

State of Wisconsin Procurement Desk Guide

**State Bureau of Procurement
Division of Enterprise Operations**

September 2016



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

State of Wisconsin Procurement Desk Guide

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Foreword

This desk guide introduces the reader to State of Wisconsin procurement policies and procedures.¹ While this booklet gives meaning to major terms and concepts, it is by no means comprehensive and should not be relied upon as a substitute for the laws, codes and policies that govern state purchasing.

State procurement is the method by which agencies (including University of Wisconsin campuses) purchase goods and services. In general, procurement rules apply to any purchase paid from agency or campus accounts, regardless of the source of funding.

Most large organizations—public and private—regard procurement as a critical element in the effective acquisition of products and services needed to serve customers. Procurement creates savings and improves efficiency by identifying the right process, product, price, quantity, quality, and time and place of delivery.

¹ This guide does not apply to state building construction, highway construction, municipal or quasi-public procurement activities.

Wisconsin procurement laws are longstanding and based upon nationally-accepted best practices. State employees are required to follow procurement rules for several reasons:

- Provide vigilant stewardship of taxpayer funds
- Comply with Wisconsin Statutes and Administrative Codes
- Inspire public confidence in state government by following consistent and transparent processes
- Ensure the vendor community has access to open and fair competition for state contracts
- Avoid individual liability for illegal purchasing

Laws and Concepts

State Procurement Laws. Wisconsin procurement statutes provide a framework for the policies and procedures used by state agencies and campuses to acquire goods and services needed for day-to-day operations. State procurement laws and policies are established as follows:

- §16.70-16.78, Wis. Stats., apply to all general purchasing of goods and services by agencies and campuses
- ADM 5-11 and 50, Wisconsin Administrative Code, define purchasing and competitive bidding policies
- The State Procurement Manual sets forth detailed procurement policies and procedures

Procurement Concepts. Four major concepts provide the foundation for state procurement activities: competition, consistency, integrity and openness.

Competition. With limited exceptions, state law provides that agencies will award contracts to the lowest responsible bidder or highest scoring proposer. Competition brings about lower prices and higher quality goods and services. To create a competitive environment, agencies must develop solicitations with clear specifications that encourage bidding by multiple vendors.

Consistency. State procurement laws, policies and procedures apply equally to all agencies, campuses and vendors. Consequently, the State strives to use consistent processes across state government.

Agencies must provide fair treatment of all vendors. To that end, bids and proposals are compared and evaluated on an equal basis. The specifications presented in a solicitation must relate to the deliverables provided in any resulting contract. Consistency helps agencies conduct transparent and defensible procurements as expected by the public and vendor community.

Integrity. Procurement is not a mechanized process, but rather one carried forward by the actions and decisions of people. As such, procurement officials and evaluators must understand and fulfill their responsibilities at each stage of a procurement process. All decisions and activities must be measured against a standard of fairness that will withstand public and legal scrutiny.

Openness. Unclear or ambiguous communications with vendors and stakeholders can compromise even the best procurements. To avoid misperceptions, solicitations, notifications and award decisions must be written in clear, understandable language. In addition, all records relating to a procurement activity are open to public inspection and should be maintained in a central location.

Procurement Organization and Delegation

State Bureau of Procurement. §16.71, Wis. Stats., provides that the Department of Administration (DOA) “shall purchase and may delegate to special designated agents the authority to purchase all necessary materials, supplies, equipment, all other permanent personal property and miscellaneous capital, and contractual services and all other expense of a consumable nature for all agencies.” DOA implements this law through the State Bureau of Procurement (SBOP). The SBOP Director serves as the State Procurement Director.

SBOP administers procurement laws, policies and procedures on behalf of all agencies and campuses. SBOP's responsibilities include:

- Interpret statutes and administrative code
- Establish policies and procedures governing all agency and campus procurements
- Manage statewide procurements and contracts for goods and services used across state government
- Provide training and consulting services to agencies
- Maintain VendorNet, the State's online purchasing information system
- Perform management reviews of agencies and campuses for compliance with state procurement laws, policies and procedures

Delegation and Delegated Agencies. DOA, through SBOP, delegates procurement authority to the nine agencies that represent the highest levels of general purchasing in state government:

- Department of Administration
- Department of Children and Families
- Department of Corrections
- Department of Health Services
- Department of Justice
- Department of Natural Resources
- Department of Transportation
- Department of Workforce Development
- University of Wisconsin System Administration (UWSA in turn delegates procurement authority to campuses)
- University of Wisconsin -Madison

Each delegated agency employs a specially designated purchasing agent and staff to implement procurement laws and conduct agency-specific solicitations. In addition, the delegated agencies are represented on the Interagency Procurement Council (IPC), a workgroup consisting of procurement officials from the delegated agencies that examines and reviews purchasing trends, policies, and best practices.

Non-Delegated Agencies. Most non-delegated executive agencies receive procurement management services directly from the Consolidated Agency Purchasing Services (CAPS) section in the State Bureau of Procurement. CAPS conducts procurements over \$50,000 for its supported agencies, and each agency has a designated purchasing liaison to CAPS. CAPS-supported agencies include:

- Department of Agriculture, Trade and Consumer Protection
- Department of Financial Institutions
- Department of Military Affairs
- Department of Public Instruction
- Department of Revenue
- Department of Safety and Professional Services
- Department of Tourism
- Department of Veterans Affairs
- Office of the Commissioner of Insurance
- Office of the Governor
- Office of the Lt. Governor
- Office of the Secretary of State
- Office of the State Public Defender
- Office of the State Treasurer
- Board on Aging and Long Term Care
- Educational Communications Board
- Board for People with Developmental Disabilities
- Wisconsin National and Community Service Board
- District Attorneys Program
- Judicial Council
- Labor and Industry Review Commission
- Kickapoo Valley Reserve
- Tax Appeals Commission
- Wisconsin Arts Board
- Wisconsin Women’s Council

Contracts

Statewide Contracts. SBOP manages contracts for products and services commonly purchased across state government agencies and campuses. Statewide contracts offer several benefits including:

- Lower pricing
- Standard terms and conditions
- Consistent warranties and customer service requirements

Most statewide contracts are mandatory. However, agencies may in limited instances request waivers from mandatory contracts to meet specialized needs.

Examples of statewide contracts include paper, furniture, flags, janitorial supplies, financial services, vehicles and related supplies, information technology services, personal computers and software, office supplies and machines, electrical and plumbing supplies (maintenance, repair and operations), pharmaceuticals, and hazardous waste management.³

Agency Contracts. Statewide contracts meet some, but not all, of state government's needs. Scores of agency contracts exist with specifications tailored to meet the exact and unique requirements of an agency's mission or programs. Delegated agency procurement personnel manage internal solicitations that result in agency contracts; CAPS manages agency procurements on behalf of non-delegated agencies.

Examples of agency contracts include social and medical services, security services and equipment, clothing and uniforms, and specialized information technology solutions.

Trained professionals implement competitive bidding procedures for the procurement of all goods and services over \$50,000. A procurement professional's duties include:

³ Most statewide and agency contracts are available for use by municipalities, including Tribal governments.

- Maintain knowledge of procurement laws, codes, policies and procedures
- Lead official bid processes
- Ensure solicitations are open and fair, specifications are not restrictive and end user needs are met
- Verify bid pricing and maintain records

Methods and Procedures

Methods. Competitive bidding is the preferred method for selecting suppliers of goods and services. However, alternate methods may be considered if competitive bidding is justified as impractical or not in the best interests of the State. State law provides the following procurement methods:

- Competitive Solicitation (Request for Bids, Request for Proposals, Simplified Bidding, Best Judgment)
- Sole Source Waiver
- Emergency Procurement
- Waiver of Bidding Process
- Other Procurement Processes (Piggybacking, Collective, Intergovernmental, Cooperative)

Agencies must submit certain procurement actions to SBOP for approval prior to release of solicitations. Submissions must be in the form of a Request for Purchasing Approval/Authority or a Procurement Plan. The following actions require SBOP approval:

- Requests for proposals over \$50,000
- Intergovernmental or cooperative procurements over \$50,000
- Sole source and general waivers over \$25,000
- Legal services or vehicle purchases, regardless of amount
- Collective procurements, regardless of amount or over \$50,000 depending on the type of request
- Requests for bids for services over \$50,000

Procurements of \$50,000 or less may be undertaken by any agency or campus staff provided the needed product or service is not available on a mandatory contract. See simplified bidding and best judgment on page 9.

Competitive Solicitation. Competition among vendors tends to produce lower prices and higher quality goods and services. The type of commodity or service to be purchased and its estimated dollar value determine the method of competitive bidding to be used.

Official sealed solicitations are required for procurements over \$50,000. In general, an official sealed solicitation is a formal, legal process managed by a procurement professional. Solicitations are issued in written form and all responses must likewise be submitted in writing. Official sealed solicitations must provide at least seven days for response.

Official sealed solicitations are used for all statewide contracts and large or complex agency contracts. Agencies make solicitations available to the public and vendor community through postings on VendorNet, the State's procurement website. Official sealed solicitations are typically issued as a Request for Bids or a Request for Proposals.

Request for Bids. Most commodity and some service solicitations above \$50,000 are issued through a Request for Bids (RFB). An RFB is used when an agency is able to develop clear specifications for the item(s) to be procured. The RFB criteria must not restrict competition or limit the number of bidders. The award is made to the lowest cost bidder that meets all RFB requirements.

Agencies must use generic specifications—not trade or brand names—when describing an item to be procured. Multiple trade names may be used only to illuminate specifications. For instance, a bid for a mid-sized sedan might state that Ford Fusion, Chevrolet Impala and Dodge Avenger are *examples* of the vehicle desired by the State.

Request for Proposals. A Request for Proposals (RFP) may be used to solicit proposals where an award cannot be made strictly on specifications or price, and several firms are qualified to furnish the product or service. Rather than meet detailed and precise specifications, vendors are given an opportunity to propose how they would provide a product or service. However, price is typically a factor for consideration in an RFP.

An evaluation committee established prior to issuance of an RFP scores proposals. The committee must have at least three members, including at least one person from outside the procuring agency (preferably outside of state government). No political appointees may serve on an evaluation committee without prior approval of the State Procurement Director.

RFPs allow agencies to negotiate with multiple proposers prior to making an award. In addition, proposers may be asked to submit a best and final offer addressing price and/or service levels following their original submissions.

Contractual Services over \$50,000. Solicitations for services greater than \$50,000 have certain additional requirements:

- A cost benefit analysis must be completed comparing the estimated cost of contracted staff to state employee costs (see page 14).
- The solicitation must include protest and appeal provisions. Vendors may file a protest with the procuring agency following the release of a solicitation or upon issuance of a notice of intent to award a contract. Protest decisions may be appealed to the DOA Secretary. Appeal decisions may be taken to Circuit Court.

Simplified Bids. Agencies need not publish an official sealed bid for goods and services estimated to cost over \$5,000 through \$50,000. Rather, any employee may obtain quotes from three viable vendors via telephone, fax, catalog or the Internet. Simplified bidding may not be used to purchase a commodity or service otherwise available on a mandatory contract. Agencies must document the results of simplified bidding.

Best Judgment. Agencies may procure from any vendor when the commodity or service costs \$5,000 or less. Best judgment purchases may be conducted by any employee, but may not be used for goods or services available on a mandatory contract. Note: State law requires printing must be bid (see page 13 for details).

Sole Source Waiver. Sole source waivers are available when one or more circumstances exist:

- Unique or proprietary service available from only one source
- Certain grant monies are involved that cannot qualify as an exemption, require subcontracts and specify the contractor
- A public emergency exists where urgency does not permit competitive solicitation
- The purchase is subject to substantial time pressures (*not* including administrative delays or processing confusion)

Sole source waivers for purchases over \$25,000 require the Governor's approval. The State Procurement Director or a specially designated procurement agent in a delegated agency may approve at \$25,000 or less.

Emergency Procurement. Emergency procurement procedures are available when there exists a threat to public health, safety or welfare, or the Governor has proclaimed an emergency. Within three business days following an emergency purchase, agencies must write a justification stating the nature of threat, the need for unforeseeable immediate action, the reason why standard procurement processes could not meet the purchasing need, and the steps taken to obtain competition. Emergency purchases over \$25,000 require approval by the State Procurement Director and the DOA Secretary.

Waiver of Bidding Process. A competitive procurement process may be waived in limited situations where one or more of the following circumstances exist:

- **Uniqueness.** A product or service is one-of-a-kind and available from only one supplier
- **Patent or proprietary.** The features of a product or service are available from only one source and not available through competition
- **Intrinsic value.** A product is procured based on its historic, artistic or educational value
- **Emergency.** The risk of human suffering or substantial damage to property requires immediate action
- **Bidding is not possible.** An award cannot be made strictly on specifications or price
- **Substantial time pressure.** Time pressure exists beyond the agency's control (*not* including administrative delays or confusion in processing paperwork necessary for approval)

All waivers require a written justification. Delegated agencies may approve waivers \$25,000 or less; however, waivers over \$25,000 require the Governor's approval and a legal or public notice. Service waivers over \$50,000 also require a cost benefit analysis unless the purchase qualifies for an exception. (see page 14)

Other Procurement Processes. Agencies may purchase from certain contracts that did not result from an SBOP or internal solicitation:

- **Piggybacking.** Agencies and campuses may use a contract developed by another Wisconsin state agency or campus. Agencies must report piggybacking to SBOP
- **Collective Purchasing.** Agencies and campuses may use a contract from another state government or the federal government with prior approval from SBOP
- **Intergovernmental Purchasing.** Agencies and campuses may purchase *directly* from federal, state or local governments; intergovernmental purchasing must be approved by SBOP through a submitted procurement plan
- **Cooperative Purchasing.** Agencies and campuses may use a Wisconsin local government contract with SBOP approval

Special Statutory Considerations

Badger State Industries (BSI). BSI is a Department of Corrections vocational and work skills development program. State law requires agencies and campuses to offer BSI the opportunity to supply goods or services if BSI is able to provide them at a price that is comparable to one which may be obtained through competitive bidding/proposals and is able to conform to the specifications. BSI contracts include furniture and signage. BSI contracts are mandatory.

State Use Program. Agencies and campuses must purchase from State Use contracts awarded to community-based work centers that offer training and jobs to individuals with severe disabilities. Statutes permit a work center to qualify for a contract if it meets the State's specifications and provides the good or service at or below fair market value. Examples of State Use contracts include clothing, mops and brooms, writing instruments, spices and seasonings, wood stakes and lathes, alkaline batteries, admission kits, DNA kits, toothpaste and floor pads. The Governor-appointed State Use Board oversees the program; all contracts are mandatory.

Minority Business Enterprise (MBE). Statutes provide that agencies "shall attempt to ensure that 5% of the total amount expended ... in each fiscal year is paid to minority businesses." In addition, state law allows agencies to apply a price preference of up to 5% on behalf of certified MBEs. The MBE goal and preference apply only to minority businesses certified by the Department of Administration Supplier Diversity Program.

Disabled Veteran-Owned Business (DVB). Statutes provide that agencies "shall attempt to ensure that 1% of the total amount expended ... in each fiscal year is paid to disabled veteran-owned businesses." In addition, state law allows agencies to apply a price preference of up to 5% on behalf of certified DVBs. The DVB goal and preference apply only to disabled veteran-owned businesses certified by the Department of Administration Supplier Diversity Program.

Reciprocity. Wisconsin law does not provide a preference for in-state businesses. Rather, Wisconsin treats another state's vendors as our vendors are treated there (i.e., Wisconsin penalizes an out-of-state vendor if its state imposes an in-state preference). Vendors from states without a preference compete on an equal basis with Wisconsin vendors. The absence of an in-state preference allows Wisconsin businesses to compete for contracts in other states without penalty.

American-Made Preference. Agencies rarely use the American-made preference except in the case of a tie bid. In addition, state law requires that agencies will show no preference in favor of the United States when making an award that involves a member country under the World Trade Organization Government Procurement Agreement under certain circumstances.

Contract Compliance. Statutes provide that vendors may not discriminate against any employee or applicant and must take affirmative action to ensure equal employment opportunities. The contract compliance law applies only to vendors with contracts larger than \$50,000 and a workforce of 50 or more employees. The law also covers grant contracts. VendorNet lists ineligible vendors.

Failure to Collect Taxes. Agencies may not contract with vendors that the Department of Revenue has identified as not collecting and remitting Wisconsin sales or use tax. VendorNet lists ineligible vendors.

Prompt Payment. Agencies and campuses must pay interest if they fail to pay properly submitted invoices within 30 days of receipt. Agencies may avoid paying interest if goods or services are not received or do not perform satisfactorily. All agency interest payments are reported annually to the Legislature.

Printing. The Wisconsin Constitution and statutes require bidding for printing valued at \$50 or more. Official sealed bids must be used for printing contracts over \$50,000. When the estimated cost is \$50,000 or less, the agency or campus must conduct a simplified bid.

Legal Services. Statutes require that no agency may employ outside legal counsel unless approved by the Governor. All requests for procurement of legal services, regardless of dollar amount, must be processed through SBOP.

Vehicles. State law provides that no agency may purchase a motor vehicle or aircraft unless approved by the Governor. All requests to purchase a motor vehicle or aircraft must be processed by SBOP. Major bids for automobiles, light duty trucks and law enforcement vehicles are conducted annually. However, special purpose vehicles may be approved and purchased on a case-by-case basis.

Cost Benefit Analysis (CBA). With limited exceptions, agencies must complete a CBA for each contractual service of more than \$50,000. In general, CBAs compare the costs of employing contractors to the costs of state employees. CBAs may also state mitigating factors:

- Market strength
- Quality and nature of services required
- Risk and time factors
- Specialized skills
- Legal barriers

A CBA is not required for the following:

- Services that federal or state law requires to be performed by contract.
- Services that must be provided per a contract, license, or warranty, by the original equipment manufacturer or publisher.
- Services that cannot be performed by state employees because the state lacks the required infrastructure.
- Web-based software application services that are delivered and managed remotely.

Contract Sunshine. State law requires agencies to post online orders and contracts of \$10,000 or more. The Contract Sunshine website is managed by the Wisconsin Ethics Commission.

Resources

VendorNet. VendorNet is the State's online purchasing information system available on the Internet at <http://vendornet.wi.gov>. VendorNet provides:

- General purchasing information
- Automatic RFB and RFP notification to registered vendors
- Access to the State Procurement Manual and other policy and procedure information
- Downloadable forms
- RFB, RFP and contract search
- State bidder list
- Bid and contract posting

State Procurement Manual. The [State Procurement Manual](#) provides all policies and procedures for obtaining materials, supplies, equipment, services and all other items of a consumable nature. SBOP maintains and implements the policies provided in the Manual. The Manual is available to agencies, vendors and the public through VendorNet.

WISBuy. [WISBuy](#) is an online shopping and ordering website created for agencies to streamline the purchasing process and ensure purchases are made at State contract prices. Users include state agencies, University of Wisconsin campuses and Wisconsin municipalities. WISBuy is online at <http://doa.wi.gov/Divisions/Enterprise-Operations/State-Bureau-of-Procurement/WISBuy>.

Whom to Consult for Help. All delegated agencies employ procurement managers or specialists who should be consulted for procurement information and advice. Non-delegated agencies should contact their assigned procurement specialist in the Consolidated Agency Purchasing Services (CAPS) section. These trained professionals are available to provide assistance for nearly all procurement questions.

Highly specialized or particularly complex issues may arise from time to time that require advice from the SBOP personnel who manage and implement procurement policies. In those instances, agencies and campuses may contact:

Rick S. Hughes, Director
State Bureau of Procurement
(608) 266-1558 or rick.hughes@wisconsin.gov

Parting Advice

1. **Perception matters.** The public has great interest in state procurement activities. Avoid any appearance of impropriety that may place in doubt the integrity of a procurement activity.
2. **Beware of vendors bearing gifts.** Do not accept gifts or gratuities from vendors or grantees.
3. **Let the professionals handle it.** Do not communicate with interested vendors while an RFB or RFP is in process. Rather, refer all contacts to the procurement manager in charge of the solicitation. Wait until all protests and appeals are resolved before communicating with bidders or proposers.
4. **Measure twice, cut once.** Do not take a chance on making an incorrect decision. Refer purchasing questions to your agency procurement staff or CAPS contact. Confer with SBOP on complex matters and prior to answering protests.
5. **Culture counts.** Create and support an agency culture for procurement activities based upon competition, consistency, integrity and openness.

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Notes

An online version of the State of Wisconsin Procurement Desk Guide is available on VendorNet and at <http://vendornet.state.wi.us/vendornet/vguide/ProcurementDeskGuide.pdf>.

Underlined words and phrases in the printed version of this document are linked in the online version to other Internet resources.

State Bureau of Procurement
Wisconsin Department of Administration
P.O. Box 7867
Madison, Wisconsin 53707

1-800-482-7813 or (608) 264-7897

<http://vendornet.wi.gov>