

## 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:** 24-06

**Application:** Goods & Services

**Subject:** Alternative Competitive Bidding Processes

**Effective Date:** 07-19-2024

#### I. PROCESS APPROVED BY DIRECTOR OF ADMINISTRATIVE SERVICES

- A. Under the State Procurement Act, Procuring Agencies may vary from the standardized processes contained within the Procurement Manual if they propose an alternative "process approved by the Director of Administrative Services." See Neb. Rev. Stat. § 73-807 (2).
- B. The approval of an alternative competitive bidding process is not approval to avoid competitive bidding.
- C. For the Director of Administrative Services to approve an alternative process apart from the processes contained in the Procurement Manual and State Purchasing Bureau Policies, the Procuring Agency must show the following:
  1. That an identified process within the Procurement Manual or State Purchasing Bureau Policies is inappropriate for the individual procurement;
  2. That the Procuring Agency's identified alternative process will be better suited for the procurement without compromising the openness and fairness of the procurement process; AND
  3. The request for an alternative competitive bidding process is not intended to "avoid the requirements of the State Procurement Act." See Neb. Rev. Stat. § 73-812(3).
- D. The Director of Administrative Services approves the Procuring Agency's application form in a written order, and all approval orders are kept on file with the Materiel Division.
- E. An approved alternative process acts as the applicable procurement policy for the purpose of the procurement. Variance from the alternative policy is grounds for bid protest under SPB Policy 23-07 (Protest Policy) in the same manner as a variance from the procurement processes in the Procurement Manual or State Purchasing Bureau Policies.

F. To file an application for an alternative process, enter in an O8 in E1 and attach the following:

1. A completed copy of SPB Form 7.
2. A proposed order for the Director of Administrative Services.

**II. RESTRICTIVE BIDDING (Personal Property Only)**

A. Procuring Agencies must seek restrictive bidding approval from the Materiel Administrator or designee when the bidding is limited to certain brands or manufacturers.

B. The Procuring Agency bears the burden to show that only a particular brand or manufacturer can fulfill the agency's needs by proving

1. The Procuring Agency researched contractor options for the desired personal property.
2. No other brand or manufacturer can provide the personal property, OR no other brand or manufacturer can provide the desired personal property at the required location.
3. The Procuring Agency cannot write the specifications more broadly to encourage competition.

C. To request approval for restrictive bidding, enter in an O8 in E1 and attach the following:

1. Completed SPB Form 2
2. Any supporting materials for SPB Form 2

D. If the Materiel Administrator or designee does not respond to a Procuring Agency's request to approve restrictive bidding within ten (10) business days of its submission, the request is denied by default.

**III. PUBLICATION FOR FEWER THAN FIFTEEN (15) CALENDAR DAYS**

A. The Materiel Administrator may waive the fifteen-day (15-day) minimum posting requirement contained in Neb. Rev. Stat. § 73-809 (1).

B. Procuring Agencies bear the burden to prove the following:

1. The fifteen-day (15-day) minimum posting requirement is inappropriate or incompatible with the circumstances of the procurement or contract, and
2. Granting a shorter minimum posting requirements will not undermine the openness and fairness of the procurement process. See Neb. Rev. Stat. § 73-802.

C. To request that a solicitation be published for fewer than fifteen (15) days, enter an O8 Requisition (services) or an O8 Requisition (goods) in E1 and attach the following:

1. Completed SPB Form 6
2. Any supporting materials for SPB Form 6

D. If the Materiel Administrator does not respond to a Procuring Agency's request that a solicitation be published for fewer than fifteen (15) days within ten (10) business days of its submission, the request is denied by default.

The foregoing policy is duly signed and executed on this 18<sup>th</sup> 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

