts have been made to reach (company name) on (dates). Our office has also attempted to reach (company name) to no avail on (dates).

This award is based upon (company name) performing as a responsive/responsible vendor. Our inability to make contact with (company name) is a neglect of (company name)'s contractual responsibilities and a breach of the contract. Therefore, (company name) will have five (5) days upon receipt of this letter to fulfill this order. During this period (company name) must comply with the original terms and conditions of the contract. Should (company name) fail to fulfill this order as requested, DAS may be required to cancel the contract immediately. We will attempt to either re-award and may assess (company name) the cost difference incurred by the agency, should this be applicable.

This letter will be placed in our vendor files and may be used in evaluation of future potential awards to (company name)

Should you have any questions regarding the above information, please contact (person or me) at (phone number).

Sincerely,

Name
Title

(INITIALS)/(typist initials)

c: (Name), Procurement Manager
(Name), Purchasing Standards Analyst
(Name), Agency contact person
File
CTV file

PRICING/SUBSTITUTION

(date)

(name)

(address)

(state, zip)

SUBJECT: Contract No.: (insert #) Index No.: (insert #)

Dear Mr./Ms.:

The Office of State Purchasing is in receipt of a Complaint to Vendor (CTV) from the (agency) regarding non-fulfillment of the above purchase order. During (company name) (date) conversation with (person) of State Purchasing, (company name) indicated (company name) inability to fulfill this order due to (price increase, discontinuation of item). In order to avoid being found in default of the contract, (company name) need to submit written notification to the buyer of this contract requesting the item be (canceled, substituted, price increased). Upon receipt, (company name) request will be reviewed. Should the request be granted, an addendum will be issued and effective 30 days after notification to our office.

(company name) will be responsible for fulfilling this order as well as all outstanding orders issued prior to the addendum's effective date. Should (company name) fail to complete these orders, (company name) will be found in non-compliance of the contract and the agency(s) will be permitted to procure the items from another supplier. Any additional costs incurred in doing so will be forwarded to (company name) for reimbursement. (company name) will be ineligible to receive future awards until full reimbursement has been received. Future price adjustments/substitutions should be handled in accordance with the contract provisions. Failure to do so may result in cancellation of the contract.

Should you have any questions regarding the above information, please contact (person) at (phone number).

Sincerely,

Name

Title

(INITIALS)/(typist initials)

c: (Name), Procurement Manager
 (Name), Purchasing Standards Analyst
 (Name), Agency contact person
 File
 CTV File



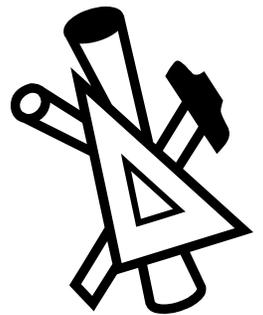
BUILDING DESIGN



CONSTRUCTION

REPAIRS

MAINTENANCE



11.0 Overview

In fiscal year 2004, state agencies spent an estimated \$1.3 billion for construction, repair and maintenance services for state owned buildings. When making these types of purchases, agencies are faced with a myriad of decisions that must be made prior to entering into a contract with a provider. For example:

- Is this construction, repair or maintenance?
- Do we need to hire an architect?
- Do we need permits and related approvals?
- Do we have to pay prevailing wages?
- Do we have to send this to DAS or may we do it ourselves?



As the agency reviews its needs for construction, repair or maintenance, it may be difficult to answer these questions. DAS has prepared the following guidelines to assist the agency in determining if the need is construction, repair or maintenance and if they should forward their request to DAS or if they may make it under their delegated authority. It is also recommended that the agency seek advice of internal counsel when making any final determination as to whether or not the project is construction, repair or maintenance.

11.1 Authority to Make Purchases

Procedures for the purchases of professional design services, construction, repairs and maintenance are set forth in the Ohio Revised Code, the Ohio Administrative Code and in DAS policies and procedures. Ohio law requires that certain of these purchases be forwarded to DAS to make the purchase on behalf of the agency. While most facility maintenance products and services and some types of facility repair purchases can be forwarded to the Office of Procurement Services, most construction work of any type on state-owned and state-occupied facilities must be processed with additional review and often, with a more detailed process.

The governmental entity may use STS Contractors as a pre-qualified list. The entity (and the construction general contractor, etc) must comply with DAS bidding requirements. The entity and general contractor are responsible to ascertain that all life safety code, building code and fire safety code requirements have been met or exceeded. Further the entity is also responsible for any front end documentations required for the project and outside the scope of the STS of MAC. At the request of DAS a completed project requirements checklist will be submitted to DAS to ensure that the utilization of a STS or MAC vendor will comply with all life safety code, building code and fire safety code requirements.

11.1.1 Construction / Major Repairs to Buildings & Structures

Most state-owned buildings and other facilities are occupied by state employees or can be accessed by the general public. As such, the building manager needs to treat all design services and construction activities with proper attention to life safety codes, building codes and fire safety codes. Those projects must receive plan approval from the Ohio Department of Commerce (ODOC), Industrial Compliance Division (ICD) or a local authority approved by ODOC.

The Ohio Revised Code empowers DAS to contract for and have general supervision over the construction of any projects, improvements, or public buildings constructed for a state agency, to include the design, specifications, inspection, etc. of such construction projects. When a state agency wants to construct a new building or structure or needs to make an alteration to an existing building or structure, it may contact DAS, State Architect's Office (SAO) for initial guidance and recommendations.

Certain agencies may be granted authority to administer projects having total project value of up to \$1.5 million. This local administration authority is created through the Capital Bill legislative process. Most agencies are required to obtain **prior** written approval from the SAO before commencing work on the project. The agencies shown below may administer projects of smaller, specific value without prior written approval from SAO.

These agencies include:

- ◆ The Capitol Square Review and Advisory Board
- ◆ The Rehabilitation Services Commission
- ◆ The Bureau of Workers' Compensation
- ◆ The Department of Public Safety
- ◆ The Department of Job and Family Services
- ◆ The Department of Mental Health
- ◆ The Department of Mental Retardation and Developmental Disabilities
- ◆ The Department of Rehabilitation and Correction
- ◆ Buildings of educational and benevolent institutions under the management and control of boards of trustees
- ◆ Department of Youth Services

11.1.2 Maintenance & Minor Repair Services

Unless otherwise set forth in the Revised Code, all purchases of maintenance and minor repair services (including necessary parts and labor) that exceed \$67,000 must be forwarded to DAS, Office of Procurement Services. Purchases under \$67,000 may be made directly by the agency under their delegated authority. If the agency is to provide labor to perform the maintenance or minor repair, the agency may purchase required parts and supplies up to \$33,500. Purchases that exceed these dollar limits must be forwarded to DAS, Office of Procurement Services. If the Office of Procurement Services determines that it is not practical or advantageous to make the purchase, the agency will be granted a Release & Permit to make the purchase under their delegated authority.

11.2 Design Services

When a project will require design services (architectural and engineering) that are estimated to be greater than \$25,000, the agency must refer their project to the Office of the State Architect for review and approval. The SAO may permit the agency to contract for these services under their local administration authority or may elect to contract for these services on behalf of the agency. In either case, all contracts for A&E services, above \$25,000, must be established in accordance with Ohio Revised Code Section 153.691 and Ohio Administrative Rule 153:1-1-06. Generally, costs for A&E services should range between 8%-10% for new construction and 8%-12% for renovation projects.

11.3 Prevailing Wages

For construction and some repair work, agencies must give consideration to the requirements for payment of prevailing wage (ORC 4115.03 to 4115.16) by the contractor. When the Office of Procurement Services establishes a contract for construction or repair, on behalf of the agency, the agency must maintain the copies of the contractor's payroll records to ensure such wages are paid.

The below modification to section 11.4 utilizes ORC 3313.46 language to provide another option for other state funded building repairs (ie schools) where life safety codes, building codes and fire safety codes are critical as well.

11.4 Construction and Major Repair Purchases

Contracts for construction and major repair services are established pursuant to Chapters 123 and 153 of the Ohio Revised Code. Projects that may be considered as construction include, but are not limited to:

- Erection or construction of a new building or structure
- Installation of heating, cooling or ventilating systems (all HVAC should not be considered herein)
- Installation of equipment that becomes a permanent part of the building or structure (storage systems, refrigerators, etc. may not be included under this provision. Owner also has the right to purchase the item from a DAS contract and then hire the installation of some items)
- Renovation, alteration or addition to an existing building where modifications or alterations are made to the support structure.

When the cost of new construction is estimated to be more than \$50,000 or any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting is estimated to be more than \$15,000, such work shall be designed by a properly licensed architect or engineer whose contract shall be approved by the Ohio Attorney General (Refer to section 11.2) unless other information is sufficient to inform DAS of the State Agency project requirements. Examples of such information could be project proposals from approved STS vendors that carry professional stamps/licenses indicating proper attention and review has been given to life safety codes, building codes and fires safety codes. When purchases exceed the \$50,000 threshold such proposals must receive plan approval from the Ohio Department of Commerce (ODOC), Industrial Compliance Division (ICD) or a local authority approved by ODOC prior to Agency submitting for DAS project approval.

While the Maximum Order Limit (MOL) has been re-established at \$50,000 this is intended to be a “checkpoint” and is not intended limit a STS project to a maximum of \$50,000. The MOL is designated to reflect discounts pertinent to the current vendor pricing schedule. STS Projects above \$50,000 are acceptable and should be submitted to DAS for additional review as additional STS vendor schedule discounts may be available.

TYPICAL CONSTRUCTION PROJECTS	
Description	Permits/Inspections / Approvals
Design	Designed by Architect/Engineer
Structural Foundation	Dept. of Commerce
Structural Framing	Dept. of Commerce
Building Envelope	Dept. of Commerce
Interior Walls and Partitions	Dept. of Commerce
Entrance/Exit Doors	Dept. of Commerce
Fire Doors and Shutters	Dept. of Commerce
Interior Doors & Wall Openings	Dept. of Commerce
Warehouse Doorways	Dept. of Commerce
Food Service Equipment	Depts. of Commerce & Health
Floor Covering	Dept. of Commerce
Electrical	Dept. of Commerce
Plumbing	Depts. Of Commerce & Health
HVAC	Dept. of Commerce
Sewer	Depts. of Commerce & Health
Utility Connections	Depts. of Commerce, Public Utilities Commission & Local Utility
Roofing	Dept. of Commerce
Driveways	Architect & Engineer Recommended
Parking Garage	Dept. of Commerce
Parking Areas	Architect & Engineer Recommended
Elevators / Escalators	Dept. of Commerce
Fire Security Systems	Dept. of Commerce
General Alarm Systems	Dept. of Commerce
Perimeter Security Systems	Dept. of Commerce
Fire Sprinkler Systems	Dept. of Commerce

11.5 Trades

The various trades (i.e. electrical, plumbing, carpentry, etc.) are generally a part of a construction project. If the Trades portion of the project is estimated to be greater than \$5000, separate contracts will have to awarded to each trade.

11.6 Minor Repair Purchases



The agency may determine the need for a “minor” repair of the existing building or structure. If, the repair requires an alteration to the support structure, HVAC systems or impacts life/health/safety issues, the repair may not be “minor”. A repair may be considered “minor” when it:



- ♦ Does not remove any wall, partition or portion thereof
- ♦ Does not remove or cut any structural beam or load bearing support
- ♦ Does not remove or change any means of egress
- ♦ Does not rearrange parts of a structure affecting the egress requirements
- ♦ Does not, replace or relocate any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electrical wiring or mechanical or other work affecting public health or safety

While some of these items may appear to be “minor” or simple, in an institutional or public building, a higher standard of care is necessary and required to ensure the protection of the occupants and visitors within the building. As such, many of the “minor repairs” must be reviewed by properly licensed professionals and reviewed and approved by life safety and health code officials. There are times, however, when it is not necessary to follow the requirements of Chapters 123 and 153 of the Ohio Revised Code for purchases of minor repairs. Agencies may make such purchases under their delegated authority or may forward their request to the Office of Procurement Services to make the purchase on their behalf. The agency should be aware of any potential that the minor repairs could impact life/health/safety codes which would require permits and approvals from state or other sources. The following chart depicts examples of minor repairs and required approvals.

MINOR REPAIRS	
Description	Inspections / Approvals
Remove/Replace/Modify Interior Non-Support Wall	Review w/Dept. of Commerce
Remove/Replace/Modify Exterior Wall Covering	Review w/Dept. of Commerce
Remove/Replace/Modify Existing Roof, Gutters (minor repairs/small areas)	Review w/Dept. of Commerce
Remove/Replace/Modify Windows	Dept. of Commerce
Remove/Replace/Modify Doors	Dept. of Commerce
Remove/Replace/Modify Flooring	Dept. of Commerce
Remove/Replace/Modify HVAC to Existing Ductwork	Review w/Dept. of Commerce
Remove/Replace/Modify Food Service Equipment	Dept. of Health
Exterior / Interior Painting	Not Applicable
Remove/Replace/Modify Electrical	Dept. of Commerce
Remove/Replace/Modify Fire Security System to Existing Utilities	Dept. of Commerce
Remove/Replace/Modify General Alarm System to Existing Utilities	Dept. of Commerce
Remove/Replace/Modify Perimeter Security System to Existing Utilities	Dept. of Commerce
Remove/Replace/Modify Parking Area(s)	Architect/Engineer Recommended
Remove/Replace Personnel Transport Systems in Existing Areas	Dept. of Commerce
Remove/Replace/Modify Fire Sprinkler Systems	Dept. of Commerce

11.7 Maintenance



Maintenance, by definition, means the care and work put into property to keep it operating and productive; general repair and upkeep. Maintenance may involve the mere cleaning and making minor adjustments to a piece of equipment or it may require major adjustments and/or replacement of parts to keep the equipment in a safe operating condition. Agencies must be aware that some maintenance may require permits and approvals from state or other sources to meet health/life/safety codes. The following chart depicts typical examples of maintenance projects and required permits and/or approvals:



TYPICAL MAINTENANCE PROJECTS	
Description	Inspections / Approvals
Service Elevators/Escalators	Dept. of Commerce
Clean/Service Fire Security System	Dept. of Commerce
Clean/Service General Alarm Systems	Dept. of Commerce
Service Perimeter Security Systems	Dept. of Commerce
Service HVAC Systems	Not Applicable
Service Food Service Equipment	Review w/Dept. of Health
Service Plumbing	Dept. of Health
Topcoat Asphalt Parking Areas	Not Applicable
Exterior Painting	Not Applicable
Interior Painting	Not Applicable
Janitorial/Housekeeping Services	Not Applicable
Service Lighting Fixtures (Bulbs/Ballasts)	Not Applicable

11.8 Quick Reference

The following information lists various types of projects and suggestions as to the appropriate category of the need. Refer to charts for necessary permits, inspections and approvals. This list is not all inclusive. If any questions arise, consult with DAS and/or in-house counsel.

HVAC (Heating, Ventilation & Air Conditioning) - Replacement of equipment, no ductwork or wiring – Repair

Windows -Replacement of glass, re-glazing, cleaning – Maintenance

Doors - Replace existing door, no alteration to frame – Repair

Parking Areas - Remove/replace existing concrete/blacktop – Repair

Floor Coverings & Window Treatments - Remove/replace existing – Repair

Fire Alarm/Suppression Systems - Remove/replace/modify existing – Repair

Security Systems (Video, Fencing, etc.) - Remove/replace Existing – Repair

11.9 Laws for Construction, Repairs & Maintenance

Public Buildings

- ♦ Ohio Revised Code Sections 123.01 – 123.031
- ♦ Ohio Building Code Sections 4101.01 – 4101.08

Construction & Major Repair

- ♦ Ohio Revised Code Sections 153.01 – 153.60

Maintenance & Minor Repair Services

- ♦ Ohio Revised Code Sections 125.01 – 125.111 & 125.17 & 125.19
- ♦ Ohio Administrative Code Sections 123:5-1-01 – 123:5-1-10

11.10 Important Websites

Office of Procurement Services	www.ohio.gov/procure
Office of the State Architect	http://www.das.ohio.gov/gsd/sao/sao.html
Ohio Department of Commerce “Industrial Compliance”	www.com.state.oh.us
Ohio Department of Health “Rules & Regulations”	www.odh.ohio.gov

Maintenance & Minor Repair Services

- ◆ Ohio Revised Code Sections 125.01 – 125.111 & 125.17 & 125.19
- ◆ Ohio Administrative Code Sections 123:5-1-01 – 123:5-1-10

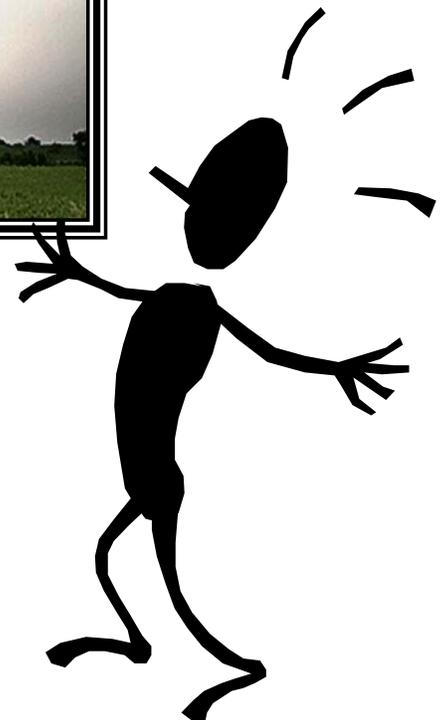
11.10 Important Websites

Office of State Purchasing	www.ohio.gov/procure
Office of the State Architect	http://www.das.ohio.gov/gsd/sao/sao.html
Ohio Department of Commerce “Industrial Compliance”	www.com.state.oh.us
Ohio Department of Health “Rules & Regulations”	www.odh.ohio.gov



Emergency Purchases

Chapter 12



12.0 Emergency Purchases

Every day, state agencies are faced with situations that may require making purchases of supplies or services quickly. These situations may not permit the agency to follow standard procurement policies and procedures established by DAS or by their individual agency. To address such situations, DAS has developed this chapter to define what an emergency is and offer guidance as to how the agency may obtain required supplies or services while complying with competitive processes required by law.

12.1 Emergency Defined

The dictionary defines “emergency” as an unexpected or sudden occurrence of a serious and urgent nature that demands immediate action.

Such situations could be as simple as an interruption in utility services or as severe as a weather event that causes damage or destruction to an agency’s facility. In any case, an emergency can create a situation that could jeopardize the health, welfare and safety of the agency or the general public.

Ohio Administrative Code Section 123:5-1-01(G) defines an “emergency condition”, in part, as a situation which creates a threat to public health, welfare, safety, which may arise by reason of epidemics, riots, equipment failure or such other reasons as may be proclaimed by the Governor.

12.2 Making a Purchase under an Emergency Condition

As discussed in previous chapters, law requires that purchases be made through some form of competitive process. These procedures may work well for most needs, however, what does an agency do if an emergency situation arises and time is crucial to prevent further damage or injury. For example, a boiler breaks down in the middle of the night or on a holiday weekend. The Ohio Revised Code does permit an agency to waive certain requirements of the process to make these purchases expeditiously. Requirements such as seeking multiple quotes or obtaining release and permits may be waived under certain emergency conditions. Agencies should note that accurate files of all transactions must be maintained to support the emergency purchase.

12.2.1 Purchases under the Dollar Thresholds

As discussed in previous chapters, the Ohio Revised Code establishes dollar limitations for making purchases of supplies and services. If the value of supplies is \$33,500 or less, and the value of services is \$67,000 or less, the agency may use its direct purchase authority. Generally, agencies will require their staff to contact three or more known suppliers, seek quotes and award the contract to the lowest priced vendor. This process could delay your ability to locate required items to resolve the emergency condition in a timely manner. Agencies should re-visit their individual policies and procedures and establish a process that would expedite obtaining quotes and still provide sufficient supportive information to document the purchase activity.

12.2.2 Purchases above the Dollar Thresholds

When the purchase will exceed the dollar limits described in section 12.2.1, Ohio Revised Code requires that the agency contact DAS to make the purchase. DAS does have the capability to expedite the bidding process. However, this still may not enable the agency to resolve the emergency condition quickly. In addition, it may not be possible to wait until the next regular business day to contact DAS. The Ohio Administrative Code (123:5-5-04) does permit the agency to proceed with obtaining quotes and making the purchase prior to contacting DAS when the situation warrants. The agency is then required to contact DAS and advise them of the emergency condition and the purchase that was necessary to resolve the situation, by the next regular business day. DAS will then extend a Release & Permit to the agency. If the amount of the purchase exceeds the cumulative annual threshold established by OBM, the agency must notify the Controlling Board and may be required to obtain its approval as well. The agency is required to maintain a record of each emergency procurement setting forth the basis for the emergency and the name of the contractor used to supply the items or provide the service to resolve the emergency. Purchase of supplies and services shall be restricted to only those supplies and services necessary to resolve the emergency.

12.3 Catastrophic Emergency Events



Photos courtesy of Ohio EMA

Catastrophic events are those situations which have a devastating impact upon one or more agencies located in a particular region or multiple regions within the state of Ohio. Natural events such as floods, earthquakes and tornados or man-made events such a terrorism, chemical or biological dispersions can cause severe damage to facilities and jeopardize the health and welfare of employees, clients of the state and the general public. While these events are happening, time for locating supplies and services is crucial. Any delay in contacting suppliers and procuring items can result in life-threatening issues for those impacted by the event. Procedures have been established to enable agencies to waive normal bidding processes and make necessary purchases and repairs immediately.

12.3.1 Emergency Declaration

Section 125.023 of the Ohio Revised Code permits DAS to suspend the purchasing and contracting requirements for purchase of supplies, services and construction. This provision of law becomes effective only when the appropriate statement is included in a Governor's Proclamation of emergency for those areas of the state impacted by a disaster. Agencies may use the most expedient means available to procure supplies, services or construction, during the pendency of the Governor's Proclamation of emergency. Agencies should, however, attempt to use competitive processes when possible and are required to maintain accurate records of all procurements made under this authority.

12.3.2 Ohio Emergency Management Agency (OEMA)

The Ohio Emergency Management Agency is responsible for coordinating responses to natural and man-made catastrophic events that occur within the state of Ohio. OEMA maintains a staff of well-trained experts experienced in handling all types of situations. They conduct training exercises for all levels of government to test skills of those who will be responding to the emergency events. OEMA has authored a statewide emergency response plan patterned after federal guidelines. The state's plan is available for review on OEMA's website at <http://www.ema.ohio.gov/ema.asp>.

In the event of a disaster, and upon issuance of a Governor's proclamation of emergency, OEMA will coordinate response and recovery efforts to resolve the issues associated with the event. When efforts to resolve the situations at the local levels have been exhausted, OEMA will activate state agencies (i.e. DAS) to assist in these efforts. DAS operates State Emergency Operations Plan, Emergency Support Function No. 7 - Resource Support. When called upon, DAS, in conjunction with other agencies identified in ESF No. 7, will locate vendors for requested supplies, services and equipment and make arrangements to transport to pre-arranged staging locations and/or to the impacted areas. All requests for assistance are routed through the state Emergency Operations Center using a pre-defined process established by OEMA. In the event the resources of the state are exhausted and the applicable criteria are met, the Governor may request assistance under the Stafford Act, administered by the Federal Emergency Management Agency (FEMA). If state or federal disaster assistance becomes available, some state agency costs may be eligible for reimbursement, pursuant to the applicable law and regulations.

Questions & Answers

Q: *We forgot to order toner for our copier and we can't make copies and I have a major report to copy for the boss. Can we use emergency authority to buy more?*

A: No. An emergency exists when the safety or welfare of individuals are at risk. Failure to monitor inventories is not reason to support an emergency.

Q: *If I have a valid emergency and I am trying to locate supplies quickly, is it necessary to get a minimum of three quotes?*

A: When a valid emergency exists, it is always important to try to resolve the situation as quickly as possible to prevent further harm to the facility or residents of the facility. This does not mean, however, that one can disregard the safeguards that have been put in place to protect the state from paying too much for a product, sacrifice quality or to remove opportunities for vendors to compete. Good judgment should be exercised by those making the purchase to guard against this. Always remember, you may have to defend your actions to others.

Q: *I work in an institution, it's the fourth of July weekend, temperatures are above ninety degrees and our air conditioning just stopped working. May I use emergency authority to have it serviced?*

A: This would fit within the definition of an emergency condition as the heat could cause medical issues for residents of the institution. If the dollar value will exceed your direct purchase limits (\$33,500/\$67,000) you may proceed with the purchase without prior approval from DAS. It will be your responsibility to notify DAS on the next business day.

Q: *Our agency was severely damaged by a tornado. I contacted suppliers to correct the damage. My capital and equipment funds are limited. Can I expect to receive assistance to help pay for repairs ?*

A: There is no guarantee that funding assistance will be available. If your facility is damaged, you should first take steps to evacuate and then secure the area. Before any work commences, you should file a damage report with OEMA and then contact DAS, Office of Risk Management to ascertain if the property is insured. **Once funding issues have been resolved, you should then contact DAS, Office of the State Architect to determine most advantageous method to complete repairs.**

Ohio Penal Industries (OPI)

Ohio Penal Industries (OPI)
1221 McKinley Avenue
Columbus, OH 43222
Telephone: (800) 237-3454
Fax: (614) 752-0302
www.opi.state.oh.us

Fiscal Services: opi.fiscal-services@odrc.state.oh.us
Inside Sales: opi.sales@odrc.state.oh.us
Delivery/Shipping: opi.distribution@odrc.state.oh.us
Order Status: opi.orderstatus@odrc.state.oh.us
Warranty & Product Repair Service: opi.warranty-repair@odrc.state.oh.us

Community Rehabilitation Programs (State Use) and OIH, Inc.

Office of procurement from Community Rehabilitation Programs
4200 Surface Rd.
Columbus, Ohio 43228-1395
Telephone: (614) 752-9782
Fax: (614) 752-9788
e-mail: kay.devault@das.state.oh.us

OIH, Inc.
4795 Evanswood Drive, Suite 102
Columbus, Ohio 43229-6281
Telephone: (614) 846-4877
Fax: (614) 846-9523
www.oih.org

Office of Support Services (OSS)

Central Food Warehouse
3201 Alberta Street
Columbus, OH 43204-1200
Telephone: (614) 752-0026
Fax: (614) 752-0030

Medical Complex (Central Pharmacy, Pharmacy Service Center)
2150 W. Broad Street
Columbus, OH 43223-1200
Telephone: (614) 752-0116
Fax: (614) 752-0102

www.mh.state.oh.us/reference/oss.html

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State Printing Fax	(614) 644-5799	

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Included in this appendix are pre-printed versions of the purchasing sections of Ohio Revised Code and Ohio Administrative Code. Full text of both codes is available on-line at:

<http://onlinedocs.andersonpublishing.com/revisedcode/>

Two DAS Directives are included in this Appendix:

- DAS Directive No. 01-19, Public Printing
- DAS Directive No. 01-21, Purchasing Policies and Procedures

Three Executive Orders are included in this Appendix:

- Executive Order 2000-03T, Policies & Procedures to Implement the MBE Program for State Purchases of Goods and Services
- Executive Order 2001-12T, Strengthening the Efficiency and Integrity of the State Procurement System
- Executive Order 2002-17T, EDGE Program Initiative, Encouraging Diversity, Growth and Equity (EDGE)

This appendix includes forms that are referenced elsewhere in this handbook:

- ADM 0500 – General Requisition
- ADM 0515 – Print Order
- ADM 0520 – Copy Center Order
- ADM 0523 – Purchase Order
- ADM 3252 – Request for Release and Permit
- ADM 3284 – Agency Survey Letter
- ADM 3289 – Complaint to Vendor
- OBM 7219 – Inter-Departmental Purchase Order
- W-9 - Request for Taxpayer Identification Number and Certification

Forms are also available on-line at:

<http://www.gsd.das.state.oh.us/forms/sfd.htm>

For a listing of terms used on the State Procurement web site, go to:

<http://procure.ohio.gov/proc/glossary.asp>

Commonly used terms ...

A

Addendum – 1) Written or graphic instruction issued prior to the opening of bids which clarifies, amends or interprets the contract documents (GSD); 2) Written change to a contract (CSD).

Affirmative Action – A proactive program undertaken by employers to assure equal opportunity in employment with the goal of achieving a work force that accurately reflects the composition of the community.

Agency – Any state department, office, institution, board or commission.

Amendment – 1) Written change to a contract (GSD); 1) Written or graphic instruction issued prior to the opening of bids which clarifies, amends or interprets the contract documents (CSD).

Appropriation – Legislative authorization to expend public funds for a specific purpose.

B

Bidder – person of firm who submits a response resulting from a Competitive Sealed Bid.

Bid Response – all documents, whether attached or incorporated by reference, supplied by the bidder in response to a Competitive Sealed Bid.

Bond – Note or other form of evidence of obligation issued in temporary or definitive form, including a note issued in anticipation of the issuance of a bond and renewal note.

C

Certified EDGE – Encouraging Diversity, Growth and Equity business certified by the DAS Equal Opportunity Division.

Certified MBE – Minority Business Enterprise certified by the DAS Equal Opportunity Division.

Commodity Code – A system of words and numbers designed to identify and list commodities or services by classes and sub-classes.

Competitive Sealed Bid (CSB) – A competitive selection process normally used for commodity-oriented, price-sensitive purchases. A CSB specifies terms and conditions and solicits sealed bids from vendors based on the criteria. A contract is awarded to the bidder whose bid meets or exceeds specifications at lowest cost to the state.

Competitive Sealed Proposal (CSP) – A competitive selection process ordinarily used for more complex projects demanding higher creativity or skill levels. A CSP specifies project terms, conditions and criteria and awards the contract to the vendor whose proposal provides greatest value to the state and meets or exceeds performance criteria and expectations (see RFP).

Controlling Board – Provides legislative oversight for certain capital and operating expenditures, and has approval authority over various other state fiscal activities.

Cooperative Purchasing – The combining of requirements of two or more public procurement units in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.

D

Department of Administrative Services (DAS) – The administrative organization that provides oversight and leadership for most state procurement activities.

Default – Any failure of product to conform to the specified requirements.

Direct Authority – The authority by which state agencies are permitted to procure on their own.

Direct Purchase Process – The process whereby agencies may purchase supplies or services under their own authority without using a state contract, though still using competitive bidding and sound evaluation practices and procedures (see Direct Authority).

E

e-Buy!Ohio – An electronic catalog that contains a limited number of state contracts.

EDGE – A race and gender neutral program to **E**ncourage **D**iversity, **G**rowth and **E**quity in procurement.

Expiration Date – The last day on which a contract may be used.

F

FOB Destination – Title changes hands from vendor to purchaser at the destination of the shipment; vendor owns goods in transit and files any claims. Payment of freight charges is determined by contract terms.

Force Majeure – Acts beyond the control of the party in question; acts of God or disruptive conditions for which a vendor or carrier cannot be held responsible.

G

General Distribution Contract – A mandatory, competitively bid contract that is available to all state agencies.

I

Index Number – A short contract designator, often represented by three characters followed by three numbers.

Invitation to Bid (ITB) – A process used to solicit Competitive Sealed Bids (CSB's) from vendors and generally used for commodity purchases. Also refers to all documents used for soliciting Competitive Sealed Bids (see Competitive Sealed Bids).

J

Joint Venture – A partnership or cooperative agreement between two or more persons restricted to a single effort.

L

Life Cycle Cost – The total cost of ownership, including acquiring, operating, maintaining, supporting, and (if applicable) disposing of an item.

Limited Distribution Contract (LDC) – A mandatory, competitively bid contract that is available to a limited number of state agencies.

Liquidated Damages – A specific sum stated in the contract to be paid by the party who is in default, or who breaches the contract, to the other party in settlement for damages.

M

Master Maintenance Agreement (MMA) – An optional contract for maintenance and service of equipment that is no longer covered under a manufacturer's warranty.

Material Safety Data Sheets (MSDS) – Documentation concerning a hazardous chemical that identifies the chemical, the common names of the ingredients, the physical and chemical characteristics, the hazards of the chemical and the emergency and first aid procedures to be considered when working with that chemical.

Minority Business Enterprise (MBE) – An individual, partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, residents of Ohio who are members of one of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Orientals.

Multiple Award Contract (MAC) – A contract that is awarded to more than one vendor for same or comparable supplies or services.

O

Offeror – person or firm who submits a proposal in response to a Request for Proposal.

Open Market Competition – Purchases open to any business for unrestricted competition, both minority and non-minority.

P

Payment Card Purchases – Purchases of supplies or services with made with a state of Ohio payment card.

Pre-Bid Conference – Meeting held with prospective bidders prior to solicitation of bids, to clarify any ambiguities, answer bidder questions, and ensure all bidders have a common basis of understanding regarding the supplies or services required.

Pre-Proposal Conference – Meeting held with prospective offerors prior to solicitation of proposals, to clarify any ambiguities, answer offeror questions, and ensure all offerors have a common basis of understanding regarding the supplies or services required.

Proposal – all documents, whether attached or incorporated by reference, supplied by an offeror in response to a request for proposal.

Purchase Order – A purchaser’s written document to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested item(s), delivery schedule, terms of payment, and transportation.

R

Recycled Content Product – product made from pre-consumer or post-consumer recovered materials whose portion of weight or volume of recovered materials meets or exceeds the minimum content percentage standard guidelines established by DAS.

Request for Proposal (RFP) – A process used to solicit Competitive Sealed Proposals (CSP’s) from vendors for more complex goods and services such as information technology systems and services, medical equipment, etc. Also refers to all documents used for soliciting Competitive Sealed Proposals.

Requisition – An internal document by which a using agency sends details of supplies, services, or materials required to the purchasing authority.

Release and Permit – Issued by DAS to state agencies when purchasing limits exceed the agency’s direct purchase authority and when it has been determined that the product or service cannot be procured by DAS through the competitive selection process.

S

Schedule Number – A designator that is specific to a vendor under a state term schedule (STS).

Specification – any description of the physical or functional characteristics or of the nature of supplies or service to be purchased. It may include a description of any requirements for inspecting, testing, or preparing supplies or services for delivery.

State Term Contract - Contract that addresses the estimated requirements for a number of agencies for supplies or services that are used repeatedly or in significant quantities over a period of time. Agencies place orders directly with term contract vendors for the quantity needed.

State Term Schedule (STS) -- An alternative procurement method to purchase supplies and services, with contracts negotiated between DAS and vendors for use by all state agencies and political subdivisions. State Term Schedules require the vendor to provide the state with either the manufacturer’s Federal GSA pricing or their best commercial pricing. Strict guidelines govern the states’ authority to accept and negotiate product, prices, terms and conditions from qualifying companies. Currently only office equipment, computer equipment and telecommunications equipment are available for this program.

Surety – A person or entity providing a bond to a contractor to indemnify the State against all direct and consequential damages suffered by failure of the contractor to perform the contract and to pay all lawful claims of subcontractors, material suppliers and laborers as applicable.

T

Term Contract – A contract for an indefinite quantity of supplies or services over a fixed period of time.

Terms and Conditions – Legal provisions of a contract that describe the nature and boundaries of that contract.

References:

Dictionary of Purchasing Terms, Fifth Edition, National Institute of Governmental Purchasing, Inc., 1996.
Ohio Revised Code and Ohio Administrative Code, various sections.

Commonly used acronyms ...

ASC: Agency-Specific Contract
CAS: Central Accounting System
CFR: Code of Federal Regulations
COB: Close of Business
CO-OP: Cooperative Purchasing Program
CPPB: Certified Professional Public Buyer
CPPO: Certified Public Purchasing Officer
CSB: Competitive Sealed Bid
CSP: Competitive Sealed Proposal
CTV: Complaint to Vendor
DAS: Department of Administrative Services
DBE: Disadvantaged Business Enterprise
DDD: Desired Delivery Date
DP: Data Processing
EDGE: Encouraging Diversity, Growth and Equity
EEO: Equal Employment Opportunity
EOD: DAS Equal Opportunity Division
FAR: Federal Acquisition Regulations
FOB: Free On Board
GDC: General Distribution Contract
GSA: Federal General Services Administration
GSD: DAS General Services Division
I-AM: Information-Action Manual
IT: Information Technology
ITB: Invitation to Bid
ITGD: DAS Information Technology Governance Division
LDC: Limited Distribution Contract
LTOP: Lease to Purchase
MAC: Multiple Award Contract
MBE: Minority Business Enterprise
MMA: Master Maintenance Agreement
MPC: ABA Model Procurement Code for State and Local Governments
MRO: Maintenance, Repair and Operating Supplies
MSDS: Material Safety Data Sheet
NAFTA: North American Free Trade Agreement
NASPO: National Association of State Procurement Officials
NIGP: National Institute of Governmental Purchasing
OAC: Ohio Administrative Code
OBM: Office of Budget and Management
OEM: Original Equipment Manufacturer
ORC: Ohio Revised Code
PB: Performance Bond
R&P: Release and Permit
REN: Rental
REQ: Requisition
RFI: Request for Information
RFP: Request for Proposal
RFQ: Request for Qualifications
S&LG: State and Local Government Contract
SIC: Standard Industrial Classification
SOW: Statement of Work
STS: State Term Schedule
SV: Site Visit
UPPCC: Universal Public Purchasing Certification Council
WBE: Women-owned Business Enterprise

This Appendix includes links to Standard Terms and Conditions, Policies and Procedures and miscellaneous documents relative to the purchasing processes.

Terms and Conditions

- ♦ [Standard Terms and Conditions for Invitations to Bid](#)..... Rev. 10/01/2007
- ♦ [Standard Terms & Conditions for Reverse Auction](#)..... Rev. 10/01/2007

Policies & Procedures:

- ♦ PUR – 001 Ethics..... Rev. 2/16/2007
- ♦ PUR – 002 Fraud, Waste & Abuse..... Rev. 2/16/2007
- ♦ PUR – 003 Domestic & In-State Preference..... Rev. 2/16/2007
- ♦ PUR – 004 Hierarchy of Procurement Methodologies..... Rev. 2/16/2007
- ♦ PUR – 005 Contracting Method Determination..... Rev. 2/16/2007
- ♦ PUR – 006 Selecting Contracts for Set Aside..... Rev. 2/16/2007
- ♦ PUR – 007 Communications & Protests Procedures..... Rev. 10/22/2007
- ♦ PUR – 008 Exceptions to Terms and Conditions..... Rev. 2/16/2007
- ♦ PUR – 009 Contract Modifications..... Rev. 2/16/2007
- ♦ PUR – 010 Bid Modifications..... Rev. 2/16/2007
- ♦ PUR – 011 Delegated Signature Authority..... Rev. 2/16/2007
- ♦ PUR – 012 Bid & Performance Bonds..... Rev. 2/16/2007
- ♦ PUR – 013 Internal Counsel..... Rev. 2/16/2007
- ♦ PUR – 014 Professional Development..... Rev. 2/16/2007
- ♦ PUR – 015 Debarment Bid Modification to a Contract..... Rev. 2/16/2007

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
INSTRUCTIONS, TERMS AND CONDITIONS FOR BIDDING**

I-1. Complete Competitive Sealed Bid with Authorized Signature. Bidders must submit a complete, signed competitive sealed bid, which at a minimum, should include all of the pages of the Invitation to Bid that require the bidder to respond and any additional information or samples required by the Invitation to Bid. Bids should be signed, in ink (blue is preferred), on the front page of the Invitation to Bid. Bidders are requested not to use black ink to sign the Bid.

I-2. When Bids may be Delivered. The Department of Administrative Services ("DAS") must receive bids no later than 1:00 p.m. the day the bids are scheduled for opening. Bids received after 1:00 p.m. on the scheduled date for opening will be considered as late and will not be opened. DAS receives bids during the hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, except state observed holidays. DAS does not accept bids with insufficient postage or collect on delivery.

I-3. Where Bids must be Delivered. Bids must be delivered to the following address:

Department of Administrative Services
General Services Division, Office of Procurement Services
ATTN.: Bid Desk
4200 Surface Rd.
Columbus, OH 43228-1395

I-4. How Bids May be Delivered. Each bid must be submitted in a sealed envelope or similar container with the bid number clearly marked on the exterior. If a bidder uses an express mail or courier service, the bid number must be clearly marked on the exterior of the express mail or courier service envelope or must be enclosed in a sealed envelope inside the express mail or courier service envelope with the bid number clearly marked on the inside envelope. A bid that is not properly and clearly marked and is inadvertently opened, before the scheduled bid opening time, may be disqualified without additional consideration.

I-5. Bids are a Public Record. Interested bidders may attend the opening of the bids. After bids are opened and certified by the Auditor of State, they are available for public review by interested parties who have registered with the bid desk to review the bids. Once bids have been reviewed, they will be forwarded to the contract analyst to begin the evaluation and award process. After bids are opened they are public records as defined in Ohio Revised Code 149.43 and are subject to all laws appurtenant thereto. Bidder may request that certain information, such as trade secrets or proprietary data, be designated as confidential and not considered as public records. Material so designated shall accompany the bid and be in a sealed container duly marked, and shall be readily separable from the bid in order to facilitate public inspection of non confidential portion. Prices, makes, models, catalog numbers of items offered, deliveries and terms of payment shall not be considered as confidential. The decision as to whether or not such trade secrets or proprietary data shall be

disclosed at the bid opening rests solely with the Department of Administrative Services.

I-6. Withdrawal of Bid before Bid Opening. A bidder may withdraw its bid, by written request, any time after DAS receives the bid and before bid opening.

I-7. Withdrawal of Bid after Bid Opening. A bidder may by written request withdraw its bid after bid opening, if there is reasonable proof that an inadvertent mistake was made and the correction cannot be determined with reasonable certainty. "Inadvertent" means inattentive or unobservant; heedless; due to oversight; unintentional. If DAS suspects that the lowest bid contains a mistake, DAS may ask the bidder for written confirmation of its bid.

I-8. Correction of Bid before Bid Opening. If a bidder withdraws its bid and resubmits it with revisions, the revisions should be clearly identified and signed or initialed by the bidder. The omission of a bidder's signature or initials to a modification may result in the bid being determined to be not responsive. Any corrections must be completed off the premises.

I-9. Correction after Bid Opening. DAS may permit a bidder alleging an inadvertent error to correct its bid, after opening, only if the mistake and the correction are clearly evident from the bid and correction does not affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

I-10. Bids are Firm for 90 Days. Unless stated otherwise, once opened all Bids are irrevocable for ninety (90) days. Beyond ninety (90) days, bidder will have the option to honor their Bid or make a written request to withdraw their Bid from consideration.

I-11. Bidder May Request Clarification. If a bidder discovers an inconsistency, error or omission in this Invitation to Bid, the bidder should request clarification from Procurement Services as indicated on the front page of the Invitation to Bid. Such clarification may be made only through the internet. Bidders should make their requests for clarification a minimum of five (5) working days before the date of bid opening unless otherwise noted on Page 1 of the ITB. No other form of clarification is acceptable. Failure of Bidder to comply may result in the Bidder being deemed not responsive.

I-12. Requests for Revisions or Additions to the Bid: Bidders are required to comply with all of the terms and conditions of the Invitation to Bid, whether the bidder had actual knowledge of the terms and conditions of the Invitation to Bid and regardless of any statement or omission in the bid that might indicate a bidder's contrary intention. DAS will not agree to any additional or inconsistent terms or conditions proposed by the bidder. The terms and conditions of the Invitation to Bid prevail over any inconsistent or additional terms or conditions of the bid proposed by the bidder.

I-13. DAS Modifications to the Bid. When it is necessary to modify an Invitation to Bid, DAS does so by written addendum only.

I-14. Rejected Bids. DAS may reject any bid, in whole or in part, if any of the following circumstances are true:

- (A) bids offer supplies or services that are not in compliance with the requirements, specifications, terms or conditions stated in the Invitation to Bid,
- (B) the price of the lowest responsive and responsible bid is excessive in comparison with market conditions or with the purchasing agency's available funds, or
- (C) DAS determines that awarding any item is not in the best interest of the State of Ohio.

I-15. Bid Preparation. The State of Ohio assumes no responsibility for costs incurred by the bidder prior to the award of any Contract resulting from this Bid. Total liability of the State is limited to the terms and conditions of a resulting Contract.

I-16. Damages Arising from Bid Specifications. A bidder may not be compensated for damages arising from inaccurate or incomplete information in the Invitation to Bid specifications or from inaccurate assumptions based upon the specifications.

I-17. Evaluation of Bids. The contract will be awarded to the lowest responsive and responsible bidder as determined by DAS under the Ohio Revised Code (the "Code"). To protect the integrity of the competitive bid process, bids will be closed for public review once the evaluation and award process begins.

I-18. Unit Costs. Bidders shall not insert a unit cost of more than three (3) digits to the right of the decimal point. Digit(s) beyond three (3) will be dropped and not used in the evaluation of the Bid.

I-19. Lowest Bidder. A bidder is lowest if its bid offers the lowest-cost supply or service in comparison to all other bidders as set forth in the evaluation paragraph in the bid. While bidders may offer discounts for prompt payment and other similar incentives, discounts and incentives will not be used to determine the lowest bidder.

I-20. Responsive Bidder. A bidder is responsive if its bid responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

I-21. Responsible Bidder. DAS' determination of a bidder's responsibility includes the following factors:

- (a) experience of the bidder,
- (b) bidder's financial condition,
- (c) bidder's conduct and performance on previous contracts,
- (d) the bidder's facilities,
- (e) the bidder's management skills,
- (f) the bidder's ability to execute the contract properly, and
- (g) review of Federal and the Ohio Department of Transportation debarment list.

I-22. Estimated Usage. Unless otherwise stated, the usage indicated for each item(s) are to be considered as estimates only and should be considered as information relative to

potential purchases that may be made from the contract. The State makes no representation or guarantee as to the actual amount of item(s) to be purchased by the participating agencies.

I-23. Preference for Ohio Products. The bid award may be subject to the domestic preference provisions of the Buy America Act, 41 U.S.C.A., 10a-10d, as amended, and to the preference for Ohio products under Ohio Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06.

I-24. Tie Bids. If two or more bidders offer the same cost and both are determined to be responsive and responsible, DAS may break the tie with the flip of a coin. DAS may assign "heads" and "tails" to the bidders. The coin flip may be conducted in the presence of the bidders, if they elect to be present, and is the final determination of the lowest, responsive and responsible bidder.

I-25. Information Requested: DAS may request additional information to evaluate a bidder's responsiveness to the Invitation to Bid or to evaluate a bidder's responsibility. If a bidder does not provide the requested information, it may adversely impact DAS' evaluation of the bidder's responsiveness or responsibility.

I-26. Samples: DAS may require bidders, by Invitation to Bid or by request during evaluation, to provide sample supplies or equipment or examples of work, at the bidder's expense. Samples must clearly identify the bidder, the bid number, and the item the sample represents in the bid. DAS will return samples that are not destroyed by testing, at the bidder's expense, upon the bidder's timely request. DAS may keep the samples of the bidder awarded the contract until the completion of the contract. Unsolicited samples submitted in response to this Invitation to Bid will not be evaluated and DAS may dispose of them in any way it chooses.

I-27. Suspension and Debarments. The Department of Administrative Services will not award a contract for goods or services, funded in whole or in part with Federal funds, to a person who has been suspended or debarred from doing business with the State of Ohio or who appears on the Federal List of Excluded Parties Listing System <http://www.epls.gov/>.

I-28. Protests and Communications During Evaluation. Any bidder, who is not in agreement with the competitive bidding process used to make the award may file a protest. The protest must be timely and submitted in writing to the Procurement Services Administrator. Any attempt by the bidder, the bidder's agent(s), or any party representing the bidder to file a protest with any entity of the State of Ohio other than the Administrator may result in the bidder being deemed as not responsive. During the evaluation process, unless requested by Procurement Services as part of the evaluation process, any attempt on the part of the bidder, the bidder's agent(s), or any party representing the bidder, to submit correspondence that is determined by DAS to be an attempt to compromise the impartiality of the evaluation or any attempt on the part of the bidder, the bidder's agent(s), or any party representing the bidder to communicate with any member of the State regarding the evaluation process may be grounds for immediate disqualification of the bidder. A determination to stay the proceedings or reverse an award determination will be at the sole discretion of the Procurement Services Administrator. The decision of the Administrator shall be final and conclusive unless any person adversely affected by the decision commences an action in a court of law.

I-29. Registration with the Secretary of State. By the signature affixed to this Bid, the bidder attests that the Bidder is:

- (A) an Ohio corporation that is properly registered with the Ohio Secretary of State; or
- (B) a foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under Sections 1703.01 to 1703.31 of the Ohio Revised Code, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250 nor more than ten thousand dollars. No officer of a foreign corporation shall transact business in the state of Ohio, if such corporation is required by Section 1703.01 to 1703.31 of the Revised code to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree.

I-30. Certification Regarding Contract Eligibility With Other Governmental Entities: By the signature affixed on Page 1, Bidder hereby certifies that Bidder has not, within the last seven (7) years been the subject of any government action to limit the Bidder's right to do business with the government. If the Bidder cannot so certify, the Bidder must provide a written explanation with the bid response.

I-31. Non-Collusion Certification: By the signature affixed on Page one (1) of the Bid, the Bidder certifies that he/she is (sole owner, partner, president, secretary, etc.) of the party making the forgoing bid; that such bid is genuine and not collusive or sham; that bidder has not colluded, conspired or agreed, directly or indirectly, with any bidder or person, to put in a sham bid; or colluded or conspired to have another not bid and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the bid price of its bid or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against any bidder or any person or persons interested in the proposed contract and that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted this bid, or the contents thereof, or divulged any related information or data to any association or to any member or agent of any association.

I-32. Specifications. The Department of Administrative Services is authorized to prepare specifications to obtain supplies and services. The purpose of the specification is to describe the supplies or services to be purchased and will serve as a basis for comparison of bid responses. The department may use any form of specification it determines to be in the best interest of the State and that best describes the supplies or services to be purchased. Specifications may be in the form of a design specification, a performance specification or a combination thereof. If the department determines that a design, performance or combination specification is not in the best interest of the State, it may use brand name or equal specifications. Where a brand name or equal specification is used, use of the brand name is for the purpose of describing the base standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. Substantially equivalent supplies or services to those designated will be considered for award. The department may also use a qualified products list of the federal government or may develop a qualified products list applicable to the State of Ohio. When developing a qualified products list, the department shall solicit a sufficient number of suppliers to ensure maximum coverage with providers of the supplies or services. Any supplier,

not solicited, may request inclusion on the qualified products list. Potential suppliers will be required to furnish exact samples of the supplies or services to be provided for testing and examination by the State. Only those supplies or services that conform to the state's requirements will be considered for inclusion on a qualified products list. The department may also use a brand specific specification when it is determined that the identified brand name supplies or services will satisfy the State's need in the most cost-efficient manner, when the identified brand name supplies or services are necessary to protect the health and well-being of clients of the state, when emergency conditions will not permit acceptance of alternate brand name supplies or services, and when there are two or more authorized stocking distributors available to provide the required brand specific supplies or services. Final approval of, revisions to, and cancellation of the specifications for supplies and services or the proposed criteria and methodology for establishing and maintaining a qualified products list shall be the responsibility of the Department of Administrative Services.

I-33. FDA Registration. In accordance with the Public Health Security and Bioterrorism Preparedness Response Act of 2002, all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food and Drug Administration (FDA) no later than December 31, 2003. This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: <http://www.cfsan.fda.gov/~furl/ovffreg.html>. By the signature affixed to Page 1 of this ITB, Bidder certifies that Bidder, or his supplier(s) are properly registered with the FDA, unless otherwise exempted from such registration by the FDA.

I-34. Elections Law. Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio. Also, any Contractor unable to certify compliance with the above-referenced provisions in O.R.C. Section 3517.13, that accepts the Contract and any purchase orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management's website at: www.obm.ohio.gov.

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
STANDARD CONTRACT TERMS AND CONDITIONS**

I. CONTRACT TERM PROVISIONS:

- A. APPROPRIATION OF FUNDS.** The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of a current biennium. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by actions of the State of the decision to do so.

- B. OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all of the following conditions have been met:

1. All statutory provisions under the Ohio Revised Code, including Section §126.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

C. TERMINATION / SUSPENSION.

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.
 - a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.
 - b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.
 - c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in any way.
 - d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.
 - e. **Termination for Financial Instability.** The State may terminate this Contract by written notice to the Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.
 - f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current.

- g. **Termination for Subcontractor Default.** The State may terminate this Contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.
 - h. **Termination for Failure to Retain Certification.** Pursuant to section §125.081 of the Revised Code, the State may set aside a bid for supplies or services for participation only by minority business enterprises (MBE's) as certified by the State of Ohio, Equal Opportunity Coordinator. After award of the Contract, it is the responsibility of the MBE Contractor to maintain certification as a MBE. If the Contractor fails to renew its certification and/or is de-certified by the State of Ohio, Equal Opportunity Coordinator, the State may immediately cancel the Contract.
 - i. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.
 - j. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.
2. **Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause will be effective immediately on the Contractor's receipts of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

II. CONTRACT REMEDIES:

- A. **ACTUAL DAMAGES.** Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.
- B. **LIQUIDATED DAMAGES.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.
- C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice to being issued to the Contractor by the State.

III. PAYMENT PROVISIONS:

- A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:
 1. The purchase order number authorizing the delivery of products or services.
 2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

- B. PAYMENT DUE DATE.** Payments under this Contract will be due on the 30th calendar day after the later of:
1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
 2. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with Ohio Revised Code Section §126.30.

IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

- A. CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.
- B. GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:
1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
 2. No Deliverable will infringe on the intellectual property rights of any third party.
 3. All warranties are in accordance with Contractor's standard business practices attached.
 4. That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

5. The Contractor has the right to enter into this Contract.
6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
7. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
8. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

- C. INDEMNITY.** The Contractor will indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractors performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace Deliverable with an equivalent or better item.
3. Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or

4. Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

D. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

V. GENERAL PROVISIONS:

- A. **AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.
- B. **ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the State of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.
- C. **ASSIGNMENT / DELEGATION.** The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.
- D. **AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred (\$2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than (5) five business days after the request by the State or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, and misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

- E. **CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production. The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of providing actual damages. This provision shall not, however, diminish or alter any right to claim and recover.

- F. **CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- G. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:
1. The location (s) where all services will be performed; and
 2. The location(s) where any state data applicable to the contract will be maintained or made available; and
 3. The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

- H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site:

<http://www.das.ohio.gov/Eod/AEEO.htm>

- J. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.
- K. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.
- L. **HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.
- M. **NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.
- N. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.
- O. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without prior, written consent of the State.
- P. **STRICT PERFORMANCE.** The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- Q. **SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, reserves the right to reject any subcontractor submitted by the Contractor.
- R. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this Contract.
- S. **TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.

SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS

S-1. Contract Components. This Contract consists of the complete Invitation to Bid, including the Instructions to Bidders, Terms and Conditions for Bidding, the Standard Contract Terms and Conditions, the Supplemental Contract Terms and Conditions, the Special Contract Terms and Conditions, the bid specifications and any written addenda and contract amendments to the Invitation to Bid; the completed competitive sealed bid, including proper modifications, clarifications and samples; and applicable, valid State of Ohio purchase orders or other ordering documents ("Contract").

S-2. Contract Orders. Participating state agencies will order supplies or services under this Contract from the Contractor directly. The Contractor may receive orders made by participating state agencies by telephone, facsimile, electronically, in person, debit order or by State of Ohio payment card or purchase order (ORDE) from authorized employees of the participating agency. The State will not be responsible for orders placed by unauthorized employees. Contractor is not required to fill an order with a delivery date that is more than 30 days beyond the date of Contract expiration, termination or cancellation, unless the Contract provides for quarterly deliveries. Under a Contract that provides for quarterly deliveries, Contractor is not required to fill an order with a delivery date that is more than 90 days beyond the date of Contract expiration, termination or cancellation.

S-3. Compensation. In consideration for Contractor's performance each participating state agency will pay Contractor directly at the rate specified in the Contract. Payments may be made by the Ohio Payment Card, an Auditor of State warrant or by electronic funds transfer (EFT). For all transactions the Contractor must have a valid W-9 form on file with the Office of Budget and Management. Registration in OBM's database requires the Contractor to complete an IRS W-9 Form. The completed original form should be mailed to: Office of Procurement Services, 4200 Surface Rd., Columbus, OH 43228-1395.

S-4. Ohio Payment Card. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Procurement Services website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

S-5. Term of Contract. This Contract is effective upon the projected beginning date on the Invitation to Bid cover page or upon signature of DAS whichever is later in time. This Contract will remain in effect until the projected ending date on the Invitation to Bid cover page or until the Contract is fully performed by both parties or until it terminates in accordance with the Ohio constitutional or statutory limitations in Paragraph I-1 of the Contract Terms and Conditions or until it is canceled or terminated, whichever occurs first. State contracts may not extend beyond a biennium. If the term of this Contract extends beyond a biennium, the Contract will terminate on the last day of the current biennium. At that time, DAS may renew this Contract by letter to Contractor no later than July 1, of the new biennium. The operating biennium expires June 30th of each odd-numbered calendar year.

S-6. Contract Renewal. This Contract may be renewed solely at the discretion of DAS for a period of one month. Any further renewals will be for an appropriate period of time. The cumulative time of all renewals may not exceed twenty-four (24) months unless DAS determines that additional renewal is necessary.

S-7. Requirements Contract. The quantity of supplies or services to be provided under this Contract is the quantity determined by the actual, good faith, requirements of the participating state agencies. DAS may allow a participating state agency to purchase supplies or services identical to those provided under this Contract from a supplier other than Contractor, if one of the following conditions apply:

- (A) The supplies or services to be purchased were not anticipated by DAS at the time this Contract was let and the supplies or services are required in a large quantity;
- (B) The supplies or services to be purchased are unique or unusual from the supplies or services provided under this Contract; or
- (C) The agency requires the supplies or services to remedy an emergency and Contractor is not able to provide the supplies or services, as the emergency requires.

S-8. F.O.B., The Place of Destination. Contractor must provide supplies or services under this Contract F.O.B. the place of destination. The place of destination will be specified by the participating state agency on the agency's purchase order or other ordering document. Freight will be prepaid unless otherwise stated.

S-9. Time of Delivery. If Contractor is not able to deliver the supplies or services on the date and time specified by the participating state agency on the agency's ordering document, Contractor must coordinate an acceptable date and time for delivery with the agency.

If Contractor is not able to or does not provide the supplies or services to a participating state agency by the date and time provided on the agency's ordering document or by the date and time later agreed upon, the State may obtain any remedy under Section II, "Contract Remedies", as described in the Standard Contract Terms and Conditions or any other remedy at law.

S-10. Minimum Orders-Transportation Charges. For purchase orders placed that are less than the stated minimum order, transportation charges will be prepaid and added to the invoice by the Contractor to the delivery location designated by the ordering agency. Shipment is to be made by private or commercial freight service provider, air, rail, water, parcel post, express or commercial package delivery, whichever is the most economical and expeditious method for proper delivery of the item. Failure of the Contractor to utilize the most economical mode of transportation shall result in the Contractor reimbursing the ordering agency the difference between the most economical mode of transportation and the mode of transportation used by the Contractor. Failure to reimburse the ordering agency shall be considered as a default.

S-11. Price Adjustments. If the Contract provides for a price increase, Contractor may request a price increase in accordance with the Contract. If DAS or contractor becomes aware of a general price decrease for the supplies or services provided under Contract, Contractor must provide a price decrease to the State of Ohio. Failure to provide a decrease will be considered as a default.

S-12. Workers' Compensation. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.

S-13. Automobile and General Liability Insurance. During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. The Office of Procurement Services reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy (ies) endorsed to reflect per project / per location general aggregate limits.

If not submitted with the Bidder's response, copies of the respective insurance certificates shall be filed with the Office of Procurement Services within seven (7) calendar days after notification. Failure to submit the insurance certificates within this time period may result in the bidder being deemed not responsive. Said certificates are subject to the approval of the Director, Department of Administrative Services and shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to the Director, Department of Administrative Services. Failure of the Bidder to maintain this coverage for the duration of the Contract, and any renewals thereto, may be considered as a default. All insuring companies shall have and maintain at least an A- (Excellent) rating from A.M. Best.

S-14. Contract Compliance. The participating state agency will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify DAS through a Complaint to Vendor (CTV) to help resolve the infraction(s).

S-15. Quality Assurance. At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of the testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.

S-16. Electronic Commerce Program. The State of Ohio is an active participant in E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the contractor by reducing time delays in receiving orders and payments that are associated with the existing manual processes. It is the goal of the State of Ohio to eventually conduct all procurement activities through electronic commerce technologies. Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio in the future. The following information is offered to assist all interested businesses in their efforts to move toward becoming a trading partner with the State of Ohio through the electronic commerce technologies. Electronic Data Interchange (EDI) is used for electronic purchase orders, invoicing, and payment of purchases. The program includes sending electronic purchase orders to the Contractor, the receipt of electronic invoices from the Contractor and the transmission of payment and remittance information back to the Contractor. A complete "Implementation Guide", for doing business with the State of Ohio using EDI, can be found on the Internet at: <http://ecedi.ohio.gov/financial/>. This guide contains all of the information necessary for a company to become EDI compliant. By following all of the links, the entire guide may be viewed, downloaded and printed at your location. In addition, companies who are interested in becoming EDI trading partners with the State of Ohio should visit the Office of Budget and Management's website at www.state.oh.us/obm/BusinessCommunityPage/eCommerce.asp for additional information regarding E-Commerce.

S-17. Usage Reports. At no cost to the State, the Contractor shall be required to provide quarterly, bi-annual or annual usage reports as requested by the Office of Procurement Services. The reports will include information as to purchase activity under the Contract by all participating agencies and Co-operative Purchasing Program members. Report topics will include, but will not be limited to: customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information as requested by the Office of Procurement Services. Electronic media is the preferred method for these reports. Failure to provide the requested reports will be deemed as an event of default.

S-18. Return Goods Policy. The State will apply the following Return Goods Policy on all purchases made under the Contract. The bidder acknowledges to have read, understood, and agrees to this Policy.

- (A) Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.
- (B) For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.
- (C) Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

S-19. Product Recall. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify DAS-Procurement Services and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

S-20. Ohio Ethics. All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01S, Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other Contracts with the state of Ohio up to and including debarment.

Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

Executive Order 2007-01S is available for review at www.governor.ohio.gov, click on Governor's Office and then on Executive Orders.

S-21. Declaration of Material Assistance. In accordance with R.C. 2909.33(C), I certify that I meet one of the following conditions:

(a) I have **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;
or

(b)(1) I have received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.

and,

(2) I have either precertified with the Office of Budget and Management, or have completed the Declaration of Material Assistance form as directed on page 2 of the Invitation to Bid, (Item D), certifying that I have not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
INSTRUCTIONS TO BIDDERS FOR REVERSE AUCTIONS

Article RA-0. Description of Reverse Auction Process.

RA-0.1 Definition of Reverse Auction. Reverse auction is a purchasing process in which offerors submit bids in competition to sell services or supplies in an open environment via the internet. The auction itself is an invitation-only, timed event that is open to bidders who have been prequalified.

RA-0.2 Reverse Auction is a Competitive Selection Process. Ohio Revised Code sections 125.01 and 125.072 authorize the use of reverse auction as a form of competitive selection.

RA-0.3 Definition of Bid. In the context of reverse auction, the bid or bid response means all documents, whether attached or incorporated by reference, supplied by the bidder in response to an Invitation to Bid (ITB) by Reverse Auction, including a qualifications summary and the lowest price submitted by the bidder during the auction event.

RA-0.4 Chronology of Reverse Auction Process.

The reverse auction process includes the steps listed below:

- (1) notice of Invitation to Bid by Reverse Auction;
- (2) on-line questions and answers;
- (3) submittal of qualifications summaries;
- (4) preliminary evaluation;
- (5) auction event invitations;
- (6) event preparation and training of bidders;
- (7) auction event;
- (8) final evaluation and award.

Article RA-1. Notice of Invitation to Bid (Step 1).

The State posts bid opportunities on the State Procurement web site at www.ohio.gov/procure. Bidders may also register on-line to be notified automatically of bid opportunities. The invitation to bid document may be downloaded directly from the web site.

Article RA-2. Bid Preparation (Step 2).

RA-2.1 Cost of Preparation. The State of Ohio assumes no responsibility for costs incurred by the bidder prior to the award of any Contract resulting from this bid. Total liability of the State is limited to the terms and conditions of a resulting contract.

RA-2.2 Clarifications, Questions and Answers. If a bidder discovers an inconsistency, error or omission in this ITB, the bidder should request clarification from Procurement Services as indicated on the front page of the ITB. Bidders may post questions regarding this ITB through the State Procurement web site at www.ohio.gov/procure. Questions must be submitted a minimum of five working days prior to the deadline for submitting qualifications summaries. Answers to all bidder questions will be posted on the web site and linked to the bid number. The state will make every attempt to respond to website inquiries within forty-eight (48) hours of receipt. No other form of clarification is

acceptable. Failure of the Bidder to comply may result in the Bidder being deemed not responsive.

RA-2.3 DAS Modifications through Written Addendum. When it is necessary to modify an ITB, DAS does so by written addendum only.

RA-2.4 Damages Arising from Bid Specifications. A bidder may not be compensated for damages arising from inaccurate or incomplete information in the ITB specifications or from inaccurate assumptions based upon the specifications.

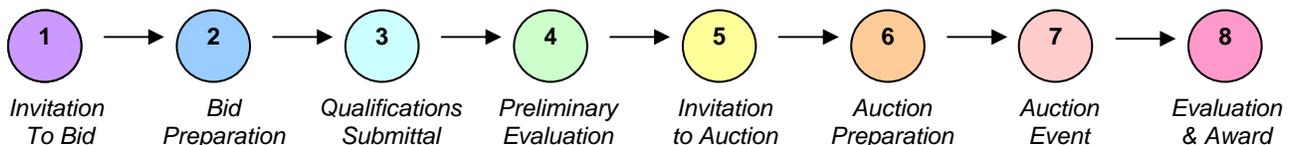
Article RA-3. Qualifications Submittal (Step 3).

RA-3.1 Complete Qualifications Summary with Authorized Signature. Bidders must submit a complete, signed qualifications summary, which at a minimum should include all of the pages of the ITB that required the bidder to respond and any additional information or samples required by the ITB. The Qualifications Summary should be signed with an original signature on the front page of the ITB. Bidders are requested not to use black ink to sign the qualifications summary. The signature on the qualifications summary shall serve as the signature for the entire bid response.

RA-3.2 How Qualifications Summary May be Delivered. Each summary must be submitted in a sealed envelope with the bid number clearly marked on the exterior. If a bidder uses an express mail or courier service, the bid number must be clearly marked on the exterior of the express mail or courier envelope or must be enclosed in a sealed envelope inside the express mail or courier service envelope, with the bid number clearly marked on the inside envelope. A summary that is not properly and clearly marked and is inadvertently opened before the scheduled bid opening time may be disqualified without additional consideration.

RA-3.3 When Qualifications Summary May be Delivered. DAS must receive the qualifications summary no later than 1:00 p.m. the day the summaries are scheduled for opening. DAS receives summaries during the hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, except state observed holidays. DAS does not accept summaries with insufficient postage, collect on delivery, or through electronic means.

RA-3.4 Where Qualifications Summary Must be Delivered. Summaries must be delivered to the following address:
 Department of Administrative Services
 General Services Division, Office of Procurement Services
 ATTN.: Bid Desk
 4200 Surface Rd.
 Columbus, OH 43228-1395



RA-3.5 Correction before Qualifications Summary Opening. If a bidder withdraws its summary and resubmits it with revisions, the revisions should be clearly identified and signed or initialed by the bidder. The omission of a bidder's signature or initials to a modification may result in the bid being determined to be not responsive. Any corrections must be completed off the premises.

RA-3.6 Withdrawal before Qualifications Summary Opening. A bidder may withdraw its summary, by written request, any time after DAS receives the summary and before the opening date and time.

Article RA-4. Preliminary Evaluation (Step 4).

RA-4.1 Qualified Bidders List. The department will use information from the qualifications summaries to register bidders for the auction event. The State reserves the right to exclude bidders who are deemed not responsive or not responsible. Reasons for exclusion may include, but are not limited to: late qualifications summary submittal, failure to include mandatory information or samples, and lack of Minority Business Enterprise (MBE) certification for a MBE set aside bid.

RA-4.2 Correction after Qualifications Summary Opening. DAS may permit a bidder alleging an inadvertent error to correct its summary, after opening and prior to the auction event, only if the mistake and the correction are clearly evident from the summary and correction does not otherwise affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

RA-4.3 Withdrawal before Auction Event. A bidder may by written request withdraw its qualifications summary before the auction event, if there is reasonable proof that an inadvertent mistake was made and the correction cannot be determined with reasonable certainty. "Inadvertent" means inattentive or unobservant; heedless; due to oversight; unintentional. If DAS suspects that the qualifications summary contains a mistake, DAS may ask the bidder for written confirmation of its summary.

Article RA-5. Invitation to Auction (Step 5). The department shall provide written notice to each bidder through postal mail or electronic means regarding the bidder's inclusion or exclusion from the qualified bidders list. The notice to excluded bidders shall include the reason(s) for exclusion. Notice to qualified bidders shall include an invitation to the auction event, with the date and time of the event and instructions for participation. The date and time in this invitation shall supercede the estimated date and time written in the invitation to bid.

Article RA-6. Event Preparation and Bidder Training (Step 6). The department or its agent shall work with the bidder to prepare for the auction event. Preparation may include, but is not limited to: configuration of the auction computer system, testing of the bidder interface, delivery of event procedure manuals and other documentation, and training.

Article RA-7. Auction Event (Step 7).

RA-7.1 Participation by Invitation Only. Only those bidders on the qualified bidders list will be allowed to participate in the auction event.

RA-7.2 Event Support. The department or its agent will provide the necessary administrative support to ensure that the integrity of the auction event is not compromised.

RA-7.3 Event Record. The department or its agent will keep an event record, which will include the prices offered by the bidders. The event record will become part of the contract documents and a public record at the conclusion of the event.

RA-7.4 Non-Disclosure of Competitors. The bidder interface will be configured such that a bidder will not know the identity of competing bidders until the event is complete.

RA-7.5 Start of Event. The department or its agent will begin the event through an electronic notification to all qualified bidders.

RA-7.6 Price Submittals. Bidders may submit multiple prices during the event. The lowest price offered will become the price portion of the bid response. Prices must be submitted by, or under the direction of, an authorized representative of the bidder as designated in the qualifications summary.

RA-7.7 Tie Bids. In the event that multiple bidders submit identical prices for the same lot, the bid received first will be considered the lowest. Any other identical bids received later will be considered in the order received, as determined by the official clock that the state designates.

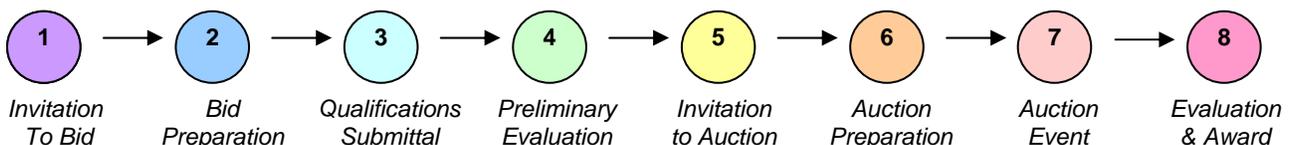
RA-7.8 Event Conclusion and Extensions. The auction event will have a scheduled stop time. The event may be extended if bids are received within a predetermined amount of time prior to the scheduled stop time. Specific procedures on time extensions shall be contained in the event procedure manual that will be distributed to all qualified bidders. The event will conclude at either the scheduled stop time or the time at which all extensions are completed, whichever is later.

Article RA-8. Evaluation and Award (Step 8).

The contract will be awarded to the lowest responsive and responsible bidder as determined by DAS under the Ohio Revised Code (the "Code"). To protect the integrity of the competitive selection process, bids will be closed for public review once the evaluation and award process begins.

RA-8.1 Lowest Bidder. A bidder is lowest if its bid offers the lowest cost supply or service in comparison to all other bidders as set forth in the evaluation paragraph in the bid.

While bidders may offer discounts for prompt payment and other similar incentives, discounts and incentives will not be used to determine the lowest bidder. The lowest bidder will be determined at the conclusion of the on-line reverse auction event.



RA-8.2 Responsive Bidder. A bidder is responsive if its bid responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

RA-8.3 Responsible Bidder. DAS' determination of a bidder's responsibility includes the following factors:

- (A) the experience of the bidder;
- (B) the bidder's financial condition;
- (C) the bidder's conduct and performance on previous contracts;
- (D) the bidder's facilities;
- (E) the bidder's management skills;
- (F) the bidder's ability to execute the contract properly; and
- (G) review of Federal and State of Ohio debarment list.

RA-8.4 Information Requested. DAS may request additional information to evaluate a bidder's responsiveness to the Invitation to Bid or to evaluate a bidder's responsibility. If a bidder does not provide the requested information, it may adversely impact DAS' evaluation of the bidder's responsiveness or responsibility.

RA-8.5 Bids are Firm for 90 Days. Unless stated otherwise, all bids are irrevocable for ninety (90) days after the conclusion of the auction event. Beyond ninety (90) days, the bidder will have the option to honor its bid or make a written request to withdraw its bid from consideration.

RA-8.6 Preference for Ohio Products. The bid award may be subject to the domestic preference provisions of the Buy America Act, 41 U.S.C.A., 10a-10d, as amended, and to the preference for Ohio products under Ohio Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06.

RA-8.7 Rejected Bids. DAS may reject any bid, in whole or in part, if any of the following circumstances are true:

- (A) bids offer supplies or services that are not in compliance with the requirements, specifications, terms or conditions stated in the Invitation to Bid,
- (B) the price of the lowest responsive and responsible bid is excessive in comparison with market conditions or with the purchasing agency's available funds, or
- (C) DAS determines that awarding any item is not in the best interest of the State of Ohio.

Article RA-9. Public Disclosure during Reverse Auction Process.

RA-9.1 Opening of Qualifications Summaries. The public may attend the opening of the qualifications summaries. After summaries are opened and certified by the Auditor of State, a list of respondents will be available for public review by interested parties who have registered with the bid desk. Once summaries have been opened and certified, they will be forwarded to the contract analyst to begin the evaluation process. The contents of the qualifications summaries will not be open to public inspection until after the award.

RA-9.2 Public Viewing of Auction Event. The public may attend the internet auction event. The auction event will be conducted such that the names of the bidders will not be disclosed until after the completion of the auction, at which time the event record will be available to the public.

RA-9.3 Public Records upon Award. After the contract is awarded the qualifications summaries and associated documents are public records as defined in Ohio Revised Code 149.43 and are subject to all laws appurtenant thereto.

Article RA-10. Requests for Revisions or Additions to the Bid.

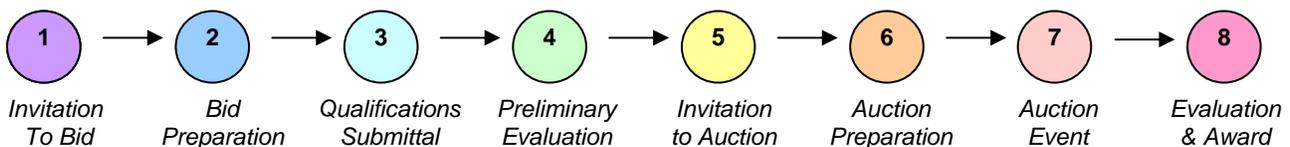
Bidders are required to comply with all of the terms and conditions of the Invitation to Bid, whether the bidder had actual knowledge of the terms and conditions of the Invitation to Bid and regardless of any statement or omission in the bid that might indicate a bidder's contrary intention. DAS will not agree to any additional or inconsistent terms or conditions proposed by the bidder. The terms and conditions of the Invitation to Bid prevail over any inconsistent or additional terms or conditions of the bid proposed by the bidder.

Article RA-11. Samples.

DAS may require bidders, by Invitation to Bid or by request during evaluation, to provide sample supplies or equipment or examples of work, at the bidder's expense. Samples must clearly identify the bidder, the bid number, and the item the sample represents in the bid. DAS will return samples that are not destroyed by testing, at the bidder's expense, upon the bidder's timely request. DAS may keep the samples of the bidder awarded the contract until the completion of the contract. Unsolicited samples submitted in response to this Invitation to Bid will not be evaluated and DAS may dispose of them in any way it chooses.

Article RA-12. Protests and Communications During Evaluation.

Any bidder who is not in agreement with the competitive selection process used to make the award may file a protest. The protest must be timely and submitted in writing to the Procurement Services Administrator. Any attempt by the bidder, the bidder's agent(s), or any party representing the bidder to file a protest with any entity of the State of Ohio other than the Administrator may result in the bidder being deemed as not responsive. During the evaluation process, unless requested by Procurement Services as part of the evaluation process, any attempt on the part of the bidder, the bidder's agent(s), or any party representing the bidder, to submit correspondence that is determined by DAS to be an attempt to compromise the impartiality of the evaluation or any attempt on the part of the bidder, the bidder's agent(s), or any party representing the bidder to communicate with any member of the State regarding the evaluation process may be grounds for immediate disqualification of the bidder. A determination to stay the proceedings or reverse an award determination will be at the sole discretion of the Procurement Services Administrator. The decision of the Administrator shall be final and conclusive unless any person adversely affected by the decision commences an action in a court of law.



Article RA-13. Ethics. All bidders and employees of the Office of Procurement Services are bound by the ethics laws of the State of Ohio. Any bidder or employee who violates any of these laws will be subject to penalties set forth by law.

Article RA-14. Registration with the Secretary of State. By the signature affixed to this Bid, the bidder attests that the Bidder is:

- (A) an Ohio corporation that is properly registered with the Ohio Secretary of State; or
- (B) a foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under Sections 1703.01 to 1703.31 of the Ohio Revised Code, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250 nor more than ten thousand dollars. No officer of a foreign corporation shall transact business in the state of Ohio, if such corporation is required by Section 1703.01 to 1703.31 of the Revised code to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree.

Article RA-15. Certification Regarding Contract Eligibility With Other Governmental Entities. By the signature affixed on Page 1, bidder hereby certifies that bidder has not, within the last seven (7) years been the subject of any government action to limit the bidder's right to do business with the government within the last seven (7) years, please provide a written explanation with the bid response.

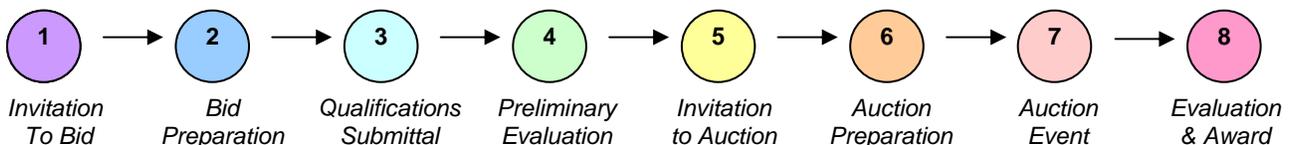
Article RA-16. Non-Collusion Certification. By the signature affixed on page one (1) of the bid, the bidder certifies that he/she is (sole owner, partner, president, secretary, etc.) of the party making the forgoing bid; that such bid is genuine and not collusive or sham; that bidder has not colluded, conspired or agreed, directly or indirectly, with any bidder or person, to put in a sham bid; or colluded or conspired to have another not bid and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the bid price of its bid or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against any bidder or any person or persons interested in the proposed contract and that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted this bid, or the contents thereof, or divulged any related information or data to any association or to any member or agent of any association.

RA-17. Specifications. The Department of Administrative Services is authorized to prepare specifications to obtain supplies and services. The purpose of the specification is to describe the supplies or services to be purchased and will serve as a basis for comparison of bid responses. The department may use any form of specification it determines to be in the best interest of the State and

that best describes the supplies or services to be purchased. Specifications may be in the form of a design specification, a performance specification or a combination thereof. If the department determines that a design, performance or combination specification is not in the best interest of the State, it may use brand name or equal specifications. Where a brand name or equal specification is used, use of the brand name is for the purpose of describing the base standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. Substantially equivalent supplies or services to those designated will be considered for award. The department may also use a qualified products list of the federal government or may develop a qualified products list applicable to the State of Ohio. When developing a qualified products list, the department shall solicit a sufficient number of suppliers to ensure maximum coverage with providers of the supplies or services. Any supplier, not solicited, may request inclusion on the qualified products list. Potential suppliers will be required to furnish exact samples of the supplies or services to be provided for testing and examination by the State. Only those supplies or services that conform to the state's requirements will be considered for inclusion on a qualified products list. The department may also use a brand specific specification when it is determined that the identified brand name supplies or services will satisfy the State's need in the most cost-efficient manner, when the identified brand name supplies or services are necessary to protect the health and well-being of clients of the State, when emergency conditions will not permit acceptance of alternate brand name supplies or services, and when there are two or more authorized stocking distributors available to provide the required brand specific supplies or services. Final approval of, revisions to, and cancellation of the specifications for supplies and services or the proposed criteria and methodology for establishing and maintaining a qualified products list shall be the responsibility of the department.

RS-18 Suspension and Debarments. The Department of Administrative Services will not award a contract for goods or services, funded in whole or in part with Federal funds, to a person who has been suspended or debarred from doing business with the State of Ohio or who appears on the Federal List of Excluded Parties.

RS-19. FDA Registration. In accordance with the Public Health Security and Bioterrorism Preparedness Response Act of 2002, all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food and Drug Administration (FDA) no later than December 12, 2003. This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: <http://www.cfsan.fda.gov/~furlis/ovffreg.html>. By the signature affixed to Page 1 of this ITB, Bidder certifies that Bidder, or his supplier(s) are properly registered with the FDA, unless otherwise exempted from such registration by the FDA.



**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
STANDARD CONTRACT TERMS AND CONDITIONS**

I. CONTRACT TERM PROVISIONS:

- A. APPROPRIATION OF FUNDS.** The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of a current biennium. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by actions of the State of the decision to do so.

- B. OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all of the following conditions have been met:
1. All statutory provisions under the Ohio Revised Code, including Section §126.07, have been met.
 2. All necessary funds are made available by the appropriate state agencies.
 3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
 4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

C. TERMINATION / SUSPENSION.

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.
 - a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.
 - b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.
 - c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in any way.
 - d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.
 - e. **Termination for Financial Instability.** The State may terminate this Contract by written notice to the Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.
 - f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current.

- g. **Termination for Subcontractor Default.** The State may terminate this Contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.
 - h. **Termination for Failure to Retain Certification.** Pursuant to section §125.081 of the Revised Code, the State may set aside a bid for supplies or services for participation only by minority business enterprises (MBE's) as certified by the State of Ohio, Equal Opportunity Coordinator. After award of the Contract, it is the responsibility of the MBE Contractor to maintain certification as a MBE. If the Contractor fails to renew its certification and/or is de-certified by the State of Ohio, Equal Opportunity Coordinator, the State may immediately cancel the Contract.
 - i. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.
 - j. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.
2. **Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause will be effective immediately on the Contractor's receipts of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

II. CONTRACT REMEDIES:

- A. **ACTUAL DAMAGES.** Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.
- B. **LIQUIDATED DAMAGES.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.
- C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice to being issued to the Contractor by the State.

III. PAYMENT PROVISIONS:

- A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

1. The purchase order number authorizing the delivery of products or services.
2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

B. PAYMENT DUE DATE. Payments under this Contract will be due on the 30th calendar day after the later of:

1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
2. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with Ohio Revised Code Section §126.30.

IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

A. CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY. Contractor warrants that it is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.

B. GENERAL REPRESENTATIONS AND WARRANTIES. The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:

1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with Contractor's standard business practices attached.
4. That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

5. The Contractor has the right to enter into this Contract.
6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
7. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
8. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

C. INDEMNITY. The Contractor will indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractors performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon

consultation with and approval by the Office of the State Attorney General. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace Deliverable with an equivalent or better item.
3. Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
4. Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

D. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

V. GENERAL PROVISIONS:

- A. **AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.
- B. **ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the State of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.
- C. **ASSIGNMENT / DELEGATION.** The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.
- D. **AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred (\$2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than five (5) business days after the request by the State or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, and misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

- E. **CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production. The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of providing actual damages. This provision shall not, however, diminish or alter any right to claim and recover.

- F. **CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- G. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:
1. The location (s) where all services will be performed; and
 2. The location(s) where any state data applicable to the contract will be maintained or made available; and
 3. The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

- H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site: <http://www.das.ohio.gov/Eod/AEEO.htm>

- J. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.
- K. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.
- L. **HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.
- M. **NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.

- N. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.
- O. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without prior, written consent of the State.
- P. **STRICT PERFORMANCE.** The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- Q. **SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, reserves the right to reject any subcontractor submitted by the Contractor.
- R. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this Contract.
- S. **TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.

VI. **ELECTIONS LAW.** Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio. Also, any Contractor unable to certify compliance with the above-referenced provisions in O.R.C. Section 3517.13, that accepts the Contract and any purchase orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management 's website at: www.obm.ohio.gov.

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SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS

S-1. Contract Components. This Contract consists of the complete Invitation to Bid, including the Instructions to Bidders, Terms and Conditions for Bidding, the Standard Contract Terms and Conditions, the Supplemental Contract Terms and Conditions, the Special Contract Terms and Conditions, the bid specifications and any written addenda and contract amendments to the Invitation to Bid; the completed competitive sealed bid, including proper modifications, clarifications and samples; and applicable, valid State of Ohio purchase orders or other ordering documents ("Contract").

S-2. Contract Orders. Participating state agencies will order supplies or services under this Contract from the Contractor directly. The Contractor may receive orders made by participating state agencies by telephone, facsimile, electronically, in person, debit order or by State of Ohio payment card or purchase order (ORDE) from authorized employees of the participating agency. The State will not be responsible for orders placed by unauthorized employees. Contractor is not required to fill an order with a delivery date that is more than 30 days beyond the date of Contract expiration, termination or cancellation, unless the Contract provides for quarterly deliveries. Under a Contract that provides for quarterly deliveries, Contractor is not required to fill an order with a delivery date that is more than 90 days beyond the date of Contract expiration, termination or cancellation.

S-3. Compensation. In consideration for Contractor's performance each participating state agency will pay Contractor directly at the rate specified in the Contract. Payments may be made by the Ohio Payment Card, an Auditor of State warrant or by electronic funds transfer (EFT). For all transactions the Contractor must have a valid W-9 form on file with the Office of Budget and Management. Registration in OBM's database requires the Contractor to complete an IRS W-9 Form. The completed original form should be mailed to: Office of Procurement Services, 4200 Surface Rd., Columbus, OH 43228-1395.

S-4. Ohio Payment Card. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Procurement Services website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

S-5. Term of Contract. This Contract is effective upon the projected beginning date on the Invitation to Bid cover page or upon signature of DAS whichever is later in time. This Contract will remain in effect until the projected ending date on the Invitation to Bid cover page or until the Contract is fully performed by both parties or until it terminates in accordance with the Ohio constitutional or statutory limitations in Paragraph I-1 of the Contract Terms and Conditions or until it is canceled or terminated, whichever occurs first. State contracts may not extend beyond a biennium. If the term of this Contract extends beyond a biennium, the Contract will terminate on the last day of the current biennium. At that time, DAS may renew this Contract by letter to Contractor no later than July 1, of the new biennium. The operating biennium expires June 30th of each odd-numbered calendar year.

S-6. Contract Renewal. This Contract may be renewed solely at the discretion of DAS for a period of one month. Any further renewals will be for an appropriate period of time. The cumulative time of all renewals may not exceed twenty-four (24) months unless DAS determines that additional renewal is necessary.

S-7. Requirements Contract. The quantity of supplies or services to be provided under this Contract is the quantity determined by the actual, good faith, requirements of the participating state agencies. DAS may allow a participating state agency to purchase supplies or services identical to those provided under this Contract from a supplier other than Contractor, if one of the following conditions apply:

- (A) The supplies or services to be purchased were not anticipated by DAS at the time this Contract was let and the supplies or services are required in a large quantity;
- (B) The supplies or services to be purchased are unique or unusual from the supplies or services provided under this Contract; or
- (C) The agency requires the supplies or services to remedy an emergency and Contractor is not able to provide the supplies or services, as the emergency requires.

S-8. F.O.B., The Place of Destination. Contractor must provide supplies or services under this Contract F.O.B. the place of destination. The place of destination will be specified by the participating state agency on the agency's purchase order or other ordering document. Freight will be prepaid unless otherwise stated.

S-9. Time of Delivery. If Contractor is not able to deliver the supplies or services on the date and time specified by the participating state agency on the agency's ordering document, Contractor must coordinate an acceptable date and time for delivery with the agency.

If Contractor is not able to or does not provide the supplies or services to a participating state agency by the date and time provided on the agency's ordering document or by the date and time later agreed upon, the State may obtain any remedy under Section II, "Contract Remedies", as described in the Standard Contract Terms and Conditions or any other remedy at law.

S-10. Minimum Orders-Transportation Charges. For purchase orders placed that are less than the stated minimum order, transportation charges will be prepaid and added to the invoice by the Contractor to the delivery location designated by the ordering agency. Shipment is to be made by private or commercial freight service provider, air, rail, water, parcel post, express or commercial package delivery, whichever is the most economical and expeditious method for proper delivery of the item. Failure of the Contractor to utilize the most economical mode of transportation shall result in the Contractor reimbursing the ordering agency the difference between the most economical mode of transportation and the mode of transportation used by the Contractor. Failure to reimburse the ordering agency shall be considered as a default.

S-11. Price Adjustments. If the Contract provides for a price increase, Contractor may request a price increase in accordance with the Contract. If DAS or contractor becomes aware of a general price decrease for the supplies or services provided under Contract, Contractor must provide a price decrease to the State of Ohio. Failure to provide a decrease will be considered as a default.

S-12. Workers' Compensation. The contractor will provide the following insurance coverage at its own expense throughout the term of this Contract: Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.

S-13. Automobile and General Liability Insurance. During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. The Office of Procurement Services reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy (ies) endorsed to reflect per project / per location general aggregate limits.

If not submitted with the Bidder's response, copies of the respective insurance certificates shall be filed with the Office of Procurement Services within seven (7) calendar days after notification. Failure to submit the insurance certificates within this time period may result in the bidder being deemed not responsive. Said certificates are subject to the approval of the Director, Department of Administrative Services and shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to the Director, Department of Administrative Services. Failure of the Bidder to maintain this coverage for the duration of the Contract, and any renewals thereto, may be considered as a default. All insuring companies shall have and maintain at least an A- (Excellent) rating from A.M. Best.

S-14. Contract Compliance. The participating state agency will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify DAS through a Complaint to Vendor (CTV) to help resolve the infraction(s).

S-15. Quality Assurance. At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of the testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.

S-16. Electronic Commerce Program. The State of Ohio is an active participant in E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the contractor by reducing time delays in receiving orders and payments that are associated with the existing manual processes. It is the goal of the State of Ohio to eventually conduct all procurement activities through electronic commerce technologies. Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio in the future. The following information is offered to assist all interested businesses in their efforts to move toward becoming a trading partner with the State of Ohio through the electronic commerce technologies. Electronic Data Interchange (EDI) is used for electronic purchase orders, invoicing, and payment of purchases. The program includes sending electronic purchase orders to the Contractor, the receipt of electronic invoices from the Contractor and the transmission of payment and remittance information back to the Contractor. A complete "Implementation Guide", for doing business with the State of Ohio using EDI, can be found on the Internet at: <http://ecedi.ohio.gov/financial/>. This guide contains all of the information necessary for a company to become EDI compliant.

By following all of the links, the entire guide may be viewed, downloaded and printed at your location. In addition, companies who are interested in becoming EDI trading partners with the State of Ohio should visit the Office of Budget and Management's website at www.state.oh.us/obm/BusinessCommunityPage/eCommerce.asp for additional information regarding E-Commerce.

S-17. Usage Reports. At no cost to the State, the Contractor shall be required to provide quarterly, bi-annual or annual usage reports as requested by the Office of Procurement Services. The reports will include information as to purchase activity under the Contract by all participating agencies and Co-operative Purchasing Program members. Report topics will include, but will not be limited to: customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information as requested by the Office of Procurement Services. Electronic media is the preferred method for these reports. Failure to provide the requested reports will be deemed as an event of default.

S-18. Return Goods Policy. The State will apply the following Return Goods Policy on all purchases made under the Contract. The bidder acknowledges to have read, understood, and agrees to this Policy.

(A) Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.

(B) For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

(C) Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

S-19. Product Recall. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify DAS-Procurement Services and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

S-20. Ohio Ethics. All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01S, Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other Contracts with the state of Ohio up to and including debarment.

Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

Executive Order 2007-01S is available for review at www.governor.ohio.gov, click on Governor's Office and then on Executive Orders.

S-21. Declaration of Material Assistance. In accordance with R.C. 2909.33(C), I certify that I meet one of the following conditions:

(a) I have **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;
or

(b)(1) I have received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.

and,

(2) I have either precertified with the Office of Budget and Management, or have completed the Declaration of Material Assistance form as directed on page 2 of the Invitation to Bid, (Item D), certifying that I have not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Ethics
POLICY/PROCEDURE NO.: PUR- 001
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 billion for supplies and services required for the daily operation of their facilities. Agencies are permitted to make purchases of supplies up to \$33,500 and services up to \$67,000 under their direct purchase authority for items not covered by a mandatory state source (i.e. OPI, DMH/OSS, RSC, State Use, DAS). Purchases that exceed these limits must be procured by or through the Department of Administrative Services or must be approved by the Controlling Board.

The Office of Procurement Services is responsible for establishing contracts for the various non-IT supplies and services required by state agencies. The processes associated with these contracting efforts involve the expenditure of tax dollars that creates a trust between Procurement Services and the general public. This Policy and Procedure will set forth the guidelines that Procurement Services will follow to protect this trust and to establish fair and equal treatment of all vendors who are interested in participating in the procurement of these supplies and services.

II. Scope

This policy is applicable to all employees of Procurement Services to include their spouse, children and family relatives as described in the Ohio Revised Code. To the extent permitted by law, this policy also applies to all private companies and their employees conducting business with or seeking to do business with the state of Ohio or with Procurement Services. This policy is not intended to replace or modify any existing laws, executive orders or DAS departmental policies relative to ethics. If any terms of this policy conflict, the existing laws, executive orders or departmental policies shall prevail.

III. Policy

The Office of Procurement Services will conduct all procurement activities in a manner above reproach and with complete impartiality and preferential treatment to none. Employees will receive ongoing routine training on Ohio's ethics laws, Executive Orders and Departmental Policies and will conform to the requirements of such. Prior to July 1 of a new biennium, employees will receive formal training on Ohio's Ethics Laws through programs offered by the Ohio Ethics Commission.

IV. Procedures

A. Employee Responsibility

All employees of Procurement Services are responsible to become familiar with the ethics laws of the state of Ohio (ORC 102.01 to 102.09), any Executive Orders and DAS departmental policies pertaining to ethical conduct. Employees are required to perform their daily activities in a professional and responsible manner to maintain the public trust. Employees must avoid any “perception of impropriety”. Employees who violate the ethics laws, Executive Order(s) or DAS departmental policies will be subject to any penalties set forth by law, as well as, be subject to disciplinary action up to and including termination of employment.

In addition to the legal requirements for ethical conduct, employees of Procurement Services shall comply with the following:

- 1) No employee shall solicit anything of value for personal use, either directly or indirectly, from anyone who has or is seeking to do business with the State or with Procurement Services.
- 2) No employee shall use or authorize the use of their position of employment to secure anything of value for personal use, or promise or offer to provide anything of value from anyone who has or is seeking to do business with the State or with Procurement Services.
- 3) No employee shall outwardly display promotional items provided by anyone who has or is seeking to do business with the State or with Procurement Services. Use of promotional items may be permissible if done in such a manner so as to not disclose the name, logo or other identifying trademark of the supplier.
- 4) Employees may participate in business lunches, dinners, trade events or conferences provided that such activities are not established to discuss a forthcoming procurement or bid or RFP that is under evaluation. Employees are expected to pay for their meals, registration, travel or lodging subject to reimbursement in accordance with state travel policies. Acceptance of door prizes or gifts is discouraged. However, if a door prize or gift of nominal value is accepted from an entity that is doing business or seeking to do business with the State or with Procurement Services, it must be reported. If the value of the prize exceeds \$20.00, the employee must follow the filing requirements set forth by DAS and the Ethics Commission. Employees should use good judgment when participating in such activities.
- 5) All activities of Procurement Services are of public interest and a matter of public record. Employees shall conduct their official duties so that all actions can be fully substantiated and legally defended. No employee shall disclose or use, without proper authorization, any information acquired in the course of performing their official duties. Employees shall maintain complete and concise records on all activities subject to existing laws pertaining to public records.
- 6) When required, employees shall file, an annual Financial Disclosure Statement with the Ohio Ethics Commission.

B. Vendor responsibilities

All suppliers who are actively doing business with or seeking to do business with the State and/or with Procurement Services are expected to perform their business activities in a professional manner and avoid any “perceptions of impropriety”. Suppliers will be responsible to review and become familiar with the ethics laws of the state of Ohio. Any supplier who violates Ohio’s ethics laws or any executive order or DAS policy will be subject to legal penalties up to and including debarment.

Procurement Services utilizes a variety of methods for establishing contracts for supplies and services which include: Competitive Sealed Bidding, Competitive Sealed Proposals, Reverse Auction, Multiple Award Contracts and State Term Schedules. Processes for implementing these methods have been developed to ensure fair and equal treatment of all vendors participating in the procurement activity. Any vendor that attempts to influence the evaluation and/or award of a contract either directly or through an outside agent or representative will be disqualified and will not be able to participate in the procurement activity. In addition, a vendor who attempts to influence an evaluation and award will be subject to penalties set forth by law up to and including debarment from doing business with the Department of Administrative Services and/or the state of Ohio.

C. Suspected violation of ethics laws

Suspected violations of Ohio’s ethics laws, executive orders or DAS policies and procedures by any employee of the State or vendor are to be reported to the Administrator of the Office of Procurement Services. The Administrator will advise the Division Deputy Director and may forward the evidence to the DAS Office of Chief Counsel for their review and disposition. If the Office of Chief Legal Counsel concurs that a violation has occurred, the Director of Administrative Services, and, if applicable, the Ohio Attorney General and Ohio Ethics Commission will be notified and the matter will be turned over to them for resolution.

V. Professional Membership

Procurement Services maintains membership in the following professional procurement organizations: National Association of State Procurement Officials (NASPO), National Institute of Governmental Purchasing (NIGP), Central Ohio Organization of Public Purchasers (CO-OPP) Chapter of NIGP and the Ohio, Indiana, Northern Kentucky (O.I.N.K.) Chapter of NIGP. These organizations subscribe to high ethical standards intended to govern the conduct of its members. Published herein is the Code of Ethics of the National Institute of Governmental Purchasing. To the extent practicable and permissible under Ohio law, Procurement Services Division has adopted the NIGP Code of Ethics.



NIGP CODE OF ETHICS

The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization.

Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.

Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.

Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.

Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.

Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.

Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.

Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

Resists encroachment on control of personnel in order to preserve integrity as a professional manager. Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.

Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.

Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.

GUIDELINES TO THE NIGP CODE OF ETHICS

I. RESPONSIBILITY TO YOUR EMPLOYER

Follow the lawful instructions or laws of the employer.

Understand the authority granted by the employer.

Avoid activities, which would compromise or give the perception of compromising the best interest of the employer.

Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition.

Obtain the maximum benefit for funds spent as agents for the employer.

II. CONFLICT OF INTEREST

Avoid any private or professional activity that would create a conflict between your personal interest and the interests of your employer.

Avoid engaging in personal business with any company that is a supplier to your employer.

Avoid lending money to or borrowing money from any supplier.

III. PERCEPTION

Avoid the appearance of unethical or compromising practices in relationships, actions and communications.

Avoid business relationships with personal friends. Request a reassignment if the situation arises.

Avoid noticeable displays of affection, which may give an impression of impropriety.

Avoid holding business meetings with suppliers outside the office. When such meetings do occur, the meeting location should be carefully chosen so as not to be perceived as inappropriate by other persons in the business community or your peers.

IV. GRATUITIES

Never solicit or accept money, loans, credits or prejudicial discounts, gifts, entertainment, favors or services from your present or potential suppliers which might influence or appear to influence purchasing decisions.

Never solicit gratuities in any form for yourself or your employer.

Items of nominal value offered by suppliers for public relations purposes are acceptable when the value of such items has been established by your employer and would not be perceived by the offeror, receiver or others as posing an ethical breach.

Gifts offered exceeding nominal value should be returned with an explanation or if perishable either returned or donated to a charity in the name of the supplier.

In the case of any gift, care should be taken to evaluate the intent and perception of acceptance to ensure that it is legal, that it will not influence your buying decisions, and that it will not be perceived by your peers and others as unethical.

V. BUSINESS MEALS

There are times when during the course of business it may be appropriate to conduct business during meals. In such instances, the meal should be for a specific business purpose.

Avoid frequent meals with the same supplier.

The purchasing professional should be able to pay for meals as frequently as the supplier. Budgeted funds should be available for such purposes.

VI. CONFIDENTIAL INFORMATION

Keep bidders' proprietary information confidential.

Develop a formal policy on the handling of confidential information.

VII. RELATIONSHIP WITH THE SUPPLIER

Maintain and practice, to the highest degree possible, business ethics, professional courtesy, and competence in all transactions.

Association with suppliers at lunches, dinners or business organization meetings is an acceptable professional practice enabling the buyer to establish better business relations provided that the buyer keeps free of obligation. Accordingly, it is strongly recommended that if a seller pays for an activity that the buyer reciprocate.

Purchase without prejudice, striving to obtain the maximum value for each dollar of expenditure.

Preclude from showing favoritism or be influenced by suppliers through the acceptance of gifts, gratuities, loans or favors. Gifts of a nominal value that display the name of a firm which is intended for advertisement may or may not be accepted in accordance with the recipient's own conscience or jurisdictional rules.

Adhere to and protect the supplier's business and legal rights to confidentiality for trade secrets, and other proprietary information.

Refrain from publicly endorsing products.

VIII. RELATIONSHIP WITH THE EMPLOYER

Remain free of any and all interests and activities, which are or could be detrimental or in conflict with the best interests of the employer.

Refrain from engaging in activities where the buyer has a significant personal or indirect financial interest.

Exercise discretionary authority on behalf of the employer.

Avoid acquiring interest or incurring obligations that could conflict with the interests of the employer.

IX. RELATIONSHIPS WITH OTHER AGENCIES AND ORGANIZATIONS

A buyer shall not use his position to exert leverage on individuals or firms for the purpose of creating a benefit for agencies or organizations that he may represent.

All involvement and transactions shall be handled in a professional manner with the interest of the buyer's employer taking precedent.

X. RELATIONSHIP WITH PROFESSIONAL PURCHASING ORGANIZATIONS AND ASSOCIATIONS.

It is the obligation and the responsibility of the buyer, through affiliation with professional organization, to represent that organization in a professional and ethical manner.

A buyer shall not use his position to persuade an individual or firm to provide a benefit to an organization.

XI. POLICY

It is the policy of NIGP that any member of the Institute who personally, or on behalf of his local chapter, is involved in the process of acquiring advertisers and/or exhibitors on behalf of the Institute, shall act only in the capacity of providing referrals of potential or interested parties to the Institute. As a result of such referral, should the Institute form a contractual obligation, appropriate credit shall be given to the individual or chapter.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Fraud, Waste and Abuse
POLICY/PROCEDURE NO.: PUR- 002
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 Billion for supplies and services required for the daily operation of their facilities. Each department, agency, institution, board and commission, authorized to make purchases of supplies and services, bears a duty to the public to make all procurements in a responsible manner to avoid the potential for accusations of fraud, waste or abuse. Procurement activity must reflect that the item meets the need of the agency, meets the quality standards set forth in the specifications and is used for the intended purpose.

II. Scope

This Policy and Procedure will provide guidance to identify and report situations of fraud, waste and abuse of state-owned property including equipment, supplies, services, staff, reimbursements and expenditures.

III. Policy

It is the responsibility of each employee of Procurement Services, to perform their daily activities to avoid accusations of fraud, waste or abuse. Think of this office as living and working in a glass bowl, everyone is watching us. Caution must be exercised, however, to distinguish between errors and incidents of fraud, waste or abuse.

IV. Recognizing Fraud, Waste, or Abuse

- A. “*Fraud*” means a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.¹ Fraud can take many forms such as insurance fraud, mail fraud, bank fraud or criminal fraud. One type of fraud that could best describe procurement processes is “*fraud in the inducement*” which occurs when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties or obligations involved; an intentional misrepresentation of a material risk or duty reasonably relied upon,

¹ Black’s Law Dictionary, 8th Edition ©2004

thereby injuring the other party without vitiating the contract itself, especially about a fact relating to value². Sometimes it can be very difficult to recognize when one party to a contract has committed fraud and it may not be seen until some point well after the contract has been performed and payment has been completed. Proving an incident of fraud can be difficult as one must be able to show evidence that the accused party intentionally misleads the other party for personal gain. What might appear to be an event of fraud could actually be an error on the part of the individual. Thus caution must be used to ensure that evidence clearly indicates that fraud has occurred. Examples that could be interpreted as fraud include, but are not limited to:

- Collusive bidding (bid rigging, price fixing)
- Falsification of bid certifications
- Contract steering
- Product substitution with sub-standard products
- Bribery
- False invoices to gain payment for goods or services not provided

B. “*Waste*” means to use, consume, or expend carelessly or thoughtlessly.³ Waste can take many forms. It is not difficult to find oneself in a situation of carelessly or thoughtlessly throwing away supplies that may have some useful life available or failing to recycle items that could be used to produce new supplies. Employees should be cognizant of how they use supplies and make every effort to use the item to its fullest extent. Employees must be reminded that tax dollars are being used to purchase the item and failure to use the item to their fullest extent is a waste of the item and tax dollars. Flagrant waste should be reported to management. Examples of waste include, but are not limited to:

- Purchase of higher quality item when lesser quality would suffice
- Failure to recycle
- Failure to utilize energy efficient supplies and equipment
- Acquire supplies and store in inventory beyond warranty periods
- Release of new/unused supplies to surplus

C. “*Abuse*” means to use wrongly or improperly.⁴ Situations of abuse occur when an employee intentionally misuses state-owned property that could result in damage to item and additional expense to the state to repair it. Intentional and flagrant issues of abuse should be reported to management. Examples of abuse include, but are not limited to:

- Intentional slamming down the lid of a copier
- Kicking a computer hard drive
- Pouring liquid onto a computer keypad
- Using a state vehicle to tow another vehicle
- Improper use of office equipment

² Black’s Law Dictionary, 8th Edition ©2004

³ Webster’s New College Dictionary, 3rd Edition ©2005

⁴ Webster’s College Dictionary, 3rd Edition ©2005

V. Procedures to protect against suspected Fraud, Waste and Abuse

- A. *Bid/RFP Documents.* Staff responsible to develop bid/RFP documents will review agency requests and make necessary adjustments to ensure that all terms, conditions and specifications reflect current industry. The State has a right to set forth certain baseline product requirements to ensure that the needs of the agency are met, but should avoid specifications that would restrict open competition. There may be situations where it is necessary to limit specifications to a certain brand to protect the interests of the state which must conform to the requirements of the Ohio Administrative Code.
- B. *Copier Pre-Approvals.* A Pre-Approval is required from Procurement Services when an agency intends to make a purchase of a copier. This is to ensure that items being purchased from a term contract are listed in the contract, that equipment being purchased corresponds to the need of the agency, to ensure that the method of acquisition is in the best interest of the agency and that pricing reflects what was accepted by Procurement Services. If not making the purchase from a term contract, the agency must provide sufficient evidence as to why they are not making the purchase from the term contract. Staff responsible for the review of pre-approvals will examine the documents to ensure that items and quantities listed conform to existing contract terms, conditions and specifications. If deemed appropriate, the pre-approval may be denied and a separate bid may be issued for the supplies or services to promote more favorable pricing, etc.
- C. *Release and Permits.* A Release and Permit may be requested by an agency when the purchase exceeds their direct purchase limits, when time to complete the purchase is a critical factor or when the item is used equipment or a sole source. Staff responsible for approving a release and permit will review the supplies or services to be purchased and the reasons for the agency requesting a release and permit. If determined that the purchase was not deliberately held to avoid the bidding processes and/or that it is not possible or advantageous for Procurement Services to establish a contract for requested supplies or services, the request will be approved. If the request is denied, the agency will re-submit the request to Procurement Services for procurement under formal competitive processes.
- D. *Contract Waivers.* A Contract waiver may be requested when the vendor on a mandatory contract is unable to furnish the requested supplies or services. The respective manager will review the written request and, if valid, will approve the waiver.

VI. Reporting Suspected Incidents of Fraud, Waste and Abuse

Suspected incidents of fraud, waste or abuse, either by an employee of the Procurement Services or by an employee of a state agency, should be reported, in writing, to the Administrator. If the Administrator has reason to believe that an incident of fraud, waste or abuse has occurred, the Administrator will forward the evidence to the Deputy Director of the General Services division and to the DAS Office of Chief Counsel for their review and disposition. A number of laws have been passed to protect individuals who report incidents of fraud, waste and abuse from retribution. It is the responsibility of the person reporting the incident to seek legal advice to ensure they are protected under the “Whistle Blower” laws.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Domestic & In-State Preferences
POLICY/PROCEDURE No.: PUR-003
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

In 1983, the 115th General Assembly enacted Sections 125.09 and 125.11 of the Ohio Revised Code that require the Department of Administrative Services (“DAS”) and other state agencies apply a preference to domestic Ohio bids for supplies and services, except construction, to be purchased pursuant to these statutes. DAS prescribed further criteria to be used in giving preference to domestic and Ohio products as described in Section 123:5-1-06 of the Ohio Administrative Code. The OAC established this preference at 5% over the price offered by a non-Ohio bidder.

These laws apply to competitive sealed bids and competitive sealed bids by reverse auction issued by DAS and to procurements made by state agencies under their direct or delegated authority. When evaluating bids, it is first determined whether the bidder is offering a domestic end product (Buy America) and then if the bidder is offering an Ohio produced product or if the bidder is not offering an Ohio produced product, but is claiming to have significant Ohio economic presence (Buy Ohio).

Law also permits DAS and state agencies to treat bidders located in a state bordering Ohio on the same basis as if the bidder is an Ohio bidder. As long as the border state does not impose a greater restriction upon Ohio bidders selling products or services to agencies of that state, the border state bidder will receive the same preference as an Ohio bidder. DAS recognizes the Commonwealths of Kentucky and Pennsylvania and states of Michigan, Indiana and New York as border states as they do not apply a preference against Ohio bidders. The state of West Virginia does apply a preference to Ohio bidders and is, therefore, not eligible to receive the border state preference.

II. Scope

This Policy and Procedure will describe the criteria DAS will follow when evaluating bid responses and how the domestic and in-state preferences will be applied. DAS will apply the domestic and in-state preferences to all competitive sealed bids and reverse auctions. After application of the preferences, contracts will be awarded to the lowest responsive and responsible bidder in accordance with Section 125.11 of the Revised Code. A state agency

must adopt this Policy and Procedure for use in applying the domestic and in-state preferences to their direct and/or delegated procurements.

III. Policy

This Policy and Procedure will be applied in accordance with Ohio Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Section 123:5-1-06, as amended. This Policy and Procedure is only applicable to those contracts established through issuance of Competitive Sealed Bids and/or Reverse Auction. All other recognized methods of contracting by DAS are exempt from the requirements of the domestic and in-state preferences set forth in this Policy and Procedure.

IV. Definitions

“Border State” means any state that is contiguous to Ohio and that does not impose a restriction greater than Ohio imposes pursuant to section 125.09 of the Revised Code. To qualify for significant economic presence, the border state bidder must have either 10 or more employees or at least 75% of their employees based in the respective border state where the bidder’s company resides.

“Canadian End Product”¹ means an article that (1) is wholly the growth, product, or manufacture of Canada; or (2) in the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Domestic End Product”² means (1) an un-manufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds fifty percent of the cost of all its components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“Employer” means a person who controls and directs a worker under an express or implied contract of hire and who pay’s the worker’s salary or wages.

¹ 48 CFR Ch 1 (10-1-02 Edition) Subpart 25.5, 25.003 Definitions

² 48 CFR Ch. 1 (10-1-02 Edition) Subpart 25.5, 25.003 Definitions.

“Employee” means a person who works in the service of another person (the employer) under and express or implied contract of hire, under which the employer has the right to control the details of work performance.

“Mexican End Product”³ means an article that (1) is wholly the growth, product, or manufacture of Mexico; or (2) in the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Ohio Bid” means a bid received from a bidder offering Ohio products or a bidder demonstrating significant Ohio economic presence.

“Ohio Products” means products that are mined, excavated, produced, manufactured, raised, or grown by a person where the input of Ohio products, labor, skill, or other services constitutes no less than twenty-five percent of the manufactured cost. With respect to mined products, such products shall be mined or excavated in this state.

“Produced” means the manufacturing, processing, mining, developing, and making of a thing into a new article with a distinct character in use through the application of input, within this estate, of Ohio products, labor, skill or other services. “Produced” does not include the mere assembling or putting together of non-Ohio products or materials.

“Significant Ohio Economic Presence” means business organizations that:

- (1) Pay required taxes to the state of Ohio; and
- (2) Are registered and licensed to do business in the state of Ohio with the office of the Secretary of State; and
- (3) Have ten or more employees based in Ohio, or seventy-five percent or more of their employees based in Ohio.

“Sole Proprietorship” means a business in which one person owns all the assets, owes all the liabilities and operate in his or her personal capacity.

V. General Provisions & Requirements

- 1) **Certificate for Domestic and Ohio Preference.** Section 125.09(A) requires that bidders claiming the preference complete the Certificate for Domestic and Ohio Preference form contained in the bidding document. This form must be completed for each bid, failure to do so will result in the bidder being ineligible to receive the preference, regardless of whether they are offering an Ohio product or have significant Ohio economic presence. DAS will rely upon information provided by the bidder in this form when evaluating the bidder for the domestic and in-state preferences. In the event that DAS has reason to believe that the information is not current, is erroneous, or if a bidder fails to totally

³ 48 CFR Ch. 1 (10-1-02 Edition) Subpart 25.2, 25.003 Definitions

complete the Certification form, DAS will conduct additional research to verify the information as deemed necessary pursuant to OAC 123:5-1-06. Any bidder who intentionally submits false or misleading information in an attempt to receive the preferences will be immediately disqualified and may be subject to legal action up to and including debarment.

- 2) **Non-Available Articles, Materials and Supplies.** The Federal “Buy America” Act includes a provision that the Federal Administrator⁴ may develop a listing of those articles, materials and supplies that are not available in the United States in sufficient commercial quantities or of a satisfactory quality. Items contained in this listing are exempt from the requirements of Buy America. DAS has adopted the Federal list and will not apply the requirements of Buy America to such items. Further, DAS will review articles, materials and supplies to insure availability in sufficient commercial quantities in the United States and that such are of satisfactory quality. If determined otherwise, these items will appear on the DAS list of non-available articles, materials and supplies. Both the Federal and DAS lists of non-available articles, materials and supplies are a part of this Policy and Procedure. The contract analyst will make a determination if the requested products appear on any non-available lists and so note in the bidding documents that Buy America will not be applicable during evaluation of bid responses.
- 3) **Sufficient Competition / Excessive Price:** Section 125.09(C)(6) of the Revised Code permits DAS to waive the requirements of the domestic and in-state preferences on a contract-by-contract basis where compliance would result in the state agency paying an excessive price or acquiring an inferior product. Sufficient competition must exist to apply the domestic and in-state preferences. Ohio law defines sufficient competition as two or more qualified bids offering products produced or mined in the United States or in Ohio there is sufficient competition to proceed with evaluation of the bids. For purposes of Buy America, a price is excessive if the lowest domestic price exceeds the lowest foreign price by more than 6%⁵. For purposes of Buy Ohio, a price is deemed to be excessive when the lowest “Ohio” bid exceeds the lowest non-Ohio bid be more than 5%. If sufficient competition does not exist (i.e.; only one bid submitted) or if it is determined that all prices are excessive, the analyst may: 1) recommend cancellation of the bid in its entirety, 2) recommend re-bidding of the intended purchase, or 3) recommend award of the contract with permission of the agency.
- 4) **North American Products:** Section 125.09(C)(5) permits DAS to establish criteria and procedures that will be used to qualify bidders whose manufactured products, except mined products, are manufactured in other states or in North America and who have significant Ohio economic presence. DAS recognizes products manufactured in other states or territories of the United States as being domestic products. DAS has also adopted the definitions used by the Federal government for Canadian and Mexican products and such are recognized as domestic products.
- 5) **Mined Products:** Ohio’s in-state preference law requires that mined products be mined in Ohio. Law also stipulates that a border state bidder is to be treated in the same manner as an Ohio bidder provided the border state does not apply a preference toward an Ohio

⁴ 48 CFR Ch.1 (10-1-02) Edition, Subpart 25.103

⁵ 48 CFR Ch. 1 (10-1-02 Edition), Subpart 25.25.105(b)(1)

bidder. If a border state bidder is offering mined product, the product must either be mined in Ohio or within the respective border state in which the bidder resides. Indiana, however, has an absolute preference for coal which requires coal to be mined in Indiana. Thus, if an Indiana bidder is offering a mined product, the product must be mined in Ohio to qualify for the preference.

VI. Procedure for Application of Preferences

Step 1: Review for sufficient competition

- One bid response – recommend cancel, re-bid or award (with agency agreement)
- Two or more responses – go to Step 2

Step 2: Examine preference certification documents (Page 2)

- Preference certification not completed – bidder not eligible for preference
- Preference certification partially completed or contains inadvertently obvious mistake – contact bidder for clarification
- Preference certification completed – go to Step 3

Step 3: Evaluate product manufacture location: foreign or domestic

- Offering foreign produced or mined product
- Offering product that meets 50% rule (see definition – “domestic end product”)
- Offering product produced or mined in Canada or Mexico

Step 4: Evaluate bidder type: Ohio, border state, non-Ohio

- Ohio bidder – offering Ohio product or Ohio significant economic presence
- Border state bidder – located in Kentucky, Michigan, Pennsylvania, Indiana, New York
- Non-Ohio bidder – all other bidders

Step 5: Evaluate product compliance with bid specifications

- Product meets bid specifications – proceed with award process
- No product supportive information included, not mandatory – contact bidder
- No product supportive information included, mandatory – bid not responsive

Step 6: Application of preferences & award – mined products (sufficient competition exists)

- Any lowest responsive and responsible bidder offering Ohio mined product – award contract
- Lowest responsive and responsible border state bidder offering same border state mined product (except Indiana) – award contract
- Lowest responsive and responsible Ohio bidder offering non-Ohio mined product – apply 5% preference, award contract to lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range
- Lowest responsive and responsible border state bidder offering non-border state mined product – apply 5% preference, award lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range
- Lowest responsive and responsible non-Ohio/non-border state bidder offering non-Ohio/non-border state mined product – apply 5% preference, award contract to

lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range

Step 7: Application of preferences & award – products (sufficient competition exists)

- Any lowest responsive and responsible bidder offering Ohio product – award contract
- Lowest responsive and responsible bidder with significant Ohio economic presence offering domestic / Canada / Mexico product – award contract
- Lowest responsive and responsible border state bidder offering domestic / Canada / Mexico product – award contract
- Lowest responsive and responsible non-Ohio / non-border state bidder offering domestic / Canada / Mexico product – apply 5%, award to lowest responsive and responsible Ohio / border state bidder if within 5% range
- Any lowest responsive and responsible bidder offering foreign product – apply 6%, award foreign product if greater than 6% less costly than lowest responsive and responsible bidder offering Ohio / domestic / Canada / Mexico product

Step 8: Contract award when sufficient competition does not exist

- Requires agency agreement / manager approval
- Product appears on Federal or DAS “Non-Available” lists
- No Ohio / domestic / Canada / Mexico products available in sufficient quantity or of a satisfactory quality

VII. Federal List of Non-Available Articles⁶

Acetylene, black

Agar, bulk

Anise

Antimony, as metal or oxide

Asbestos, amosite, chrysotile & crocidolite

Bananas

Bauxite

Beef, corned & canned

Beef extract

Bephenimu hydroxynapthoate

Bismuth

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films, not printed in the United States and for which domestic editions are not available

Brazil nuts, unroasted

Cadmium, ores and flue dust

Calcium cyanamide

Capers

Cashew nuts

Castor beans and castor oil

Chalk, English

Chestnuts

⁶ 48CRF Ch. 1 (10-1-02 Edition) Subpart 25.104

VII. Federal List of Non-Available Articles, cont'd

Chicle
Chrome ore or chromite
Cinchona bark
Cobalt, in cathodes, rondelles, or other primary ore and metal forms
Cocoa beans
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form
Coffee, raw or green bean
Colchicine alkaloid, raw
Copra
Cork, wood or bark and waste
Cover glass, microscope slide
Crane rail (85-pound per foot)
Cryolite, natural
Dammar gum
Diamonds, industrial, stones and abrasives
Emetine, bulk
Ergot, crude
Erythrityl tetranitrate
Fair linen, altar
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal
Goat and kidskins
Graphite, natural, crystalline, crucible grade
Hand file sets (Swiss pattern)
Handsewing needles
Hemp yarn
Hog bristles for brushes
Hyoscine, bulk
Ipecac, root
Iodine, crude
Kaurigum
Lac
Leather, sheepskin, hair type
Lavendar oil
Manganese
Menthol, natural bulk
Mica
Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property)
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts
Nitroguanidine (also known as picrite)
Nux vomica, crude
Oiticica oil
Olive oil
Olives (green), pitted or unpitted, or stuffed in bulk

VII. Federal List of Non-Available Articles, cont'd

Opium, crude
Oranges, mandarin, canned
Petroleum, crude oil, unfinished oils, and finished products
Pine needle oil
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars
Pyrethrum flowers
Quartz crystals
Quebracho
Quinidine
Quinine
Rabbit fur felt
Radium salts, source and special nuclear materials
Rosettes
Rubber, crude and latex
Rutile
Santonin, crude
Secretin
Shellac
Silk, raw and unmanufactured
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available
Spices and herbs, in bulk
Sugars, raw
Swords and scabbards
Talc, block, steatite
Tantalum
Tapioca flour and cassava
Tartar, crude; tartaric acid and cream of tartar in bulk
Tea in bulk
Thread, metallic (gold)
Thyme oil
Tin in bars, blocks and pigs
Triprolidine hydrochloride
Tungsten
Vanilla beans
Wax, carnauba
Wire glass
Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, Angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak
Yarn, 50 Denier rayon

VIII. DAS List of Non-Available Articles

All items appearing on this list require prior approval of the State Purchasing Administrator.

Pineapple, all varieties

VIII. DAS List of Non-Available Articles, Cont'd

Canned Tuna

The following types of contracts are approved by the Controlling Board and are not subject to the requirements of the domestic preferences (Buy America):

Multiple Award Contracts (MAC)
State Term Schedules (STS)

IX. CERTIFICATE FOR DOMESTIC AND OHIO PREFERENCE FORM

Those bidders claiming preference for Domestic Source End Products and/or the Ohio preference, pursuant to Revised Code Sections 125.09 and 125.11 and Administrative Code Section 123:5-1-06 must complete the following information. Bidders who qualify as an "Ohio" bidder (offer an Ohio product or who have significant Ohio economic presence) or who qualify as a Border State bidder are eligible to receive a five percent (5%) preference over non-Ohio/Border state bidders. The state reserves the right to clarify any information during the evaluation process. **BIDDERS MUST COMPLETE THIS CERTIFICATION TO RECEIVE THE PREFERENCE.**

A. DOMESTIC PREFERENCE (BUY AMERICA): [Not applicable to "Excepted Products"]

- Where is each product/services being offered mined, raised, grown, produced or manufactured?
 United States: _____ (State) Canada Mexico (Go to B-1)
 Other: (Specify Country) _____ (Go to A-2)
- End product is manufactured outside the United States and at least 50% of the cost of its components are produced, mined, raised, grown or manufactured within the United States. The cost of components may include transportation costs to the place of manufacture and, in the case of components of foreign origin, duty whether or not a duty free entry certificate is issued.
 Yes (Go to Section B-1) No (Go to Section A-3)
- The Bidder hereby certifies that each end product, except the products listed below, is a domestic source end product as defined in the Buy America Act and that components of unknown origin have been considered to have been mined, produced, grown or manufactured outside the United States.
_____(Item) _____(Country of Origin)
_____(Item) _____(Country of Origin)

A domestic end source product is deemed to be excessively priced if it exceeds the cost of the foreign product by more than 6%. Pursuant to FAR, Part 25, the state of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The contractor, their subcontractor(s) and any agent of the contractor or subcontractor must not acquire any supplies or services originating from sources within, or that were located in or transported from or through Cuba, Iran, Iraq, Libya, North Korea, Sudan Territory of Afghanistan controlled by the Taliban, or Serbia (excluding the territory of Kosovo).

B. OHIO PREFERENCE (BUY OHIO):

- The products/services being offered are raised, grown, produced, mined or manufactured in Ohio. 
 Yes (Go to C) No (Go to B-2)
- Bidder has significant economic presence within the State of Ohio. Yes (Answer a, b, c, d below) No (Go to B-3)
 - Bidder has paid the required taxes due the State of Ohio Yes No
 - Bidder is registered with the Ohio Secretary of State
 Yes (Charter/Registration No.: _____) No
Questions regarding registration should be directed to (614) 466-3910 or visit their web site at:
<http://www.sos.state.oh.us/>
 - Bidder has ten or more employees based in Ohio or border state. Yes No (Go to B-2d)
 - Bidder has seventy-five percent or more employees based in Ohio or border state. Yes No (Go to B-3)
- Border state bidder:
 Yes (Specify which state then go to B-2c): KY MI NY PA IN No (Go to B-4)
- Border state bidder: mined products mined in respective border state Yes No Not Applicable

C. E.D.G.E. DESIGNATION

Bidder is certified E.D.G.E. business Yes No

For information on E.D.G.E. designation, please visit the DAS Equal Opportunity Division website at:
<http://www.state.oh.us/das/Eod/edge/Index.htm>

D. DECLARATION REGARDING MATERIAL ASSISTANCE/NON-ASSISTANCE TO A TERRORIST ORGANIZATION

The Bidder being awarded the Contract must complete the [Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization \(DMA\)](#) form published by the Ohio Department of Public Safety/Ohio Homeland Security ([click on link to obtain form](#)). This form is to certify that the contractor does not provide material assistance to any organization on the United States, Department of State's terrorist exclusion list. The completion of this form is considered a Condition Precedent for Execution of a Contract. Failure to complete the certification may result in the bidder being deemed not responsive and/or may invalidate any Contract award. If not submitted with the bid response, the bidder will have seven (7) calendar days, after notification, to submit the completed form.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Hierarchy of Procurement Methodologies
POLICY/PROCEDURE NO.: PUR-04
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 billion for supplies and services to meet the mission of the agency. A variety of procurement methods are available to agencies that include:

- ◆ Intra-agency purchases
- ◆ Sheltered work centers
- ◆ Visually Impaired
- ◆ DAS Contracts
- ◆ Direct purchase authority

Although these various methods are available to agencies, they may not, by law, randomly select which method to use to make the purchase.

II. Scope

Prior to making any purchase, agencies must give first consideration to the following state sources :

- ◆ Ohio Penal Industries (OPI)
- ◆ Central Warehouse/Pharmacy Services (OSS)
- ◆ Office of Procurement from Community Rehabilitation Programs (DAS)
- ◆ Rehabilitation Services Commission (RSC)
- ◆ DAS Term Contracts

Agencies are required by law to make purchases from these entities before making a purchase from any other source. If items are not available from these organizations, agencies must obtain a written waiver and then may then exercise their direct purchase authority unless the value of the purchase for supplies exceeds \$33,500 or value of services exceeds \$67,000. For purchases above these limits, agencies must make the

purchase from or through DAS, Office of Procurement Services, State Purchasing Unit. If State Purchasing determines that it is not practical or advantageous to make the purchase, the agency will be issued a Release and Permit to make the purchase under their direct authority. If an agency's direct purchases exceed their cumulative annual threshold (\$50,000/\$75,000) in a fiscal year, the agency must seek approval from the Controlling Board to make the purchase, which also requires a Release & Permit from State Purchasing. This Policy and Procedure will describe the various methods and the order which must be followed to complete the purchase.

III. Policy

Procurement Services – State Purchasing will review all purchase requests to ensure that the agency has followed the order of priority described in this Policy and Procedure. A purchase request for supplies or services offered by any of the mandatory sources will not be processed unless such is accompanied by a written waiver from the respective mandatory source.

IV. Procedures for Initiating a Purchase Request

- A. State Sources.** Law has established various state sources to furnish certain supplies and services to state agencies. Whenever the required supply or service is available from a state source, the agency must make the purchase from the respective source or obtain a waiver to make the purchase from another source. If the agency proceeds to make the purchase without obtaining a waiver, the purchase will be considered invalid and the person making the purchase could be held personally responsible to reimburse the state for the expenditure.

Special Note: Some products or services offered by OPI, OPCRP (State Use), DMH/OSS and RSC may also appear on a DAS term contract. Agencies are required to make purchases from OPI, OPCRP, DMH/OSS and RSC prior to using a DAS term contract.

Examples of the types of supplies and services offered by state sources include, but are not limited to:

- Ohio Penal Industries (OPI)
 - Office Panel Systems
 - Office Furniture
 - Files

- Community Rehabilitation Programs (Previously, State Use Program)
 - Housekeeping/Janitorial Services
 - Pens & Pencils
 - Printed Clothing

- Central Warehouse/Pharmacy Services (Mandatory for institutional agencies)
 - Foods
 - Pharmaceuticals
 - Laboratory Testing Services

- Rehabilitation Services Commission (RSC)
 - Beverage Vending Services
 - Food Vending Services
 - Cafeteria Services

- DAS Term Contracts (State Purchasing / State Printing)
 - Copier Equipment / Paper
 - Vehicles / Fuel / Tires
 - Hardware Supplies / Equipment

Agencies may make purchases from any state sources without delay and without any dollar limitation provided respective funding is available. Purchases from state sources are not counted against the agency's cumulative annual threshold.

B. Purchases from or through Procurement Services – State Purchasing . When the value of the purchase for supplies exceeds \$33,500 or services exceed \$67,000, the agency must forward the purchase request to State Purchasing. If it is determined that the request can be made through State Purchasing, the agency will be so notified and a determination made as to which purchasing method will be used to establish the contract. State Purchasing utilizes the following methods to establish contracts (in order of consideration):

- Competitive Sealed Bid (Authorized by ORC)
 - Invitation to Bid / Invitation to Bid by Reverse Auction
 - Known requirement / clearly defined specifications
 - Price driven
 - Mandatory use contract

- Competitive Sealed Proposal (Authorized by ORC)
 - Request for Proposal
 - Looking for best solution
 - Price secondary
 - Mandatory use contract

- Multiple Award Contract (Authorized by Controlling Board)
 - Utilizes Invitation to Bid process
 - Multiple awardees for similar or like items/services
 - Unless otherwise stated, optional use contracts

- State Term Schedules (Authorized by Controlling Board)
 - Contracts with manufacturers/agents only
 - Manufacturers may name authorized dealers

- Pricing based upon federal FSS (GSA) or better
- Contain maximum order limits, requires pre-approval to exceed
- Optional use contracts

Once a contract is established, the agency may make purchases as needs arise and in any volume provided sufficient funding is available to support the purchase. Purchases from these contracts do not affect the agency annual cumulative threshold nor do these contracts require approval from the Controlling Board, except for release of capital funds. Typically, a minimum of 120 calendar days is required for these processes, but additional time may be necessary depending upon the complexity of the project. Requests to expedite the process will be handled on a case-by-case basis.

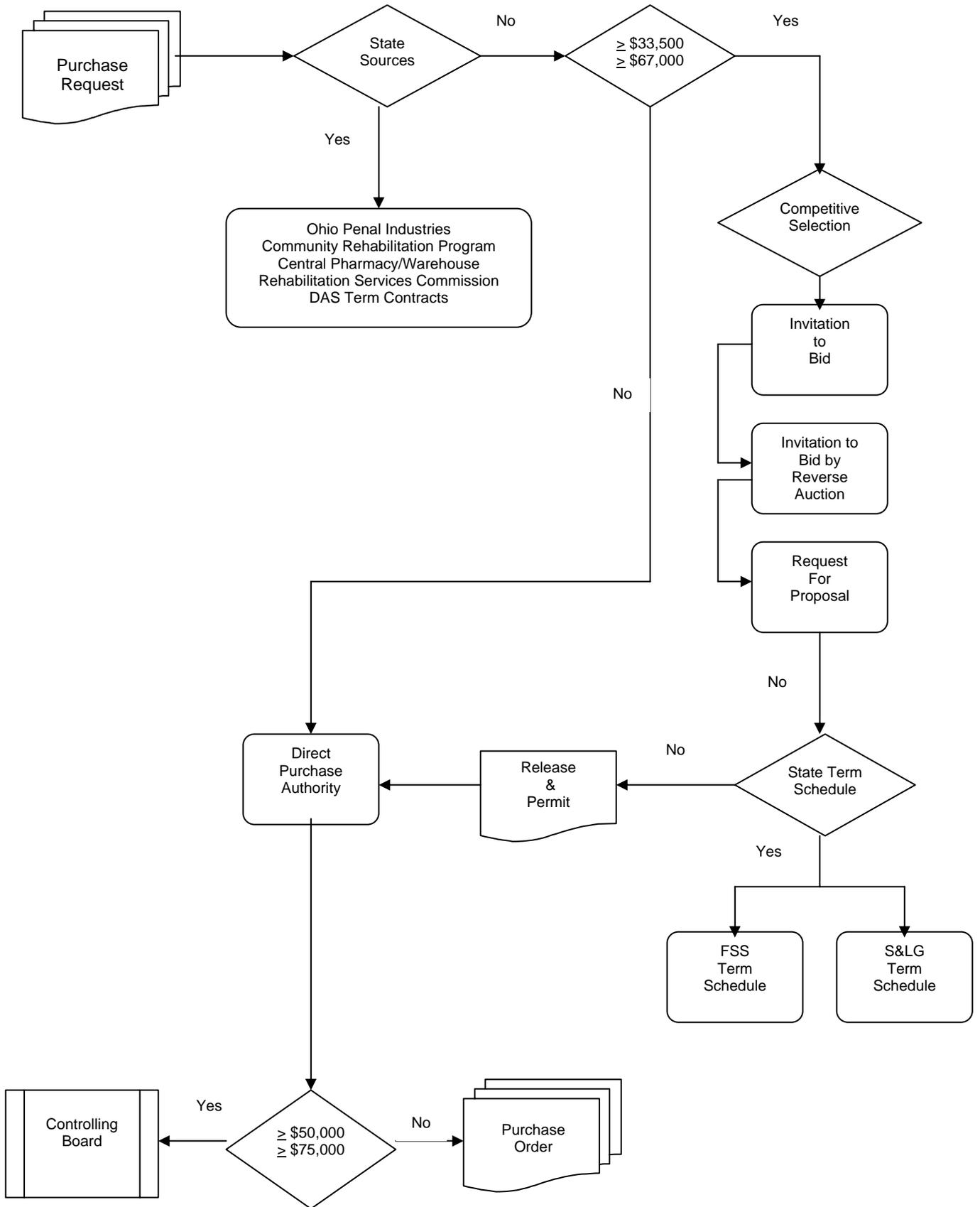
C. Release and Permit. When State Purchasing determines that it is not possible or advantageous to establish the contract, the agency will be granted a Release and Permit to make the purchase under their direct purchase authority. The agency must use a competitive process to make the purchase. If the value of the purchase will cause the agency to exceed its cumulative annual threshold (\$50,000/\$75,000) the agency must seek approval from the Controlling Board to enter into the contract. To avoid unnecessary delays or the potential for breach of contract, the agency should discuss the purchase with State Purchasing prior to making a commitment with the supplier as the Release and Permit may be denied in favor of using a different method to make the purchase.

D. Direct Purchase Authority. Law permits a state agency to make purchases of supplies with a value of \$33,500 or less, and services with a value of \$67,000 or less when such supplies or services are not available from any of the mandatory sources described in this Policy and Procedure. When an agency exercises its direct purchase authority, it must follow the competitive process outlined in all of the following:

- DAS Directive maintained by DAS, Office of Chief Counsel
- State Procurement Handbook maintained by Office of Procurement Services
- Policies and Procedures of the Office of Procurement Services

If an agency fails to follow the processes outlined in these documents, the purchase could be deemed to be invalid and could leave the person who made the purchase, financially liable to reimburse the State for the procurement. The DAS Directive is available online at <http://www.das.ohio.gov/asd/Legpage.htm#Directives> and the other documents are available from the State Procurement Website at www.ohio.gov/procure, click on training and reference materials.

Procurement Method Determination Flow Chart



State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Contracting Process Determination
POLICY/PROCEDURE NO.: PUR-05
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 billion for supplies and services that are necessary for the daily operation of their agency. Law provides that agencies may procure supplies up to \$33,500 and services up to \$67,000 using their direct purchase authority. For purchases above these limits, agencies must make the purchase from or through the Department of Administrative Services, Office of Procurement Services - State Purchasing.

State Purchasing is responsible to establish an agreement (“the contract”) between the contractor and DAS to acquire the supplies or services requested by the agency. This contract serves as an agreement between DAS and the contractor and includes specifications, terms, conditions and pricing for the respective supplies or services. The agency will make the purchase by procurement card, purchase order or other encumbering document referencing the contract agreement. This document authorizes the contractor to deliver the supplies or perform the services at an agreed upon date and time. Once delivery and acceptance have occurred, the agency will then pay the contractor in accordance with the agreement.

When determining which type of contract to establish, State Purchasing will consider various factors such as; time constraints, potential for repetitive purchases by one or more agencies, standardization of specifications and ability of suppliers to meet the needs of the state. Purchases an agency makes from a DAS contract are not subject to further approval by the Controlling Board unless capital funds are be used. In addition, purchases from DAS contracts are not applied toward the agency’s cumulative annual threshold (\$50,000 / \$75,000) established by the Office of Budget & Management.

II. Scope

This Policy and Procedure will explain the contracting processes and the decision processes utilized by State Purchasing to determine which type of contract will best meet the needs of the State.

III. Policy

State Purchasing will review all purchase requests to determine the most cost-effective and efficient method to establish the contract. In making this determination, State Purchasing will consider such things as, but not limited to:

- ◆ One or more agencies may require the supplies or services
- ◆ Supplies or services will be utilized on a routine or sporadic basis
- ◆ Specifications must reflect current technology to maximize competition
- ◆ Combining needs to take advantage of volume discounts

First consideration will be given to using competitive selection to establish contracts. If it is determined that use of competitive selection will not be in the best interest of the State, State Purchasing will utilize other methods as appropriate.

IV. Definitions

“*Agency Specific Contract (ASC)*” means a mandatory use term contract established with one or more contractor(s) to provide specific supplies or services required by one state agency. ASC contracts may only be used by the named state agency.

“*Competitive Selection*” means any of the following procedures for making purchases:

- ◆ Competitive sealed bidding under section 125.07 of the Revised Code; or
- ◆ Competitive sealed proposals under section 125.071 of the Revised code; or
- ◆ Reverse auctions under section 125.072 of the Revised Code.

“*Controlling Board*” means a legislative body consisting of a President appointed by the Governor and legislators appointed by the House and Senate to review and approve contracts established by an agency under their direct purchase authority, the value of which exceeds their cumulative annual threshold or when capital funds are used to make the purchase.

“*General Distribution Contract (GDC)*” means a mandatory use term contract with one or more contractor(s) to provide specific supplies or services routinely required by state agencies over an extended period of time. Generally, GDC contracts are made available to all state agencies and Cooperative Purchasing members.

“*Limited Distribution Contract (LDC)*” means a mandatory use term contract established with one or more contractor(s) to provide specific supplies or services to specific state agencies. LDC contracts may be used by only the named agencies.

“*Multiple Award Contract (MAC)*” means a mandatory term contract established with multiple contractors for the same or similar item(s). MAC’s are mandatory contracts unless otherwise noted in the contract.

“*One Time Bid*” means a contract for a specific item(s) required by a specific agency for delivery at a pre-established time. Once delivery and acceptance are completed the contract is closed.

“*Optional Use Term Contract*” means a requirements contract for supplies or services with one or more contractors offering the same or similar item(s). The state may not be bound to procure all required needs from the contractor(s).

“*State Term Schedules*” means a contract for the same or similar item(s) negotiated with manufacturers offering their federal FSS agreements or with manufacturers offering their best pricing for similarly situated customers. STS’s are optional use term contracts.

“*Term Contract*” means a requirements contract for the routine purchase of supplies or services over a fixed period of time.

V. Procedures for Requesting a DAS Contract

1) The Purchase Request

The agency forwards the Purchase Request to State Purchasing using a memorandum or Requisition (ADM-0500), signed by an authorized representative of the agency. The signed document authorizes State Purchasing (DAS) to let a contract on behalf of the agency. State Purchasing will not proceed with any verbal purchase request.

The purchase request may include detailed specifications for the supplies or services, delivery times and locations, billing and invoicing information and any other special requirements of the agency. The purchase request will be time/date stamped upon receipt at State Purchasing and will be forwarded to the appropriate team manager. Team managers will meet weekly to review all purchase requests and re-bids/renewals of existing contracts for determination of type of contract and procurement method.

If managers concur that it is not practical or advantageous for State Purchasing to make the purchase, the agency will be granted a Release and Permit to make the purchase under their direct purchase authority or will be re-directed to the appropriate state agency (i.e.; State Architect, Office of Information Technology, Community Rehabilitation Programs, Ohio Penal Industries, etc.).

2) Procurement Method and Type of Contract

State Purchasing managers will review the purchase request to determine which type of contract will be most advantageous and which process must be used to establish the contract. Their recommendations will be reviewed and approved by the State Purchasing Contracts Manager or Administrator, in his absence. The types of contracts and respective bidding processes include:

◆ One Time Bid (Spot Purchase Bid)	}	<i>Competitive Selection</i>
◆ Agency Specific Term Contract	}	<i>Competitive Selection</i>
◆ Limited Distribution Term contract	}	<i>Competitive Selection</i>
◆ General Distribution Term Contract	}	<i>Competitive Selection</i>
◆ Multiple Award Contract	}	<i>Controlling Board Approval</i>
◆ State Term Schedule	}	<i>Controlling Board Approval</i>

Factors to be considered when determining the type of contract include, but are not limited to:

- ◆ Dollar value per fiscal year is estimated to exceed direct purchase limits of \$33,500 for supplies or \$67,000 for services or cumulative annual threshold of \$50,000/\$75,000.
- ◆ The agency may make sporadic purchases (1-2 times per year), or more routine purchases (monthly, quarterly, etc.).
- ◆ The length of time the agency require the supplies or services.
- ◆ Potential that other agencies have a need for the supplies or services.
- ◆ Type of industry providing the supplies or services (i.e. stocking distributors, brokers, etc.).
- ◆ Pricing stability (firm-fixed price or flexible pricing).
- ◆ Availability of competition (multiple sources, specialized sources, sole source, etc.).
- ◆ Homeland security and/or emergency requirements

These and other related factors are to be used to determine the most appropriate type of contract that will best meet the need. Once the determination as to the type of contract has been made, the manager will assign the purchase to an analyst. The analyst may prepare the bidding documents using the specifications furnished by the agency as a baseline. The analyst will be responsible to conduct necessary research to ensure that specifications reflect the most current technology and that such specifications are not restrictive. The final version of bidding documents will be reviewed and approved by the manager, or contracts manager in his/her absence, prior to issuance to bidders and posting on the State Procurement website.

Typically, one time bids require a minimum of forty-five (45) calendar days to complete the process. Term contracts require a minimum of one hundred twenty (120) days for completion. Requests to expedite the process will be handled on a case-by-case basis. Once a contract has been established, agencies may purchase items from the contract at any time and in any volume thus eliminating process delays and requirements for maintaining local inventories to offset process delays.

3) Set Aside and EDGE Considerations

State Purchasing and/or the DAS/Equal Opportunity Division will review purchase requests and/or existing term contracts to discuss those that may be good candidates for set aside to certified minority business enterprises under the state's set aside program or that may provide business opportunities for EDGE certified vendors.

4) Evaluation and Award Process

The analyst will follow established procedures for development of bid documents, advertising bid documents, evaluating bid responses and awarding contracts. When competitive selection processes are utilized, contracts will be awarded to the lowest responsive and responsible bidder on Invitations to Bid or to the most advantageous offeror on Requests for Proposals. When applicable, consideration will also be given to the domestic and in-state preferences.

5) Signing Contracts

All DAS contracts established by State Purchasing will bear the signature of the Director of Administrative Services. The Director may delegate signature authority to the Division Deputy Director, the Procurement Services Administrator, the State Purchasing Contracts Manager and the unit Procurement Manager to enter into contracts on behalf of the Department. All management level employees for the Office of Procurement Services will have an active professional certification from the Universal Public Purchasing Certification Council (UPPCC) of Certified Public Purchasing Officer (CPPO) to qualify for delegated signature authority from the Director. Levels of signature authority will be at the discretion of the Director of DAS.

6) Contract Renewals for a New Biennium

No contract may extend beyond June 30 of the current biennium. When the duration of a contract crosses a biennium, the analyst will prepare an amendment to the contract to affirmatively renew the contract for the balance of its term in the new biennium. All biennial contract renewals should be completed at least thirty days prior to the end of the fiscal biennium.

7) Decision to Renew or Re-bid

Generally, term contracts will contain a clause that will permit unilateral renewal for a minimum of thirty calendar days and/or renewal, by mutual agreement of all parties, for up to twenty-four months. All contract renewals are subject to approval of the Contracts Manager and/or the Administrator. In deciding whether to renew or re-bid a term contract, factors to consider include, but are not limited to:

- Do specifications of the existing contract reflect current technology?
- Does the existing contract meet the needs of the agency(ies)?
- Is pricing for the existing contract comparable with current market?
- Is there sufficient time to complete a rebid?
- Is there a sufficient number of new bidders to warrant a rebid?
- Is it in the best interest of the state to renew or rebid?

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: **Selecting Contracts for Set Aside**
POLICY/PROCEDURE NO.: **PUR-006**
DATE ISSUED: **August 3, 2001**
DATE REVISED: **February 16, 2007**
RESPONSIBLE UNIT: **Office of Procurement Services**

I. Background

The Office of Procurement Services/State Purchasing (“State Purchasing”) is responsible to establish contracts for a variety of supplies and services that are purchased routinely by state agencies. These contracts are established using either competitive selection or with approval of the state’s Controlling Board. Ohio law requires the Department of Administrative Services to set aside approximately fifteen percent (15%) of the aggregate value of all purchases for participation by minority business enterprises who have been certified by the DAS/Equal Opportunity Division. With respect to State Purchasing contracts, only those contracts that have been established through competitive selection are subject to set aside.

II. Scope

State Purchasing maintains several types of contracts that are established through competitive selection:

- ◆ One Time Bid (Spot Purchase)
- ◆ General Distribution Term Contracts
- ◆ Limited Distribution Term Contracts
- ◆ Agency Specific Term Contracts
- ◆ Requests for Proposal

The final decision as to which contracts will be set aside lies with the Administrator of the Office of Procurement Services and/or the State Purchasing Contracts Manager. Agencies will be given an opportunity to have input into the final set aside determination to assist them with meeting their set aside goals. State Purchasing and the Equal Opportunity Division will review the term contracts annually and determine which contracts are candidates for set aside. This policy and procedure will describe the process used to make these selections.

III. Policy

Prior to establishing a contract through competitive selection, consideration will be given to setting aside the purchase for participation by certified minority business enterprises only. State Purchasing will endeavor to select contracts, the aggregate value of which is estimated at 15% of the total value of all contracts, for set aside.

IV. Definitions

“*Competitive Selection*” means any of the following procedures for making purchases:

- ◆ Competitive sealed bidding under section 125.07 of the Revised Code;
- ◆ Competitive sealed proposals under section 125.071 of the Revised Code;
- ◆ Reverse auctions under section 125.072 of the Revised Code.

“*Minority Business Enterprise*” means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are residents of this state and are members of one of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Orientals.

V. Considerations for Selecting a Purchase for Set Aside

The agency may request that the intended purchase be set aside so as to apply toward their 15% goal, which will generally be honored. If an agency has not requested that the intended purchase be set aside, State Purchasing may elect to set aside the purchase to meet the 15% goal for DAS. Whenever an intended purchase is set aside and successfully awarded to a certified MBE, the agency may also claim purchases made under the contract as set aside purchases.

Factors State Purchasing may consider when selecting an intended purchase for set aside include, but are not limited to:

- ◆ There are sufficient qualified MBE’s available to bid on the purchase. Two or more qualified bidders must be available to foster competition. The analyst or purchasing assistant will prepare a list of certified MBE’s from the list of certified MBE’s maintained by EOD.
- ◆ The size and nature of the purchase may not be conducive to the MBE community registered for the product or service area. For example, expected volume of purchase activity requires distribution network that potential MBE community cannot provide.
- ◆ A significant number of other purchase requests for similar products or services have been selected for set aside. Issuing the new request to the open market will prevent a potential of repeatedly selecting entire categories of products or services for set aside.

If set aside, only those bids received from certified MBE’s will be opened following the standard process for bid opening.

A decision to not set aside the purchase must be approved by the State Purchasing Contracts Manager or the Administrator of Procurement Services. The agency will be advised of the final determination and the reasons supporting the determination prior to issuance of the bidding documents.

VI. Procedures

1) One Time Purchases & New Term Contracts. The agency will forward their purchase request via the ADM-0500 Requisition (for One Time Purchases) or a memorandum (for term contracts). Either of these documents must be signed by a representative of the agency who is authorized to commit the agency to the purchase. These documents will also include product or service specifications, funding information, delivery information, etc. relative to the purchase. If the agency has requested the purchase be set aside, the purchasing assistant will prepare a list of certified MBE vendors who have registered for the respective supplies or services. The contract analyst will then discuss potential for set aside with the manager. If determined that the purchase is to be set aside, the analyst will proceed with preparation of the bidding documents in accordance with standard processes. If determined that the purchase will not be set aside, the manager will seek approval from the Contracts Manager or Administrator to bid the purchase to the open market.

2) Existing Term Contracts. Not later than January 1st of the current fiscal year, a listing of all active term contracts, that will expire in the approaching fiscal year, will be prepared. The list will not include contracts for fuel or mailing services or any other product category that has been exempted from set aside consideration by EOD Coordinator. A determination will be made as to which contracts will be renewed and which will be candidates for set aside in the approaching fiscal year. The list of active term contracts selected for set aside will be forwarded to EOD for their review and input.

3) Set Aside Report. The managers will prepare a report for the Contracts Manager indicating those contracts to be bid open market and those contracts to be bid set aside during the approaching fiscal year. Every effort will be given to meeting the 15% goal established by law. Precautions will be taken to avoid setting aside certain categories of supplies or services repeatedly. Tasks to be performed and questions to consider in preparing this report include, but are not limited to:

- ◆ Make complete copy of the term contract to include all addenda
- ◆ Prepare list of certified MBE's for each contract using the EOD database
- ◆ Note annual dollar value of contract
- ◆ Note if contract is currently open, set aside or partial set aside
- ◆ Note if current contractor(s) are open market or MBE companies
- ◆ Note if contract is broker based or stocking distributor based
- ◆ Note if contract has been set aside previously, and the number of times set aside
- ◆ Note past contract issues, if any (i.e. CTV's filed, informal performance issues, etc.)
- ◆ Note bidder disqualification and reason for disqualification
- ◆ Note required specification changes for next bid
- ◆ Note issues that could limit MBE participation (i.e. contract size, stocking distributors, etc.)
- ◆ Note if contract may be renewed for the next fiscal year
- ◆ Note if COOP contract
- ◆ Note if agency specific, if agency is agreeable to set aside
- ◆ Note if contract is to be cancelled and not renewed
- ◆ Note any additional information that may be helpful
- ◆ Number of qualified MBE's available to bid (minimum 2, 4 preferred)
- ◆ Note impact upon state if set aside (i.e. price competitive)
- ◆ Note impact upon DAS and agency goals if not set aside

The Contracts Manager will prepare a final report indicating the percentages of contracts to be bid open market and those to be bid set aside during the approaching fiscal year to include the estimated dollar

values and respective percentages. Every effort will be made to set aside a minimum of 15% of the intended purchases for the approaching fiscal year. Adjustments will be made to the lists, as necessary, to attain the 15% goal set forth by law.

The final report will be forwarded to Administrator and Deputy Director of GSD for review and approval. Once approved, the report will be forwarded to the Director of DAS no later than February 28th of the current fiscal year. The approved listing will then be distributed to managers and contract analysts. The list will also be distributed to EOD and other interested parties.

VII. Adjustments to the Approved Listing

During the course of the approaching fiscal year it may be necessary to make adjustments to the approved list. Some examples include a change of status from MBE to open market or vice-versa, new contract offerings or cancellation of the contract. State Purchasing may select other contracts for set aside to offset any reductions so as to maintain the minimum 15% goal as required by law.

VIII. Recruiting Minority Businesses

Law places the responsibility for recruitment and certification of minority business enterprises with the Equal Opportunity Division of DAS. State Purchasing will utilize the list of certified MBE's when determining which contracts will be set aside. If State Purchasing ascertains that insufficient MBE's exist to support setting aside of particular contracts to meet the 15% goal, notification will be forwarded to EOD of such situation and that State Purchasing will be unable to meet the goal established by law. State Purchasing will place a request that EOD either recruit and certify additional MBE's for respective product/service areas or exempt the category(ies) of product/services from the overall volume of purchases.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: **Communications & Protest Procedures**
POLICY/PROCEDURE NO.: **PUR-007**
DATE ISSUED: **August 3, 2001**
DATE REVISED: **October 22, 2007**
RESPONSIBLE UNIT: **Office of Procurement Services**

I. Background

Law provides that the Department of Administrative Services may procure required supplies and services on behalf of state agencies. The preferred method for procuring supplies and services is through competitive selection (competitive sealed bid, competitive sealed proposal or reverse auction). Agency requirements are listed in formal bidding documents. Notice of the intended procurement is then listed in a bid bulletin that is made available to interested bidders electronically. Sealed responses are publicly opened at the time and date specified on the bidding document. Responses are evaluated and contracts awarded to the lowest responsive and responsible bidder for bids, and to the most advantageous offeror for proposals and reverse auctions.

II. Scope

Sound procurement practice requires effective communication to ensure that the state's needs are met, that all bidders are treated equally and fairly, and that specifications and bidding documents accurately portray the needs of the customer agency. Communications may take place among all parties involved with the procurement; e.g. the agency, the vendor community and the procurement office.

The right to protest is another important part of an effective procurement program. At any point in the process, bidders may raise questions on the intended purchase, the bidding process, bid specifications, evaluation process or contract award process. A bidder or contractor who is not in agreement with the competitive process may file a protest with DAS, citing areas of concern. The protest should be submitted in writing and filed within a reasonable number of days after the person knows or should have known the facts relevant to the issue under protest.

The following procedures have been developed to provide direction to staff of the Office of Procurement Services when communicating with bidders and/or vendors and for handling protests.

III. Policy

It is the Policy of the Office of Procurement Services to maintain open lines of communication, except when doing so may violate confidential protections set forth in law. Efforts will be made to involve all parties to the contract in communications relative to any bid or contract established by Procurement Services.

IV. Procedures for Communications

A) Prior to Issuance of the Bid

1. Informal conversations may occur between the Office of Procurement Services, State Purchasing, the customer agency and the vendor community during the development of bid specifications. Such informal conversations may transpire over the telephone, through electronic e-mail, person-to-person, etc. These discussions are necessary to conduct research on products or services to be purchased, to ascertain if resulting specifications would be restrictive, to discuss changes to an existing contract in preparation for the new bid, etc. Information gleaned from these discussions will be used to develop final bid specifications to insure that agency needs are met.
2. State Purchasing may conduct a formal pre-bid conference as part of initial efforts to develop specifications for the required products or services. Pre-bid conferences are open to all companies who may have interest in supplying the required products or services to the State. Notice of such pre-bid conferences will be given to all vendors who have registered with the Office of Procurement Services for the respective products or services area or to any vendor known to provide the required products or services at the determination of State Purchasing. A record of such proceedings will be maintained by the Office and will become a part of the bid file.
3. State Purchasing will honor reasonable requests from the supplier community to visit the office and personally discuss the products or services to be offered to the State. **Personal visits are by appointment only.** Acceptance of unannounced visits will be at the discretion of the respective State Purchasing staff person.

B) After Issuance of the Bid – Prior to Public Opening

1. State Purchasing may determine that it is necessary to meet with potential bidders to discuss the requirements of the bid. A formal bid conference will be held for such discussions. Notice of the conference will be included in the bid documents and made available to all bidders

registered with Procurement Services or known to provide the required products or services at the determination of State Purchasing. A record of the conference and all proceedings will be maintained as part of the bid file.

2. If a bidder discovers an inconsistency, error or omission in the bid, the bidder should request clarification from State Purchasing using the address listed in the bid. A request for clarification must be placed through the State Procurement Website as set forth in the bid document. Requests for clarification must be received by State Purchasing within the minimum number of days as indicated in the bid document prior to the scheduled date and time of bid opening. Bidders who attempt to seek clarification verbally will be directed to the State Procurement Website. No other form of communication is acceptable, and use of any other form of communication or any attempt to communicate with the customer agency(ies) or any other agency of the State to discuss the bid may result in the bidder being deemed not responsive.
3. If a request for clarification results in a need to alter any part of the bid document, State Purchasing will issue an addendum to the bid to advise interested bidders of the change. The addendum will be posted on the State Purchasing web site and be available to all bidders registered with Procurement Services for the respective product or service area and to any other bidder known to have requested a copy of the bid documents.

C) After Public Opening of the Bid – During Evaluation of Responses

1. Invitations to Bid, Requests for Proposals and Reverse Auction Qualification Summaries will be opened publicly in the presence of a representative from the Auditor of State's office. Responses for Invitations to Bid will be made available for review by the general public at the time of opening. Once those in attendance have reviewed the bid responses, the formal evaluation process will begin. For Requests for Proposals and Reverse Auction Qualification Summaries only the names of the responding bidders will be disclosed. To protect the integrity of the evaluation and award process, responses will not be available for public viewing until after the contract has been awarded. Bidders may not contact State Purchasing, the customer agency or any member of the State to discuss their response or to discuss any of the other responses. Bidders who attempt to make such contacts may be deemed not responsive.
2. During the evaluation process, unless clarifying information is requested by State Purchasing as part of the evaluation process, any attempt on the part of the bidder, the bidder's agent(s), or any party

representing the bidder, to submit correspondence that is determined by Procurement Services to be an attempt to compromise the impartiality of the evaluation, or any attempt on the part of the bidder to communicate with any member of the State regarding the evaluation process may be grounds for immediate disqualification of the bidder.

D) After the Award

1. All awards will be posted on the Procurement Services web site.
2. Once the evaluation process has been completed and a contract awarded, the response/contract file will be available for public viewing. A bidder may seek clarification regarding the evaluation and award process by contacting State Purchasing at the email address listed in the bid. Such contacts may be made in writing by postal letter or by e-mail. A bidder who requests verbal clarification will be directed to place the request in writing. No other form of communication is acceptable.

IV. Protest Procedures

A) Right to Protest

1. Any bidder who is not in agreement with the competitive bidding process may file a protest. If protesting a bid (ITB, RFP or RAQS), the protest must be filed prior to the scheduled date and time of bid opening. If protesting a contract award, the protest must be filed within fourteen (14) calendar days after the bidder knows or should have known of the facts giving rise to the protest. The protest is to be filed with the Administrator of Procurement Services.
2. In the event of a timely filing of a protest, the Administrator will review the bid file and make a determination as to the validity of the protest. If the bid is under evaluation and the Administrator determines that the protest merits further investigation, proceedings of the evaluation of the bid or awarding of the contract will be stayed until a final decision is made, unless the Administrator determines that completing the evaluation or award process is necessary to protect the interests of the state.
3. The Administrator has sole authority, prior to commencement of an action in a court of law, to resolve and settle a protest filed by a bidder or contractor. This authority will be exercised pursuant to relevant sections of the Ohio Revised and Administrative Codes. The Administrator, with assistance from the DAS Office of Chief Counsel, will issue a decision in writing stating the position of the Department and reasons for action taken. The decision of the Administrator shall

be final and conclusive unless any person adversely affected by the decision commences action in a court of law. When deemed necessary, the Administrator will discuss the issues and the proposed resolution with the Division Deputy Director prior to issuance of the finding.

B) Legal Contacts

1. Staff should not talk with any person identifying himself or herself as an attorney or legal representative of a bidder or contractor. Such calls are to be directed to DAS, Office of the Chief Counsel at (614) 644-1773. The Administrator is also to be advised of any such contacts. When deemed necessary, the Administrator will advise the Division Deputy Director of such calls.
2. Attorneys are bound by a code of professional responsibility not to talk with parties that are represented by counsel. State employees are acting as an agent for the state, a party that is represented by counsel. An attorney, whether retained by a bidder or contractor or representing another party on behalf of the bidder or contractor, should not continue any conversation with a buyer/analyst or other non-legal employee of the state of Ohio.

C) Classification of Protests

1. Level 1 Protest (Pre-Bid Opening/Pre-contract award)
 - a) Purchasing staff shall document all verbal conversations, including:
 - Bid number
 - Name of person
 - Company represented
 - Date and time of call/conversation
 - Content of conversation to include response
 - Any discussion of bid evaluation or attempts to do soStaff shall create a memo to file outlining details of the call.
 - b) Bidder must submit written protest immediately.
 - c) Any threat of legal action is to be treated as a promise of legal action. DAS counsel and the Administrator are to be notified immediately. All further communications with bidder shall cease unless directed otherwise by DAS counsel or the Administrator. The protest is to be considered a Level 3 Protest.
 - d) Any contact from a person claiming to be a legal representative of a bidder/contractor shall be communicated to DAS counsel and the Administrator immediately. At no time is the buyer/analyst or other staff to discuss issues relative to a bid evaluation or contract award

with an attorney or other legal representative unless directed to do so by DAS counsel or the Administrator. The caller is to be provided with the phone number of DAS counsel (614) 644-1773.

2. Level 2 Protest (Post-Contract Award)
 - a) Purchasing staff shall document all verbal conversations, including:
 - Contract number
 - Name of person
 - Company representing
 - Date and time of call/conversation
 - Detailed content of call/conversationStaff shall create a memo to file outlining details of the call.
 - b) Written protests must be received within fourteen (14) calendar days.
 - c) Written response will be provided within a reasonable time.
 - d) Upon receipt of written request, buyer/analyst will prepare a synopsis of the bid and award process. The synopsis will include, but not be limited to: bid evaluation and award, names of responding bidders, notations of conversations with any of the bidders or awardees and any other related information.
 - e) Upon receipt of a written protest, buyers/analysts or other staff are to discontinue any further discussions with any bidders or contractors relative to the protest unless directed otherwise.
3. Level 3 Protest (Attorney involvement/legal action threatened).
 - a) Upon receipt of a verbal or written communication, notification or threat thereof, from any attorney, of pending legal action, staff are to advise the Administrator and DAS counsel **IMMEDIATELY**. The customer agency is to be notified and advised of the status and instructed to forward any further inquiries about the bid/contract to State Purchasing. The Administrator will advise the Managers of any such protest.
 - b) All communications with non-state employees involving any aspect of the bid/contract are to be directed to DAS counsel for response. In absence of counsel, such request may be forwarded to the Administrator.
 - c) Bid/contract files and related documents are to be retrieved and examined by the buyer/analyst and supervisor/manager, organized by dates of activity, and secured. Any public records requests are to

be approved by DAS counsel. When copies of documents are requested through a public records request, four (4) sets of all such documents shall be prepared (1 for requestor, 1 for DAS counsel and 1 for DAS Office of Communications and 1 for State Purchasing file).

- d) If litigation is anticipated, or acted upon, records for such litigation are not public records pursuant to statutory exceptions. Further, correspondence from legal counsel may carry attorney-client privilege. At no time are any written documents to be released without expressed written approval from DAS counsel and the Administrator.
- e) Requests for information from any state agency or staff person who is not an employee of Procurement Services are to be forwarded to DAS counsel or the Administrator.
- f) At no time are any Procurement Services staff to respond, or attempt to respond, to inquiries from legislators and/or the media. Such contacts are to be IMMEDIATELY forwarded to the Administrator. The request will then be forwarded to the Office of Legislative Affairs or Office of Communications, respectively. DAS counsel will also be advised of such contacts.

4. Level 4 Protest (Litigation commenced)

- a) Any staff who receive notice (verbal or written) that any legal action is being filed are to notify DAS counsel and the Administrator **IMMEDIATELY. THIS MEANS STOPPING WHATEVER ACTIVITIES YOU ARE DOING AND CONTACTING BOTH PARTIES WITHOUT DELAY.** If you are unable to reach either of the parties, contact your/any manager immediately. The manager will then contact the Office of Chief Counsel and/or the Attorney General representing DAS. The Administrator and Deputy Director are to notified immediately of any such legal action.
- b) Any person receiving a subpoena should notify DAS counsel and the Administrator immediately.
- c) Any person receiving a subpoena, on behalf of another named individual, should obtain proper identification from the process server, note the time and date of receipt, and forward to DAS counsel or the Administrator immediately.
- d) Buyer/analyst may be required to provide a memo, on the bid at issue, for the litigation file.

- e) At no time are any records to be released for review or copies made thereof, without expressed authority from the Attorney General or DAS counsel.
- f) Upon notification that legal action has ensued, all relevant communications with non-Procurement Services personnel, in either written or verbal form, must be approved by counsel.
- g) Generally, once litigation has been filed, staff may be deposed by counsel (state and vendor). Affected staff will be advised of any depositions by counsel, will be advised of dates and times for the deposition, and will receive instructions from the Attorney General representing the department on the deposition process.
- h) Once litigation has ensued, all discussion relative to the litigation, outside of the office, are to be discontinued unless directed otherwise by the Attorney General.
- i) At no time are any Procurement Services staff to respond, or attempt to respond, to inquiries from legislators and/or the media. Such contacts are to be IMMEDIATELY forwarded to the Attorney General. If directed by the Attorney General, the request will then be forwarded to the Office of Legislative Affairs or Office of Communications, respectively for response. The Chief Administrator, Administrator and DAS counsel will also be advised of such contacts.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Exceptions to Terms & Conditions
POLICY/PROCEDURE NO.: PUR-008
DATE ISSUED: November 21,2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

The Office of Procurement Services, State Purchasing is responsible for establishing contracts of supplies and services required by most state agencies. The preferred process for making such purchases is the Competitive Selection process as defined in Ohio Revised Code Section 125.01. This process involves issuance of Invitations to Bid (ITB) that describe the intended purchase, time and dates for delivery, pricing schedules and various other terms and conditions related to the procurement. These terms and conditions are broken down into three categories; Instructions to Bidders, Contract Terms and Conditions and Special Contract Terms and Conditions.

II. Scope

Terms and Conditions of an ITB or RFP are not considered to be specifications that describe the supplies or services to be purchased. Terms and Conditions do such things as; set forth guidelines on how vendors are to structure and submit their bid responses, establish warranty coverage and time periods, establish shipping and payment terms and address limits of liability on the part of the State and the vendor. In general, Terms and Conditions are designed to protect the interests of the State. This Policy and Procedure will describe the current Terms and Conditions in use by Procurement Services and set forth procedures staff are to follow whenever a vendor elects to replace these Terms and Conditions with their individual Terms and Conditions that may not be in the best interest of the State.

III. Policy

It is the Policy of DAS – Procurement Services that all vendors accept the Terms and Conditions, as written. Any request to alter these Terms and Conditions will be on a case-by-case basis and must be approved by the DAS-Office of Chief Counsel, Contracts Manager and/or the Administrator.

IV. Intent of Terms and Conditions

The purpose of Terms and Conditions is to establish a baseline under which DAS – Procurement Services will conduct business with a vendor. Procurement Services utilizes three basic categories of

Terms and Conditions; the Instructions to Bidders, the Standard Contract Terms and Conditions and Special Contract Terms and Conditions. Each category includes, but is not limited to the following:

Instructions to Bidders: description of a complete signed bid; when, where and how bids will be delivered; bids are public record; modifications to bids; evaluation of the lowest responsive and responsible bidder; rejection, withdrawal and correction of bids; bid preparation and submittal and filing protests; etc..

Contract Terms and Conditions: contract components; contract changes; contract orders, funding, delivery, invoicing and payment; contract performance and non-performance; contract termination and cancellation; insurance requirements; price adjustments; equal opportunity requirements; automation; etc.

Special Contract Terms and Conditions: bid conferences and site visits; supportive documentation and samples; price adjustments, evaluation and award of contracts; delivery and acceptance; prevailing wages; bonds and sureties; etc.

V. Revisions to Terms and Conditions

Periodically, DAS will review the existing instructions to bidders as well as the terms and conditions and, if necessary, revise the documents to reflect the current business arena. These documents shall not be altered without review of the DAS Office of Chief Counsel and approval of the State Purchasing Contracts Manager and/or Administrator of Procurement Services. Terms and Conditions are written so as to treat all bidders equally while protecting the interests of the State.

VI. Counter-offers

At times, bidders will attempt to offer their individual terms and conditions as part of their bid response, however, such counter-offers may not be acceptable to State Purchasing. As a courtesy to the bidder, the analyst will contact the bidder and afford them an opportunity to withdraw their counter-offer. Bidders who are not agreeable to withdraw their counter-offer and to accept the published instructions and/or terms and conditions will be deemed not responsive. All discussions regarding the counter-offer will be confirmed in writing. The analyst will utilize the approved letter pertaining to "Exceptions" to notify the bidder.

**State of Ohio
Ohio Department of Administrative Services
General Services Division**

POLICY/PROCEDURE NAME: Contract Modifications
POLICY/PROCEDURE NO.: GSD-PUR-09
DATE ISSUED: December 10, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

The Department of Administrative Services, Office of Procurement Services – State Purchasing is responsible to establish contracts for supplies and services required by state agencies. State Purchasing utilizes a variety of processes to establish contracts which includes; Competitive Sealed Bids, Competitive Sealed Proposals, Multiple Award Contracts and State Term Schedules. State agencies and other governmental entities purchase over \$400 million in supplies and services from these contracts.

II. Scope

These contracts contain terms, conditions, specifications and pricing that are favorable to the State. Once signed by the Director of DAS (or his designee), these contracts create a legally binding agreement between DAS, state agencies and the vendor. Any party to the contract that fails to perform in accordance with the contract will create a breach of contract that could subject the party to legal remedies up to and including litigation.

During the term of the contract, it may be necessary to make a change or modify the contract, but a contract cannot be arbitrarily modified without mutual agreement of the parties. Once agreement is reached, only State Purchasing may modify the contract. This Policy and Procedure will set forth guidelines and procedures for modifying a contract.

III. Policy

Any change or modification to a DAS contract established by Procurement Services – State Purchasing will be made in writing and will contain all necessary approvals. Verbal modifications or modifications made to a contract without the express written authority from State Purchasing may be considered to be invalid.

IV. Ability to Modify a Contract

The Contract consists of all documents associated with the method used to create the contract which may include, but not be limited to:

- ◆ The complete ITB, RFP or offer
- ◆ Instructions to Bidders (if applicable)
- ◆ Standard Contract Terms and Conditions
- ◆ Special Contract Terms and Conditions
- ◆ Specifications
- ◆ All supportive documentation and samples
- ◆ Addenda to the ITB or RFP (if applicable)
- ◆ Valid State of Ohio purchase orders or other encumbering documents

The Contract will describe the supplies or services to be purchased, how each party to the Contract will perform, payment terms, pricing, etc. The Contract may contain terms and conditions that permit the contract to be modified. For example: price adjustments, contract renewal and re-assignment of the contract. Some modifications may not require mutual agreement of the parties, but, in general, modifications do require mutual consent of the parties to the contract. The following are examples of typical terms and conditions that are contained in DAS contracts that permit modification:

- ◆ Unilateral 30-day renewal, mutual agreement not required
- ◆ Grammatical corrections, mutual agreement not required
- ◆ Unilateral early termination, mutual agreement not required
- ◆ Renewal beyond thirty days, mutual agreement required
- ◆ Price adjustment, mutual agreement required
- ◆ Change of Contractor address, mutual agreement required
- ◆ Assignment of Contract, mutual agreement required

Only Procurement Services - State Purchasing may modify a DAS Contract. All requests to modify a Contract must be forwarded in writing to State Purchasing for consideration. In order for a Contract to be modified, it must contain a provision allowing for modification. Any modification that significantly alters the original scope of the Contract is not permissible. In such a case, the Contract must be terminated with thirty days prior notice to the vendor. If the need for a contract remains, State Purchasing may then re-bid the intended purchase or grant the agency a Release and Permit to procure under its direct purchase authority.

V. The Amendment

A modification to the Contract is accomplished using an Amendment. All Amendments must be in writing. The Amendment serves as written notification to all parties to the Contract that a modification has been authorized. When mutual consent is required, signed written documents will be secured from all parties to the Contract indicating that

they agree to the change. This correspondence will be retained in the Contract file. Failure to obtain written agreement from all parties, where required, will invalidate the modification provided for by the Amendment.

The analyst will be responsible to obtain all written agreements and related documentation to support the modification. The analyst will then prepare the Amendment to include language indicating the purpose of the Amendment and that the modification is hereby made a provision of the Contract. The analyst will then forward the completed Amendment to their respective Manager for review and approval. Upon review, the Manager will determine whether or not the proposed Amendment should be forwarded to DAS Office of Chief Counsel for review and approval. The Manager will then forward the Amendment to the Contracts Manager or Administrator (in absence of Contracts Manager) for review. The Contracts Manager or Administrator will provide final approval for the Amendment. Once final approval has been obtained the Amendment will be attached to the respective Contract and placed on the Internet with all appropriate Contract documentation. Unless otherwise stated, no modification shall be applicable prior to the effective date listed on the Amendment.

VI. Creating the Amendment to the Contract

The analyst will be responsible for the creation of the Amendment to the Contract using the "Contract Amendment Worksheet." All supportive documentation will be attached to the worksheet. Amendments requiring approval of DAS Office of Chief Legal Counsel will include written documentation approving the modification to the Contract. No Amendments will be placed into the Contract until all required approvals have been obtained. The signed worksheet will be retained in the Contract file. The analyst may correct any grammatical errors discovered after posting of the Amendment to the electronic bulletin board.

CONTRACT AMENDMENT WORKSHEET

CONTRACT No.: _____ INDEX No.: _____ Date: _____

CONTRACT DESCRIPTION: _____

PURPOSE OF AMENDMENT

- Renewal _____ Unilateral 30 Day _____ Mutual _____ Months (Req. D/D approval)
- Grammatical Corrections
- Unilateral Termination with 30 days Notice (Req. Legal Approval)
- Cancellation _____ Partial _____ Total (Req. Legal Approval)
- Allowable Price Adjustment
- Contractor change of address
- Contract assignment
- Add-on to Contract New ITB No. _____
- Re-award
- Other _____

REVIEWS AND APPROVALS

Submitted to Manager	_____ (Date)	_____ (Initials)
Returned for Corrections	_____ (Date)	_____ (Initials)
Re-Submitted to Manager	_____ (Date)	_____ (Initials)
Approved by Manager	_____ (Date)	_____ (Initials)
Approved by Administrator	_____ (Date)	_____ (Initials)

ALL RENEWALS

Approved by Deputy Director _____ (Date) _____ (Initials)

**State of Ohio
Ohio Department of Administrative Services
General Services Division**

POLICY/PROCEDURE NAME:	Bid Modifications
POLICY/PROCEDURE NO.:	GSD-PUR-10
DATE ISSUED:	December 10, 2001
DATE REVISED:	December 21, 2007
RESPONSIBLE UNIT:	Office of Procurement Services

I. Background

The Office of Procurement Services – State Purchasing is responsible to establish contracts for various types of supplies and services required by state agencies. State Purchasing utilizes a variety of methods to establish these contracts which includes; Competitive Sealed Bid, Competitive Sealed Proposal, Multiple Award Contract and State Term Schedule. The preferred contracting process is Competitive Selection which includes Competitive Sealed Bids and Proposals. Law requires that Bids and Proposals describe the intended purchase, list time and date for delivery of the response and include instructions, terms and conditions relative to the intended purchase. Notice of the bid or Proposal is posted on an electronic bulletin board, and, as a courtesy, electronically sent to vendors who have registered to receive such notice.

II. Scope

Law requires Procurement Services to give notice of the Invitation to Bid (ITB) or Request for Proposals (RFP) to interested parties (bidders), as well as, place notices on an electronic bulletin board. This notice must be posted for a specified number of days as determined by Procurement Services, sufficient to allow bidders ample time to prepare and submit their bid response by the date and time for official bid opening. During the period of advertisement, we may discover that certain information has not been included in the ITB or RFP that could impact how a bidder would respond. In such situations, Procurement Services will issue an Addendum to incorporate the modification into the ITB or RFP. This Policy and Procedure will provide guidance for modifying an ITB or RFP.

III. Policy

When it is necessary to modify an Invitation to Bid or Request for Proposal, such modification will be completed in writing and posted to the electronic bulletin board. It will be the responsibility of the bidder to periodically check the bulletin board to determine if any addenda have been issued.

IV. Modifications to the ITB or RFP

At any point during the time period DAS gives notice of the ITB or RFP, it may be necessary to make changes to the ITB or RFP. Changes may be the result of a formal bid conference, new information from the bidders, or new requirements from respective state agencies. Examples of modifications to the ITB include, but are not limited to:

- ◆ Modification of the scope of the project

- ◆ Modification of the specifications
- ◆ Modification of any terms and conditions
- ◆ Modification of bid opening date

V. The Addendum

Any changes or modifications to the ITB or RFP must be completed in writing. Procurement Services will use the Addendum to modify the ITB or RFP. The Addendum will reference the portions of the ITB or RFP amended and will be posted on the electronic bulletin board. The Addendum will be distributed within a reasonable time to allow prospective bidders to prepare their bid response. If determined that there is not sufficient time for prospective bidders to prepare their bid response, Procurement Services may extend the date for opening. If determined that recommended changes significantly alter the original ITB or RFP, Procurement Services may cancel the ITB or RFP and re-bid under revised specifications at a later date.

All addendums must be issued a minimum of five business days prior to the scheduled date of opening. If there is less than five business days available Procurement Services will either extend the date for opening or cancel the ITB or RFP.

VI. Creating the Addendum

The analyst will be responsible for preparing the Addendum using the "Bid Addendum Worksheet". All supportive documentation, including language indicating the purpose of the Addendum, will be attached to the worksheet. The analyst will assign an Addendum number and then forward the completed Addendum to his/her respective Manager for review and approval. Upon review, the Manager will determine whether or not the proposed Addendum should be forwarded to DAS Office of Chief Counsel or Contracts Manager (Administrator in absence of the Contracts Manager) for review and approval. After approval, the Manager will forward the Addendum to the Bid Desk for posting on the electronic bulletin board. The signed worksheet will be retained in the ITB or RFP file. No Addendum will be issued unless all required signatures have been obtained. The analyst may correct any grammatical errors discovered after posting of the Addendum to the electronic bulletin board.

BID ADDENDUM WORKSHEET

ANALYST NAME:

BID No.:

INDEX No.:

ADDENDUM NUMBER:

DATE:

DESCRIPTION: _____

PURPOSE OF ADDENDUM

- Extend Opening
- Cancellation (Req. Legal/Administrator Approval)
- Modification to Project Scope
- Modification to Specifications
- Modification to Terms and Conditions (Req. Legal/Administrator Approval)
- Grammatical Corrections
- Other (Other)

File name and location: _____

REVIEWS AND APPROVALS

	<u>Date</u>	<u>Initials</u>
Submitted to Manager	_____	_____
Returned for Corrections	_____	_____
Re-Submitted to Manager	_____	_____
Approved by Manager	_____	_____

Includes the review of worksheet, mock-up, camera-ready, vendor documents as applicable.

ADDITIONAL REVIEWS AND APPROVALS (IF NECESSARY)

Submitted to Legal Counsel	_____	_____
Approved by Legal	_____	_____
Submitted to Administrator	_____	_____
Approved by Administrator	_____	_____

Includes the review of worksheet, mock-up, camera-ready, vendor documents as applicable.

BID DESK REVIEWS

Posted by _____

Rev. 01/14/02

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY / PROCEDURE NAME: Delegated Signature Authority
POLICY / PROCEDURE NO.: PUR-011
DATE ISSUED: August, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

The Department of Administrative Services is responsible to let contracts for various types of supplies and services required by state agencies. The Office of Procurement Services, which is a part of DAS, establishes and maintains these contracts. Procurement Services utilizes different methods to establish these contracts which includes; Competitive Sealed Bid, Competitive Sealed Proposal, Multiple Award Contracts and State Term Schedules. Many of these contracts are also used by local governmental agencies, political subdivisions and institutions of higher education enrolled in the DAS Cooperative Purchasing Program. Each fiscal year combined purchases by state agencies and Coop members from DAS contracts are estimated at \$400 million.

II. Scope

This Policy and Procedure describes the authority granted to DAS to enter into contracts and the ability of the Director to delegate signature authority to certain named managers within the General Services Division and the Office of Procurement Services.

III. Authority to Contract / Delegated Signature Authority

Section 125.02 of the Ohio Revised Code authorizes DAS – Procurement Services to enter into contracts for supplies and services on behalf of most state agencies. Agencies exempted from DAS include:

- ◆ Adjutant General
- ◆ Capital Square Review and Advisory Board
- ◆ Department of Rehabilitation and Correction's program for employment of prisoners
- ◆ General Assembly
- ◆ Bureau of Worker's Compensation
- ◆ Institutions administered by Boards of Trustees

When establishing these contracts, Procurement Services may prescribe uniform rules governing form of specifications, advertisements of bids and proposals, opening of bids and proposals, making of awards and contracts and the purchase of supplies and performance of work. Law permits the Director of DAS to delegate authority to certain named managers within the General Services Division to affix the Director's name to these contracts. This delegation is prepared and administered by the DAS, Office of the Chief Counsel, and will describe the type and level of authority at which the Designee may sign on behalf of the Director. Delegated signature authority carries the same level of obligation as if the Director has signed the Contract. Thus, once the Contract is signed by the Designee, DAS is bound by the terms, conditions and specifications of the Contract.

Delegated signature authority for the Office of Procurement Services is vested in the State Purchasing Administrator and State Purchasing Contracts Manager who may sign contracts without limitation or restriction. In the event that either of these designees is absent, full authority to sign contracts has been delegated to the Division Deputy Director. Limited signature authority has also been delegated to Procurement Managers who have attained professional certification status. These multiple levels of signature authority have been established to prevent any lapse or delay in processing contract awards should one or more of the designees be absent from the Office.

III. Conditions for Delegated Signature Authority

Authority to sign contracts and legally obligate the DAS, and the state of Ohio, carries with it a tremendous responsibility. Individuals authorized to sign contracts must be knowledgeable of the state's procurement laws and have a strong working knowledge of general contract process and law. To be eligible for delegated signature authority the individuals must be in an active management status and shall have active designation as a Certified Professional Public Buyer (CPPB) or Certified Public Purchasing Officer (CPPO). This certification is administered by the Universal Public Purchasing Certification Council (UPPCC) and currently through the National Institute of Governmental Purchasing (NIGP). Unlimited signature authority requires the individual to have a CPPO designation. Those management positions having delegated signature authority within the General Services Division and Office of Procurement Services, to include their limits of authority, are as follows:

<u>POSITION</u>	<u>LEVEL OF AUTHORITY</u>	<u>DESIGNATION</u>
Division Deputy Director	Unlimited	CPPO
State Purchasing Administrator	Unlimited	CPPO
State Purchasing Contracts Manager	Unlimited	CPPO
State Purchasing Procurement Manager	<\$500,000	CPPO
State Purchasing Procurement Manager	<\$100,000	CPPB

UPPCC certification must be maintained throughout the time period covered by the delegated signature authority. No individual may delegate their authority to another individual without express prior written approval of the Director of DAS.

IV. Review and Approval Process for Contract Documents

Listed below is the signature flow chart that depicts the review, approval and final sign-off processes for all documents used by the Office of Procurement Services to establish contracts. When legal counsel is involved, staff shall obtain approval from their manager to meet with counsel prior to any discussions. Staff will then advise their manager of the outcome of such discussion.

Term Contracts & One Time Bids

Proposed ITB/RFP:	Analyst → Manager → Contracts Manager (Optional)
ITB/RFP Document:	Analyst → Legal (RFP's only) → Manager → Contracts Manager (Optional)
ITB/RFP Addenda:	Analyst → Manager → Contracts Manager (Optional)
ITB/RFP Cancellation:	Analyst → Legal → Manager → Contracts Manager → Administrator (Optional)
Reject All ITB's/RFP's:	Analyst → Legal → Manager → Contracts Manager → Administrator (Optional)
MBE to Open:	Analyst → Manager → Contracts Manager
Contract Award <\$ 100,000, No Disq's.:	Analyst → Manager (CPPB)
Contract Award <\$500,000, No Disq's.:	Analyst → Manager (CPPO)
Contract Award >\$500,000	Analyst → Manager → Contracts Manager *
Contract Award, Not Responsive:	Analyst → Legal (Optional) → Manager → Contracts Manager*
Contract Award, Not Responsible:	Analyst → Legal (Optional) → Manager → Contracts Manager*
Contract Amendment, Administrative:	Analyst → Manager
Contract Amendment, Other	Analyst → Manager → Contracts Manager *
Contract Termination/Cancellation:	Analyst → Legal → Manager → Contracts Manager → Administrator (Optional)
Contract Renewal <\$1,000,000:	Analyst → Legal (Optional) → Manager → Contracts Manager*
Contract Renewal >\$1,000,000	Analyst → Legal (Optional) → Manager → Contracts Manager → Administrator
Contract Waivers:	Agency → Manager → Contracts Manager* (Optional)

State Term Schedules

Proposed STS:	Analyst → Manager → Contracts Manager*
STS Contract Award <\$100,000:	Analyst → Legal (Optional) → Manager (CPPB)*
STS Contract Award < \$500,000	Analyst → Legal (Optional) → Manager (CPPO)*
STS Contract Award >\$500,000	Analyst → Legal (Optional) → Manager → Contracts Manager
STS Contract Renewal <\$1,000,000	Analyst → Manager → Legal (Optional) → Contracts Manager*
STS Contract Renewal >\$1,000,000	Analyst → Manager → Legal (Optional) → Contracts Manager → Administrator
STS Amendment, Administrative:	Analyst → Manager
STS Amendment, Other	Analyst → Manager → Contracts Manager Administrator (Optional)
STS Contract Cancellation:	Analyst → Manager → Legal → Contracts Manager → Administrator (Optional)

Community Rehabilitation Program Contracts

Work Center Certification	Analyst → Legal (Optional) → Manager → Administrator*
Work Center De-Certification	Analyst → Legal → Manager → Administrator
Contract Award <\$100,000	Analyst → Manager (CPPB)*
Contract Award <\$500,000	Analyst → Manager (CPPO)*
Contract Award >\$500,000	Analyst → Manager → Administrator*
Administrative Amendments	Analyst → Legal (Optional) → Manager*
Other Amendments	Analyst → Legal (Optional) → Manager → Administrator*
Contract Renewal <\$500,000	Analyst → Legal (Optional) → Manager*
Contract Renewal >\$500,000	Analyst → Legal (Optional) → Manager → Administrator
Contract Cancellation	Analyst → Legal → Manager → Administrator

Release and Permits

All	Analyst → Manager → Contracts Manager*
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Contract Compliance

Confirmation Receipt Letter	Specialist → Manager
Initial Cure Letter	Specialist → Legal (Optional) → Manager
Revised Cure Letter	Specialist → Legal → Manager → Contracts Manager (Optional)
Cancellation Warning Letter	Specialist → Legal → Manager → Contracts Manager*
Cancellation Letter	Specialist → Legal → Manager → Contracts Manager*
Debarment Notice	Manager → Contracts Manager → Legal → Administrator → Deputy Director

(* Administrator in absence of Manager / Deputy Director in absence of Contracts Manager and Administrator)

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Bid & Performance Bonds
POLICY/PROCEDURE NO.: PUR-12
DATE ISSUED: September 9, 2002
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of State Purchasing

I. Background

The Department of Administrative Services is responsible to let contracts for supplies and services required by state agencies. The Office of Procurement Services - State Purchasing oversees the processes and performs all activities associated with establishing the contracts. A variety of methods are available to establish contracts to include; Competitive Sealed Bids, Competitive Sealed Proposals, Multiple Award Contracts and State Term Schedules. DAS contracts are also available to local governments and other political subdivisions who have enrolled in the DAS Cooperative Purchasing Program. Purchases from DAS by state agencies and Coop members are estimated at \$400 million per fiscal year.

II. Scope

The preferred methods to establish contracts are the Competitive Sealed Bid (ITB) and Competitive Sealed Proposal (RFP). When using the ITB contracts are awarded to the lowest responsive and responsible bidder and for RFP's to the bidder with the most advantageous offer to the State. A major concern with any contract award is the ability of the bidder to perform the contract properly. State Purchasing will consider a number of factors when evaluating the capability of the bidder to include; the experience of the bidder, his financial condition, his conduct and performance on previous contracts, his facilities, his management skills, and his ability to execute the contract properly. If a vendor who has been awarded a contract does not perform properly, the State will be faced with significant time delays and increased costs. One way to ensure proper performance of the bidder is require a bid or performance bond as part of the bid submission or prior to award of the contract. Law permits State Purchasing to require such a bond when deemed necessary. This Policy and Procedure has been established to explain the bond process including procedures for requesting a bond, assessing vendor performance, placing a claim against the bond and return of the bond upon completion of the contract.

III. Policy

The Office of Procurement Services – State Purchasing may request a bidder to submit a bid and/or performance bond on any intended purchase. Care will be taken to establish monetary values of the bond so as not to discourage or eliminate competition, but with sufficient monetary value as to protect the interests of the State.

IV. Intent of a Bond

The intent of a bid or performance bond is to ensure that the bidder, if awarded a contract, will faithfully execute the contract. If the vendor fails to perform the contract properly, the State may file a claim against the bond and require the bonding company to locate another vendor to complete the contract. It must be understood, however, that filing a claim against a bond may not produce the required results and may actually result in further delays in completing the contract. Historically, purchasers have looked upon a bid or performance bond as serving two purposes; 1) to pre-qualify vendors and 2) to serve as an “insurance policy” that could be redeemed for a fixed monetary amount in the event that a vendor failed to perform any part of the contract. Bond funds could then be used to hire another vendor, at the discretion of the purchaser, to complete the contract. A bid or performance bond does serve to somewhat pre-qualify vendors as the vendor must be in good standing and must maintain a positive financial status to qualify for a bond. A bid or performance bond is not, however, an insurance policy that may be redeemed for monetary damages.

A key distinction between a bond and an insurance policy is that an insurance policy responds to a loss while a bond guarantees performance. When filing a claim against an insurance policy, the damages are evident and the policy will pay a monetary sum that may be used by the claimant to offset the damages. For bonds, the purchaser must be able to prove that the vendor cannot and/or will not perform the contract (e.g. the vendor declares bankruptcy, the vendor closes its business operations or the vendor’s establishment is destroyed by a natural disaster). These situations could be considered as pure default by the vendor and may support filing a claim against the bond. Other failures to perform by a vendor (e.g. backing out of a bid response, non-delivery, substituting items, providing sub-standard quality, etc.) may not be considered as a pure default by the surety and thus would not support a claim filed against the bond. Further, if a claim is filed and accepted by the surety, funds will not be paid to the claimant. The surety is responsible to locate another provider to complete the contract. Consideration must be given by the purchaser as to whether or not a bond will best protect the interests of the State should a contractor fail to perform the contract.

V. Form of the Bond

Ohio Revised Code Section 125.10 provides that DAS may require all bids or proposals be accompanied by a bond. The two basic types of surety instruments that DAS may request are described below.

1. The **Bid Bond** is requested from the bidder as part of their bid response. The intent is to insure that the bidder is submitting the bid in good faith, will not withdraw their bid from consideration and is capable of performing the contract. Upon award of a contract, the performance bond replaces the bid bond. A bid bond is not a performance bond and is not a substitute for a performance bond. Bid bonds are generally less costly to the vendor.
2. The **Performance Bond** is requested to insure that the vendor will properly perform the contract. A performance bond may be requested as part of the bid submission or may be requested during the evaluation process. Once a contract is awarded, the bond will remain in effect for the duration of the contract unless the State decides to release the bond prior to completion of the project. A bid guaranty and contract bond is also an acceptable form of performance bond. The amount of the performance bond is generally based upon a percentage of the total value of the project and may range from 2% to 100% of the total project value.

All bonds shall affirmatively state on their face that the surety is authorized to execute bonds in the state of Ohio and that the liability incurred is within the limits of Section 3929.02 of the Ohio Revised Code. Failure to include this statement shall not cause the bid to be deemed not responsive if, in fact, the surety is authorized to execute bonds in the state and the liability is within the limits of Section 3929.02 of the Revised Code. All bonds and surety instruments will be made payable to the Treasurer, State of Ohio.

VI. Requesting the Bond

The agency may request a provision for a bond be included in the bid or RFP to protect the agency from loss caused by non-performance of the vendor. If requested, the contract analyst will consider factors such as, but not limited to:

- The type and value of the proposed project
- The risk to the State should a vendor not properly perform the contract
- The dollar amount of the bond necessary to offset the risk
- Would another form of legal remedy better protect the State
- Will inclusion of a bond serve to limit or eliminate competition
- The cost of the bond to the State

Once research is completed the contract analyst will make a recommendation to the manager as to whether or not a bond should be requested and in what dollar amount. If the Manager agrees written confirmation of the bond request is to be obtained from the customer agency. The contract analyst will insert the appropriate bond language into the bid documents. A bid bond will be a mandatory submission with the bid/RFP response to insure that the bidder is submitting the bid/RFP in good faith and that the bidder, if awarded the contract, is capable of properly performing the contract. The dollar value of the bid bond will be commensurate with the performance bond.

If a performance bond is requested, the contract analyst may require the bond as part of the bid/RFP response or may request the bond during the evaluation phase. During evaluation, once the potential lowest responsive and responsible bidder or bidder with the most advantageous offer has been determined, a decision will be made as to whether or not the performance bond will be required. If required, the bidder will have ten (10) working days to submit the performance bond. The contract analyst will confirm the request in writing using the standard bond request letter (Exhibit 'A'). If not submitted within this time period, the bidder may be considered to be not responsive and their bid disqualified from further consideration.

If the bidder is unable to secure the bond within the ten (10) days, due to the approval process of the surety (bonding company), the bidder may be permitted to submit a letter of intent from their surety indicating the reasons for the delay and of the surety's intent to issue the bond at a later date. If State Purchasing accepts the letter of intent, the contract analyst will proceed with the evaluation and award of the contract. If the bidder then fails to provide the performance bond within the time stated on the letter of intent, the bidder will be in default and State Purchasing will take appropriate action to remedy the default. Submission of a letter of intent requires the prior written approvals of the DAS Office of Chief Counsel and the Contracts Manager or Administrator (in absence of the Manager).

VII. Receipt of the Performance Bond

Upon receipt of the performance bond, the contract analyst will examine the documents in their entirety. The performance bond will be rejected if it contains material defects that are not in conformance with the bid documents and/or the bond does not contain all relevant signed support documents. The vendor will be deemed not responsive and their bid disqualified. Non-material defects may be corrected at the discretion of the Contracts Manager or Administrator. If accepted, the performance bond will be attached to the bid/RFP response and retained in the bid file. The contract analyst will then proceed with awarding of the contract.

VIII. Renewal of the Bond

The contract analyst will be responsible to ensure that the performance bond is active for the duration of the contract. If the contract is renewed, the contract analyst will contact the agency and determine if an additional performance bond is necessary to cover the renewal period. If necessary, the contract analyst will contact the vendor and request the performance bond. The vendor will have ten (10) working days to furnish the performance bond. Failure to provide the performance bond will be considered a default. The analyst will confirm the performance bond request in writing using the standard letter, (Exhibit 'B'). If a performance bond is not necessary for the renewal period, the contract analyst will request a written waiver from the agency. The contract analyst will proceed to issue the renewal amendment following standard procedures. The original performance bond will not be released until the contract has been completed.

IX. Filing a Claim

Any claim to be filed with the surety (bonding company) requires agreement of the agency and approval of DAS General Counsel and the Contracts Manager or Administrator. The State must provide conclusive evidence to the surety that the vendor cannot and/or will not complete the contract. Issues such as repeated late delivery, delivery of non-conforming items, incomplete delivery, etc. may be deemed as “customer service” issues and may not qualify as a claim against the bond. State Purchasing has a responsibility to place the surety on notice when the vendor is not performing. For the purposes of this policy and procedure, such notice will consist of the Complaint to Vendor filed by the agency. The contract analyst will prepare a cover letter (Exhibit ‘C’), attach the respective CTV(s) and forward to the surety. A copy of this notice will also be sent to the vendor. The surety may or may not acknowledge the notice.

If the vendor fails to resolve the issue and perform the contract, Procurement Services may file an official claim with the surety. The claim is to be accompanied by the complete file of the non-performance issue(s). If the surety accepts the claim, the surety will be responsible to locate another contractor to complete the contract. Determination of a replacement contractor may be at the sole discretion of the surety.

Note: It may be necessary that DAS file litigation to enforce the claim.

X. Completion of the Contract

Upon completion of the contract, the contract analyst will contact the agency to confirm proper performance by the vendor, in writing. If properly completed, the contract analyst will prepare a release letter and forward to the vendor. The original performance bond will be retained in the bid file. State Purchasing and the agency may determine that the contractor is properly performing the contract and may elect to release the bond prior to completion of the contract. A request for early release must be confirmed in writing and must be approved by DAS Office of Chief Counsel and the Contracts Manager or Administrator.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Internal Counsel
POLICY/PROCEDURE NO.: PUR- 013
DATE ISSUED: February 16, 2007
DATE REVISED:
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Ohio law places a responsibility upon the Department of Administrative Services to make purchases of supplies and services required by state agencies. The Director of DAS has delegated authority to the Office of Procurement Services to make such purchases on behalf of state agencies. The Office does not actually issue a purchase order for the required supply or service, but rather establishes contracts with vendors for the required products and services. A variety of methods are utilized to establish these contracts to include; Competitive Sealed Bids, Competitive Sealed Proposals, Multiple Award Contracts and State Term Schedules. Many of these contracts are also made available to local governments and other political subdivisions under the DAS Cooperative Purchasing Program. Each fiscal year purchases by state agencies and Coop members exceed \$400 million. Procurement Services is also responsible to establish contracts between a state agency or other governmental entity and sheltered workshops under the State Use Program. Purchases under the State Use Program exceed \$37 million each fiscal year.

II. Scope

All contracts will contain terms, conditions, specifications and pricing information relative to the supplies or services listed in the contract. It is imperative that the written contract accurately depict the needs of the State to ensure that all parties interested are provided with a fair and equal opportunity to offer their items to the State. Accuracy in these contracts also helps to ensure that the needs of the agencies are correctly met and tax dollars are spent correctly. DAS contracts are legally binding documents between the vendor and the department. If terms, conditions and specifications are not accurate or are found to be restrictive, the department is subject to formal legal action being filed in a Court of Law. If the Courts find that DAS has not met the requirements of law in developing their contracts, the Courts could rule that the contract is invalid which would subject DAS to further litigation from the vendor. This Policy and Procedure has been developed to assist the staff of Procurement Services with legal processes that must be followed in all bids, RFP's, contracts and related documents.

III. Policy

It is the policy of the Office of Procurement Services to seek legal advice from DAS Office of Chief Counsel in the development of bid, RFP and contract documents. When necessary, Procurement Services will seek legal advice from the Office of Chief Counsel in the evaluation and award processes, responding to formal protests and contract compliance issues.

IV. DAS Office of Chief Counsel

The Office of Chief Counsel will provide legal advice to Procurement Services. The Office of Chief Counsel will not represent Procurement Services in any active litigation, as this is the responsibility of the Ohio Attorney General. The Office of Chief Counsel will, however, work directly with Procurement Services and provide assistance to the Attorney General in all matters of litigation, whether pending or active. In addition, The Office of Chief Counsel will provide legal advice to Procurement Services on such topics as, but not limited to:

- ◆ Changes to Ohio Revised Code & Ohio Administrative Code
- ◆ Department Directives
- ◆ Requests for public records
- ◆ Minority Business Enterprise certification issues
- ◆ Review of vendor offerings for State Term Schedules
- ◆ Review of ITB/RFP/Contract documents, when applicable
- ◆ Ohio ethics laws
- ◆ Controlling Board requests
- ◆ Personal service contracts
- ◆ Contract compliance

V. Procedures

- A. Guidance and Interpretation. The Office of Chief Counsel will review and provide legal advice on all legal matters relative to contracting processes.
- B. Contracting Processes. Provide legal advice on any ITB, RFP, contract for supplies or services or contract with sheltered workshop. The contract analyst or other person responsible for the contract must first discuss the issue with their respective unit manager. In absence of the unit manager, the issue is to be discussed with the contracts manager or administrator. Staff should not to go directly to Counsel unless approved by the unit manager, contracts manager or administrator. Staff will report results of their discussion with Counsel to the unit manager, contracts manager or administrator, as applicable.
- C. Contract Compliance. Any issue of non-performance by either a state agency or a vendor is a breach of contract that could result in litigation. A breach of contract by a vendor could result in early termination of the contract, application of additional costs incurred by the state for replacement items to the vendor, denial of future awards to the vendor up to and including debarment of the vendor from participating in doing business with the state. Issues of breach of contract by the State could result in litigation being filed against the State and application of monetary penalties against DAS and/or the agency. The unit manager will be responsible to ensure that Counsel is involved with the contract compliance issues to ensure that all legal remedies are followed.
- D. Public Records Requests. A *public record* is any record, except for those records exempted under Section 148.43 of the Revised Code that are created and maintained by any public office. Any interested party may request to review public records and/or may request copies of public records. The agency is required to produce only those records that are created and maintained by the agency. It is preferred that public records requests be placed in writing to ensure that all

documents have been provided to the requestor. With the exception of standard requests to review bid/contract files by interested bidders, Counsel is to be advised of any public records request. Once the requested files have been compiled, they are to be forwarded to Counsel for review prior to releasing to the requestor. Public records requests received from any outside legal counsel, media or legislator or any request that intimates litigation are to be forwarded to Counsel immediately. Counsel will then advise course of action to fulfill the request. Public records requests are to be completed in a timely manner.

- E. Protests & Litigation. Any interested party may file a protest with the Office of Procurement Services. Protests are to be addressed in accordance with most recent version of Policy No. PUR-007. Any protests that threaten litigation are to be forwarded to Counsel and the Administrator immediately.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Professional Development
POLICY/PROCEDURE NO.: PUR – 14
DATE ISSUED: February 19, 2003
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of State Purchasing

I. Background

The Office of Procurement Services is responsible to let contracts for all types of supplies and services for the use by state agencies. These contracts may be developed through Competitive Sealed Bids, Competitive Sealed Proposals, Multiple Award Contracts or State Term Schedules or negotiated with sheltered workshops. Many of these contracts are used by local governments and political subdivisions under the DAS Cooperative Purchasing Program. Each fiscal year, combined purchases of state agencies and Coop members from these contracts are estimated to exceed \$400 million.

The contracting processes are very complex and require significant effort on the part of all staff. Two elements of this effort, continuing education and training, are key factors to maintaining this functionality. Managers, contract analysts and support staff invest significant time and effort to prepare specifications, evaluate bid responses and make recommendations for contract awards.

II. Scope

To promote professional development of those involved with the contracting process, management supports and, for certain positions, requires the employee obtain and maintain professional certification. Certification is offered by the Universal Public Purchasing Certification Council (UPPCC) and administered through the National Institute of Governmental Purchasing (NIGP). Two levels are offered; Certified Professional Public Buyer (CPPB) and Certified Public Purchasing Officer (CPPO). Certification involves extensive education and training in all facets of the purchasing process and is effective for a period of five (5) years at which time the employee must apply for re-certification. The UPPCC has established criteria upon which the certified professional may earn points toward re-certification. These criteria include, but are not limited to; involvement in NIGP, National Association of State Procurement Officials (NASPO), local procurement organizations (i.e., Central Ohio Organization of Public Purchasers (CO-OPP), attendance at conferences and organization meetings, attending NIGP sanctioned training courses and receiving professional recognition or awards. The individual must have accrued a minimum number of points within a five year period to qualify for re-certification. This Policy and Procedure has been established to assist employees in applying for and completing training courses, participating in organization meetings and attending seminars or conferences necessary to complete and maintain their professional certification.

III. Policy for Mandatory Certification

Professional certification is a required condition of employment for certain contract analyst and management level positions. The employee must take and pass the certification test within three years of placement into the position. It is the responsibility of the employee to be aware of training courses, conferences, organization meetings or other criteria, recognized by the UPPCC, to obtain and maintain their professional certification. Neither the Department nor any representative of management will be held accountable or responsible for any employee who fails to obtain and/or maintain their professional certification as mandated by the position.

IV. Policy for Elective Certification/Training

Professional certification and training is also available to employees who are not required to obtain and maintain UPPCC certification as a condition of employment. Employees who are interested in furthering their education by attending seminars and/or by participating in procurement related organizations should forward such interest to their respective manager. The activity must be job-related and requires prior approval of the Administrator.

V. Funding

Professional certification and training, whether mandatory or elective, is the responsibility of the employee. The employee may seek funding assistance from state sponsored sources (i.e., Workforce Development Funds or Professional Development Program) or from grants offered through the CO-OPP organization or other funding sources. Participation in the training requires approval of the employee's manager and is subject to workload conditions. When state funds are available, the Office may approve funding to pay for certification and training in the following manner (employee must meet minimum qualifications for eligibility):

A) Certification for CPPB

- ◆ Fees for testing (initial and one re-test)
- ◆ Fees for NIGP sanctioned seminars (maximum 96 hours)
- ◆ Excludes travel/lodging expenses (reimbursement contingent upon funding; travel policies)

B) Certification for CPPO

- ◆ Fees for testing (initial and one re-test)
- ◆ Fees for NIGP sanctioned seminars (maximum 144 hours)
- ◆ Excludes travel/lodging expenses (reimbursement contingent upon funding; travel policies)

C) Re-certification for CPPB/CPPO

- ◆ Must have minimum required re-certification points accrued
- ◆ Fees for re-certification
- ◆ Fees for NIGP sanctioned education/training seminars (maximum one seminar per year)
- ◆ Excludes travel/lodging expenses (reimbursement contingent upon funding; travel policies)

D) Elective certification and/or training

- ◆ Fees for certification / re-certification (if applicable)
- ◆ Fees for education/training seminars (maximum 96 hours)
- ◆ Excludes travel/lodging expenses (reimbursement contingent upon funding; travel policies)

When funding is provided by the Office, the employee is responsible to attend courses/seminars and to pass any associated tests. Failure to do so may result in the employee being required to reimburse the Office for any fees paid by the Office.

VI. Conferences

An employee may request approval to attend a regional or annual conference sponsored by NASPO, NIGP or CO-OPP or other recognized procurement organization. Depending upon the availability of funds, the office will attempt to provide financial support to an employee interested in attending these conferences. An employee, who is interested in attending a NASPO and/or NIGP conference, when being funded by the office, must be in an active certification status (CPPB/CPPO). An employee interested in attending the NASPO or NIGP annual conference must advise their manager of such interest no later than September 30 of the current calendar for attendance during the forthcoming year's event (i.e., submit request to attend conference in 2007 by 9/30/06). The manager will complete a Qualification Summary for the employee that will be considered in determining which employees will be approved to attend the forthcoming conference. The employee should use the Qualification Summary rating when planning their professional purchasing activities. Other factors will also be considered, such as, but not limited to prior attendance at the conference(s) and expiration date of their certification. Employees who do not request consideration will be ineligible to attend at office expense. For the NASPO Annual Conference, a management representative will attend as this conference is designed for management level staff. Non-management employee may be approved to attend contingent upon funding and travel policies.

For all other conferences the employee may request approval to attend, however, the conference must be specific to their job duties.

The number of employees approved to attend any conference, either at office expense or at the expense of the employee, will be contingent upon approval of the Deputy Director. Approval to attend any conference will be granted on a case-by-case basis considering factors such as, but not limited to; workload, daily performance, previous attendance, etc. An employee requesting to attend a conference at their personal expense may be granted approved leave to attend the conference. Attendance at a conference, when paid by the office, is contingent upon availability of funds and is subject to any travel policies imposed by the Governor or the Office of Budget & Management.

VII. Transportation

An employee may request use of a state vehicle to attend training seminars or conferences or may use their personal vehicle. If the seminar or conference is within a 45 mile radius of Columbus, or the employee's residence, and the employee elects to use their personal vehicle, mileage will not be paid. If outside the 45 mile radius, a state vehicle should be used. If one is not available, the employee may be approved to use their personal vehicle and may be paid mileage in accordance with the State Travel Policy and Labor Agreement. Use of a state vehicle for out-of-state travel requires prior approval of the Administrator and Fleet Management. When using a personal vehicle, the employee must have the vehicle properly insured as required by Revised Code Section 4509.51. Approval to use other forms of transportation (i.e. air, bus, train) are contingent upon funds availability and travel restrictions.

VIII. Professional Organizations

In an effort to further employee professional development, employees are encouraged to participate in professional organizations. Such participation is strictly voluntary. The employee may request membership in the organization through their manager. The level of participation (i.e. officer, committee volunteer, etc.) requires prior approval from the employee's manager and will be contingent upon, but not limited to such areas as their existing workload and daily performance. The employee will be granted reasonable time to attend meetings and participate in related activities at the discretion of the manager. The membership fees may be eligible for payment by the Office contingent upon availability of funds. If Office funding is approved, the employee will be expected to attend meetings and participate in organization activities.

Professional organizations currently recognized by Procurement Services include:

- State Purchasing User Group (SPUG)
- Central Ohio Organization of Public Purchasers (CO-OPP)
- Ohio, Indiana, Northern Kentucky Chapter of NIGP (OINK)
- Southwestern Ohio Organization of Purchasers for Government (SWOP4G)
- National Association of State Procurement Officials (NASPO)
- National Institute of Governmental Purchasing (NIGP)
- Institute for Supply Management (ISM – previously NAPM)
- National Purchasing Institute (NPI)

QUALIFICATION SUMMARY – FY _____

Name: _____

Manager: _____

1. Certification Status:

CPPB, Expiration _____

CPPO, Expiration _____

In Process, Projected Completion Date _____

2. Work Effort

Contribution to Goals/Metrics	0	1	2	3	4	5
Projects Completed on Schedule	0	1	2	3	4	5
Quality of Work Product	0	1	2	3	4	5
Voluntary Agency/Vendor Visits	0	1	2	3	4	5
Attendance/Tardiness	0	1	2	3	4	5

3. Professional Development (officer/committee member, requires Manager approval)

Voluntary participation in NIGP/NASPO	0	1	2	3	4	5
Voluntary participation in CO-OPP/Other	0	1	2	3	4	5
Voluntary participation in SPUG	0	1	2	3	4	5

4. Certification / Re-Certification Efforts

Voluntary attendance at CO-OPP	0	1	2	3	4	5
Presentation at CO-OPP/NIGP/NASPO	0	1	2	3	4	5
Specification published by NIGP	0	1	2	3	4	5
CO-OPP award recognition	0	1	2	3	4	5
NIGP sanctioned seminars (based upon budget)	0	1	2	3	4	5
Other (refer to NIGP Activity Point Schedule)	0	1	2	3	4	5

Total Score: _____

0 = None	1 = Minimal	2 = Below Average	3 = Average	4 = Above Average	5 = Exemplary
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**State of Ohio
Ohio Department of Administrative Services
General Services Division**

POLICY/PROCEDURE NAME: Debarment
POLICY/PROCEDURE NO.: PUR-015
DATE ISSUED: December 01, 2005
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

The Department of Administrative Services is empowered by law to make purchases of supplies and services required by state agencies. The Office of Procurement Services has been delegated authority by the Director of DAS to develop and establish contracts for these supplies and services. A variety of methodologies are used to establish these contracts including competitive sealed bids, competitive sealed proposals, multiple award contracts, state term schedules and contracts negotiated with sheltered workshops. Many of these contracts are also made available to local governments and other political subdivision enrolled in the DAS Cooperative Purchasing Program.

II. Scope

The processes used by Procurement Services to establish contracts are set forth in law and are designed to promote open competition and fairness to all vendors interested in selling their products or services to the state of Ohio. These processes are also structured to protect the interests of the State. Whenever a vendor does not follow the structured processes or does not properly perform a contract, the interests of the State could be placed into jeopardy. This Policy and Procedure was developed to address issues of non-conformance by a vendor in the procurement processes used by the State to procure supplies and services.

III. Policy

The Office of Procurement Services will continuously monitor activities of vendors attempting to do or who are currently doing business with the State to ensure conformance to the procurement processes and that vendors properly perform contracts. If a vendor fails to comply, the vendor will be subjected to the remedies as set forth in this Policy and Procedure.

IV. Submitting Bids and Awarding of Contracts

When Procurement Services gives notice to the supplier community of its desire to establish a contract for supplies or services there is an expectation that interested businesses will submit bids, proposals and offers in accordance with established procedures and that they will honor their bids, proposals and offers upon award of a contract. A contract is awarded by Procurement Services with the expectation that both the vendor and the state have entered into the agreement in good faith and that both parties will perform their respective duties and obligations in accordance with the contract terms, conditions and specifications at the prices quoted. When a vendor fails to comply with these expectations, Procurement Services will take necessary action, pursuant to law, to resolve the problem and to protect the interests of the state. These remedies may include, but are not limited to:

1. Denial of contract awards;
2. Cancellation of existing contracts;
3. Seeking replacement items from alternative sources; and
4. Seeking reimbursement of any additional costs for such replacement items from the contractor.

When problems become so severe as to jeopardize the interests of the state, the Director of Administrative Services (“the Director”) or his designee may debar a contractor from participating in the business of the state. When implementing debarment efforts, the Director will follow the procedures set forth below.

V. Causes for Debarment (ORC Section 125.25)

The Director of Administrative Services may debar a vendor from consideration for contract awards upon a finding based upon a reasonable belief that the vendor has done any of the following:

1. Abused the selection process by repeatedly withdrawing bids or proposals before purchase orders or contracts are issued or failing to accept orders based upon firm bids; or
2. Failed to substantially perform a contract according to its terms, conditions, and specifications within specified time limits; or
3. Failed to cooperate in monitoring contract performance by refusing to provide information or documents required in a contract, failed to respond to complaints to the vendor, or accumulated repeated justified complaints regarding performance of a contract; or
4. Attempted to influence a public employee to breach ethical conduct standards or to influence a contract award; or

5. Colluded to restrain competition by any means; or
6. Been convicted of a criminal offense related to the application for or performance of any public or private contract, including, but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and any other offense that directly reflects on the vendor's business integrity; or
7. Been convicted under state or federal antitrust laws; or
8. Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract; or
9. Violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director; or
10. Through the default of a contract or through other means had a determination of unresolved finding for recovery by the Auditor of State under Section 9.24 of the Revised Code; or
11. Acted in such a manner as to be debarred from participating in a contract with any governmental agency.

VI. Procedures for Debarment

A. Investigation and referral. State agencies and Cooperative Purchasing members may notify the Office of Procurement Services, in writing, of vendor performance issues by any of the following means:

1. E-mail via the internet or similar means
2. Vendor performance survey
3. Complaint to Vendor
4. Letter
5. Other

After the documentation has been reviewed and verified, and if the Administrator reasonably believes that grounds for debarment exist, the Administrator will prepare a written report to the Director setting forth such findings, including recommendation for debarment of the vendor.

B. Notice of debarment. When the Director reasonably believes that grounds for debarment exist, the Director will send the vendor, and any specifically named affiliate, officer, employee, or other individual or entity associated with the vendor, a notice of the proposed debarment. The notice must include at least the following:

1. Reasons for the proposed action;
2. The law or rule directly involved;
3. Statement that the vendor may request a hearing within thirty (30) days of the time of mailing the notice;
4. A statement that the vendor may be represented by his attorney or by such other representative as is permitted to practice before the agency;
5. A statement that the vendor may present his position, arguments, or contentions in writing;
6. A statement that the vendor may present evidence at the hearing and examine witnesses appearing before and against him;
7. Any other information the Director deems relative to the proposed debarment.

The notice will be given by registered mail, return receipt requested. A copy of the notice will be mailed to attorneys or other representatives of record representing the vendor. Whenever a notice sent by registered mail is returned due to failure of delivery, the Director will make personal delivery of the notice by an employee or cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known residence or business of the vendor is located. When notice is given by a publication, a copy of the newspaper, with the first publication of notice marked, will be mailed to the last known address and the notice will be deemed received as of the date of the last publication.

C. Request for hearing, notice of hearing, right to appeal. Whenever the vendor requests a hearing, the Director will immediately set the date, time and place for the hearing and immediately notify the vendor. The date set for the hearing will be within fifteen (15) days, but not earlier than seven (7) days after the vendor has requested a hearing, unless otherwise agreed between the Director and the vendor. If requested by the vendor in writing, the Director may designate the place of the hearing to be in the county seat of the county in which the vendor resides or maintains its principal place of business in Ohio or at a place within fifty miles of the vendor's residence or principal place of business. If the vendor is not a resident of and has no place of business in the state of Ohio, the Director will hold the hearing in Franklin county, Ohio. The failure of the Director to give notice for any hearing as required by Sections 119.01 to 119.13 of the Revised Code will invalidate any order entered pursuant to the hearing.

A vendor adversely affected by the order of the Director may be appealed in accordance with Chapter 119 of the Revised Code.

VII. Period of Debarment

The Director will determine the length of the debarment period commensurate with the seriousness of the cause for such debarment up to, and including, permanent debarment. The Director, at his discretion, may rescind the debarment at any time if it is deemed to be in the best interest of the state of Ohio. After ninety days of the initial effective date of

the debarment, a vendor can apply for reinstatement, in writing, to the Director, citing actions taken to remedy the reason for debarment or steps taken to prevent a recurrence of the situation that caused the debarment. The Director may extend the period of the debarment if the Director that the extension is necessary to protect the interests of the state of Ohio.

VIII. Effect of Debarment

During the period covered by the debarment any vendor, and any specifically named affiliate, officer, employee, or other individual or entity associated with the vendor who has been debarred by the Director shall be ineligible to do any of the following:

1. Be included on any vendor lists;
2. Receive and submit bids or proposals issued by the state for the procurement of supplies and services;
3. Be awarded a contract for supplies or services; and
4. Participate in any business activities with any state department, board, commission, or institution.

IX. Posting of Debarment Decision

The Director will post notice of any debarment decision on the website maintained by the Office of Procurement Services.

Ten Favorite Paths through the State Procurement web site

#	What I have...	My Question ...	From www.ohio.gov/procure, select this ...
1	Vendor or dealer name	Are they on contract?	1) Current Contracts; 2) in box labeled "Search using Keyword," enter your vendor name; 3) press "Keyword Search" button
2	Need for a supply or service	Is it on contract?	1) Current Contracts; 2) in box labeled "Search using Keyword," enter your supply or service; 3) press "Keyword Search" button
2 (alt.)	Need for a supply or service	Is it on contract?	1) Current Contracts; 2) Search using Alpha List; 3) Find the category that best matches your supply or service; 4) press "view xx contracts" to go directly to contract list, OR press "view related categories" to further define category, then "view xx contracts"; 5) find contract and click on "Doc/Bid/Sched #" to view contract
3	Document # or Index #	How do I get a copy of the contract?	1) Find It Fast; 2) select doc/bid # or index number radio button; 3) enter your #; 4) press "Find It Fast" button
4	MBE requirement	A list of available MBE set aside contracts?	1) Current Contracts; 2) Search by Contract Type, use right down arrow to select "Set Aside (MBE) Contracts"; 3) At bottom of page, click on "Search" button
5	Co-op membership	A list of all contracts available to Co-ops?	1) Current Contracts; 2) Search by Contract Type, use right down arrow to select "Cooperative Purchasing Agreements (Co-op)"; 3) At bottom of page, click on "Search" button
6	Pending ITB or RFP	Any updates?	1) What's New; 2) Opportunity Updates; 3) Scroll through list to find your ITB/RFP, OR refine your search using one of the selections under "Customize your View"
7	Problem with a vendor	How do I file a complaint?	1) Forms (on left navigation bar); 2) Complaint to Vendor; 3) complete form on-line
8	Something I am bidding under direct authority	How do I get a mailing label list of interested vendors?	1) Selling to the State; 2) Vendor Registration; 3) Access to Vendor Database, Log in OR Acquire User ID if first-time user; 4) enter User ID and password; 5) Vendor Search (left navigation bar); 6) enter criteria and click on "Search" button; 7) At top of results page, use right down arrow to select Avery format for labels
9	Need for specific help on a contract	Name, e-mail address, phone # of contact person?	1) Procurement Contacts (left navigation bar); 2) Select a division; 3) Scroll through list by assignment
10	Contract	Is this contract on e-Buy!Ohio?	1) Find It Fast; 2) select doc/bid # or index number radio button; 3) enter your #; 4) press "Find It Fast" button; 5) on Details page under Other, see "on e-Buy!Ohio" yes/no; 6) if yes, "click here"