

State Purchasing Bureau Policy

NOTICE

This guidance document is advisory in nature but is binding on the Nebraska Department of Administrative Services until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department of Administrative Services and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. See Neb. Rev. Stat. § 84-901.03

Policy No: 24-05

Application: Goods & Services

Subject: Exceptions to Competitive Bidding

Effective Date: 07-19-2024

I. GENERAL RULES

- A. Procuring Agencies are to request an exception from the competitive bidding requirements of the State Procurement Act for sole source contracts, contracts with pricing established by the General Services Administration, otherwise competitively bid contracts, emergency contracts, direct purchase authority, and other circumstances.
- B. The Procuring Agency bears the burden to show that an exception is warranted. See, Neb. Rev. Stat § 73-812(3) and Neb. Rev. Stat. § 73-813 (1).
- C. Except for contracts that have been otherwise competitively bid, contracts that receive an exception from State Purchasing Bureau's procurement process must still comply with the provisions of Neb. Rev. Stat. § 73-812.

II. SOLE SOURCE CONTRACTS

- A. The Director of Administrative Services or designee determines whether a Procuring Agency's sole source contract request meets the definition contained in Neb. Rev. Stat. § 73-803 (10). See, Neb. Rev. Stat. § 73-815.
- B. If the Director of Administrative Services or designee does not respond to a Procuring Agency's sole source request within ten (10) business days of its submission, the request is denied by default.
- C. In making a request for a sole source exception to the competitive bidding requirements State Procurement Act, Procuring Agencies are to submit documentation showing the following:
 1. The Procuring Agency researched contractor options, including Statewide Contracts, for the desired service or personal property.
 2. No other contractor can provide the desired service or personal property, OR no other contractor can provide the desired service or personal property at the required location.
 3. The Procuring Agency cannot write the specifications more broadly to encourage competition.

- D. Publication of Intent to Sole Source
1. After the Director of Administrative Services or designee approves a Procuring Agency's sole source request, State Purchasing Bureau may publish an Intent to Sole Source on the Materiel Division's website for ten (10) business days.
 2. An Intent to Sole Source includes the proposed specifications or quote and the Procuring Agency's sole source request.
 3. During the publication period, Contractors may respond to the Intent to Sole Source, informing State Purchasing Bureau of their ability to provide services or personal property that meets the Procuring Agency's needs.
 4. If a contractor's response demonstrates that the proposed sole source contract does not meet the definition in Neb. Rev. Stat. § 73-803(10), the Director of Administrative Services or designee may revoke sole source approval.
 5. A sole source request is not finally approved by the Director of Administrative Services or designee until fifteen (15) business days after the Intent to Sole Source has been published.
- E. To request a sole source exception from the competitive bidding requirements of the State Procurement Act, enter an O8 Requisition in E1 and attach the following:
1. Completed SPB Form 2
 2. Any supporting materials for SPB Form 2, including a letter from the vendor if the sole source request is based on single source distribution or proprietary.
 3. The specifications or quote of the proposed purchase.
 4. Any supplemental documentation of approval to contract from the Department of Administrative Services – Budget Division.

III. **CONTRACTS WITH GSA PRICING**

- A. The State of Nebraska may contract directly with a Contractor without competitive bidding when the Contractor offers the State of Nebraska the same pricing that it is currently offering the General Services Administration (GSA). See Neb. Rev. Stat. § 73-813(1)(a).
- B. Unless otherwise approved by the Materiel Administrator, contracts with pricing established by the GSA are managed by State Purchasing Bureau.
- C. To request an exception from the competitive bidding requirements of the State Procurement Act for a contract with pricing established by the GSA, enter an O8 Requisition in E1 and attach the following:
1. Completed SPB Form 4
 2. The Quote from the vendor and documentation of GSA pricing
 3. The terms and conditions of the purchase
 4. Any supplemental documentation of approval to contract from the Department of Administrative Services – Budget Division.

IV. **OTHERWISE COMPETITIVELY BID CONTRACTS**

- A. Procuring Agencies need permission from State Purchasing Bureau to negotiate purchasing from a contract that was otherwise competitively bid under Neb. Rev. Stat. § 73-813 (1)(a).
- B. To request an exception from the competitive bidding requirements of the State Procurement Act for a contract that has otherwise been competitively bid, enter an O8 Requisition in E1 and attach the following:
1. Completed SPB Form 3;
 2. A copy of the otherwise competitively bid contract;

3. The proposed participating addendum; and
 4. Any supplemental documentation of approval to contract from the Department of Administrative Services – Budget Division.
- C. Unless otherwise approved by the Director of Administrative Services or designee, State Purchasing Bureau manages contracts that have been otherwise competitively bid.

V. EMERGENCY

- A. A State Agency Director or their designee may approve and enter emergency contracts that meet the definition in Neb. Rev. Stat. § 73-803(6). See, Neb. Rev. Stat. § 73-815.
- B. Within three days of executing an emergency contract, agencies need to enter an O8 Requisition in E1 and attach the following:
1. Completed SPB Form 10
 2. Any supporting materials for SPB Form 10
 3. The executed emergency contract

VI. DIRECT PURCHASE AUTHORITY (Goods Only)

- A. The Materiel Administrator determines whether a Procuring Agency's request for direct purchase authority is merited under Neb. Rev. Stat. § 73-814.
- B. If the Materiel Administrator does not respond to a Procuring Agency's direct purchase authority request within 10 business days of its submission, the request is denied by default.
- C. The Procuring Agency bears the burden to show the following:
1. The requirements of Neb. Rev. Stat. § 73-814 (1) are met.
 2. Competitively bidding the purchase of the identified personal property is unnecessary under the circumstances due to the urgency of the purchase, the availability of the personal property, or another factor; AND
 3. No statewide contract exists for the acquisition of the identified personal property or the Materiel Administrator has granted an exception from Statewide contract usage under SPB Policy 24-09.
- D. To request an exception from the competitive bidding requirements of the State Procurement Act based on a grant of direct purchase authority, enter an O8 Requisition in E1 and attach the following:
1. Completed SPB Form 8 with any required attachments;
 2. Any supplemental documentation of approval to contract from the Department of Administrative Services – Budget Division.
- E. If the Materiel Administrator or designee does not respond to a Procuring Agency's direct purchase authority request within ten (10) business days of its submission, the request is denied by default.

VII. OTHER CIRCUMSTANCES

- A. Procuring Agencies bear the burden to prove to the Director of Administrative Services that due to the circumstances listed in Neb. Rev. Stat. § 73-813 (1)(b), an exception from the competitive bidding requirements of the State Procurement Act is merited.
- B. To request a sole source exception from the competitive bidding requirements of the State Procurement Act, enter an O8 Requisition attach the following:
1. Completed SPB Form 2
 2. Any supporting materials for SPB Form 2
 3. The terms and conditions of the purchase, including any terms and conditions desired by the vendor.

4. Any supplemental documentation of approval to contract from the Department of Administrative Services – Budget Division.
- C. If the Director of Administrative Services does not respond to a Procuring Agency's request for exception from competitive bidding due to other circumstances within ten (10) business days of its submission, the request is denied by default.

The foregoing policy is duly signed and executed on this 18th day of July, 2024.



Director,
State of Nebraska,
Department of Administrative Services

July 18, 24

DATE



Material Administrator,
State of Nebraska,
Department of Administrative Services

July 18, 2024

DATE

