



State Procurement Manual

Department of Administration, State Bureau of Procurement

Number
PRO-509

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SCOPE: The purpose of this policy is to define the authority for the State Use Program, the role of the State Use Board, and establish procedures for doing business with certified work centers (WC) participating in the program.

POLICY: The State Use law requires agencies to procure needed goods or services from certified work centers.

State Use Board

The State Use Board provides general oversight of the program through its duties as provided in §16.752(2), Wis. Stats. The Governor appoints members to the State Use Board in accordance with §15.105(22), Wis. Stats..

State Use Program

Per §16.752(12), Wis. Stats., state agencies must purchase certain products and services from Wisconsin's certified work centers employing persons with severe disabilities. The State Use Program was created to administer the law that provides state agencies with a fair price, good quality and on-time delivery. The State Use Program is administered by the Department of Administration through the State Bureau of Procurement (Bureau). Questions can be directed to doadeosbopprograms@wisconsin.gov.

State Use Directory

A directory of WCs certified to do business under the program, and the goods/services covered by existing WCs, can be found on the State Use Program website at <http://stateuseprogram.wi.gov/>. Agencies will refer to this directory when executing purchases at all purchasing levels.

Work Center Contracts

The Bureau administers statewide contracts with certain WCs. An agency may award also a contract or continue to contract with a WC under conditions outlined herein. For any work center contract to be established or terminated, approval by the State Use Board is required.



Legal Authority

Wis. Stats. 16.752; 104.01(6); 104.07

Agencies Affected: All, unless otherwise noted

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Exclusions and Other Considerations

This policy does not apply to the following goods, services or transaction types:

- Non-procurement transactions. See PRO-504, Grants and Other Non-Procurement Transactions.
- Construction contracts that are subject to 16.855 or 66.0901, Wis. Stats
- Purchase of printing, stationary and signage. See PRO-505, Printing Procurement Policy and Procedure and PRO-310, Procurement of Signage.
- Purchase of vehicles, legal services, general waivers, non-competitive negotiation, or emergency procurements. See PRO- 210, Request for Purchasing Authority (RPA) Policy and Procedure.
- Purchases from the industries of the Wisconsin Department of Corrections. See PRO-507, Procurement from Wisconsin Bureau of Correctional Enterprises.
- Purchases from existing mandatory statewide contracts with suppliers that are not WCs. See PRO-402, Statewide Contracts: Standards and Utilization. If an existing vendor will lose more than 15% of its gross yearly sales or production upon loss of a contract, the contract will be exempt from the WC program.

These requirements do not preclude the need to meet all policies and procedures related to the purchase of contractual services, where applicable. See PRO-204, Contractual Services Procurement.



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PROCEDURE: Contracts awarded to WCs do not require a public/legal notice.
 I. Sourcing with WCs: Directory Purchases

If the agency is purchasing a goods/services listed on the State Use Directory and there is no mandatory statewide contract, the agency will source among WCs only, as follows:

- A. Develop specifications, terms, and a stipulation that WCs must meet all appreciable contribution requirements of §104.01, Wis. Stats.
- B. Identify the WCs (if any) that provide the required good/service by searching on the State Use Program Web site. If no WC is listed, the agency will follow standard purchasing procedures. If only one WC is capable of meeting specifications, the agency may begin contract development without submitting an RPA.
- C. For an existing agency contract with a non-WC supplier, begin solicitation from WCs before the renewal/expiration date. Based on the nature of the procurement, the agency will allow sufficient lead-time to develop a contract with a WC. The agency may establish a cutoff date for the negotiation process. If a contract is not developed by that date, the agency may proceed with standard purchasing procedures.
- D. Follow the procedures established for the appropriate dollar level as prescribed in PRO-101, Procurement Definitions and Thresholds. The WC response must address all specifications.

1. Best Judgment



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The agency need only contact one WC that, in the agency's judgment, will provide a quality product at a competitive price.

2. Simplified Bidding

The agency will solicit at least three (if available) of the WCs listed on the State Use Directory for a quote.

3. Official Sealed Bidding or Request for Proposals (RFP)

The agency or the Bureau will contact all WCs listed for the commodity/service on the State Use Directory to provide notice of the opportunity.

E. If more than one WC responds to a solicitation, the agency will consider the following parameters in its award of a contract:

1. 75% direct labor requirement,
2. Fair market price,
3. Ability to meet specifications,
4. Ability to meet delivery requirements,
5. Quality control, and
6. References

F. Determine fair market price. See section V.



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- G. If all responses to the solicitation are equal, the award will be made according to PRO-305, Basis for Bid Awards or PRO-308, Basis of Award for Competitive Negotiation (RFP), whichever is applicable.
- H. For contracts for services that are over the official bidding threshold, the agency will follow notification requirements of PRO-309, Notice of Award for Competitive Solicitations.

II. Sourcing with WCs: Purchases Not on Directory

- A. If the agency is purchasing a good or service that is not listed on the State Use Directory and there is no mandatory statewide contract, the agency will follow the procedures established for the appropriate dollar level as prescribed in PRO-101, Procurement Definitions and Thresholds.
- B. If a WC submits a responsive bid or proposal, the agency will use all other responsive bids/proposals to determine fair market price and award the contract accordingly.

III. WC Solicitation of a Contract

- A. A WC may 1) identify a current contract opportunity between an agency and a non-WC supplier and formally request the opportunity to obtain the contract or 2) request development of a new contract when an agency need is identified.
- B. If an agency contract opportunity is requested, the agency will work with State Use Program staff to determine the impact on



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the agency, on existing suppliers, and proper consideration of the parameters in section I, E and F.

- C. To bid for a contract under the State Use Law, in addition to submitting a responsive bid/proposal to the procuring agency, a certified WC must complete and submit a Contract Analysis and Appreciable Contribution Work Sheet – *Initial Cost* (SUB-008). If form SUB-008 is not submitted, any bid/proposal from a WC will be treated as a non-WC bid/proposal and will not result in a State Use Program contract.
- D. If a determination is made to proceed with a WC contract, the agency will give the WC an opportunity to contract upon the existing contract's renewal or expiration, whichever is sooner.

IV. WC Research and Development (R&D)

- A. A WC may request a R&D period for a future contract from the State Use Board if no other WC is listed on the State Use Directory. In this situation, a WC may not currently be able to meet contract specifications but desires to develop such capabilities.
- B. Once granted R&D rights for development of a contract by the State Use Board, a WC may proceed to develop its capabilities knowing that a contract may be made available. For existing contracts, the agency will continue to contract with the non-WC supplier during the development period. If another WC requests the same contract, it will be placed on a waiting list.
- C. R&D periods are established for 90 calendar days. The State Use Program Coordinator may grant one additional 90-



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calendar day extension if progress has been made in the development of the commodity/service. Additional extensions must be approved by the State Use Board (SUB). All extension requests are made to the State Use Program coordinator in order to be placed on the SUB meeting agenda.

- D. A WC may be granted no more than three R&D period requests for different commodities/services at one time.
- E. A WC may request information from the agency during the R&D period (e.g. specifications, contract spend history).

V. Fair Market Price

- A. Fair market price must be determined for an initial price when awarding a new contract, for any price increases to an existing contract or at annual review.
- B. A WC must complete and submit a Contract Analysis and Appreciable Contribution Work Sheet – *Initial Cost* (SUB-008).
- C. A WC’s cost analysis is not weighed in a proposal evaluation unless similar information from non-WC vendors would also have been used in a similar procurement.
- D. When a WC requests a price increase, the WC must complete and submit the Cost Analysis and Appreciable Contribution Work Sheet—*Price Increase* (SUB-007).
- E. Preparing and reviewing a cost analysis and appreciable contribution work sheet (SUB-008 or SUB-007):



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1. A cost analysis is used as a basis for establishing the fair market price of a commodity/service. A WC must:
 - a. Adhere to Cost Analysis and Appreciable Contribution Work Sheets Definitions and Guidelines; and
 - b. Complete the necessary work sheet applicable to either an initial cost or a price increase.

2. The contracting entity (i.e., the Bureau for a statewide contract or an agency for its own contract):
 - a. Requests any additional or back-up information necessary to clarify the work sheet.
 - b. Reviews the work sheet using the following criteria, as well as other market indicators to determine fair market price:
 - c. The cost of commodities/services if purchased in similar quantities from a non-WC vendor that is currently selling similar commodities/services; for example current state contract prices must receive serious consideration.
 - d. The average of bids/proposals, including the low bid, on the most recent solicitation which are not more than thirty-five percent (35%) above the low bid.
 - e. Appropriate indices such as the consumer price index, the consumer price index for urban wage earners, etc.

3. When the WC is requesting an initial contract or a price increase on an existing contract, develop specifications



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and obtain samples from a current WC contract, then solicit bids and samples from non-WC vendors.

- F. If the WC’s price compares favorably to the fair market price, and the WC meets the appreciable contribution requirements, then the contracting entity enters into a contract or amends an existing contract.
- G. If a WC is not at fair market price, the agency will:
 1. Inform the WC it has not met the fair market price criteria;
 2. Provide evidence related to the calculation of the fair market price;
 3. Specify a response date by which the WC must challenge the fair market price calculation or lower their price; and
 4. Negotiate with the WC if they receive a written response challenging their fair market price calculation. If they cannot reach an agreement, the agency will provide a written notification to the Bureau.
 5. For disputes between the agency and the WC regarding fair market price, the agency will:
 - a. Document all actions taken to resolve the conflict.
 - b. Contact the coordinator of the State Use Program if a WC responds but is not awarded the contract due to a failure to resolve the conflict.



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6. The coordinator will review the response, facilitate further negotiation and make the final resolution. For statewide contracts, the State Use Coordinator will provide all information to the State Use Board who will make the final resolution.
 - a. If the agency or coordinator determines that the cost is at fair market price, the agency will proceed in developing the contract.
 - b. If agreement still cannot be reached, the coordinator may terminate contract development.

VI. Appreciable Contribution

- A. A certified WC must make an “appreciable contribution” or add value to the commodity. Appreciable contribution must be demonstrated. Factors used in assessing appreciable contribution may include:
 1. A WC must account for appreciable contribution or the value added to the commodity. Appreciable contribution is determined by subtracting the cost of any raw materials or components used to manufacture or to assemble the commodity from the proposed selling price.

The law states that the work center must make an appreciable contribution to the commodity.

Example:

Proposed selling price, per item: \$ 2.50



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Subcontract/joint venture costs: (.00)

Material/component costs: (\$1.90)

Added value/appreciable contribution: \$.60

2. Availability of the commodity from market sources in the form used by agencies.
3. Change in the raw materials purchased by the WC to the final commodity that the WC sells to the state, and that makes the commodity useful for the purpose for which it is acquired.
4. Number of persons with severe disabilities providing direct labor.

Example: The State Use Board determined that purchasing toothpaste in 50 gallon drums, inserting the toothpaste into tubes in sizes required by agencies, affixing caps to the tubes and employing seven persons with severe disabilities in the production, satisfied the appreciable contribution requirements.

B. Subcontract/joint venture

A certified WC may enter into a subcontract or joint venture with a for-profit entity. However, any appreciable contribution made by the for-profit entity will not be included as part of the certified WC's appreciable contribution. When two certified work centers enter into a joint venture, the appreciable contribution made to the commodity by both entities is included in the appreciable contribution calculation.



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- C. Once all required documents have been submitted and reviewed, the State Use Program Coordinator will submit the forms to the State Use Board for approval.
- D. A WC's failure to meet or, after receiving a state contract, to continue to meet the appreciable contribution requirement will result in the state's not awarding a contract or terminating its contract with the WC for the particular commodity.
- E. An agency will discuss its concerns about appreciable contribution with the Board prior to the Board taking action to award or to terminate a contract and will provide the WC with a written decision.
- F. A WC may appeal a decision of the State Use Program Board concerning appreciable contribution to the State Use Board by writing to: Chairperson, State Use Board, 101 E. Wilson St., 6th Floor, P.O. Box 7867, Madison, WI 53707-7867. Any WC appeal will be received by the State Use Board within thirty (30) calendar days of the State Use Program Board's decision and must detail reasons for the WC appeal.

VII. Contract Administration/Termination

- A. An order may be terminated by the agency if a WC fails to meet specifications, terms and conditions, performance or delivery requirements. Every effort to negotiate adjustments will be made before canceling the order. If an agency's decision is cancellation, the agency will follow PRO-413, Reporting Supplier Complaints, and notify the State Use Program staff.



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- B. State Use Board approval is required to cancel a contract in its entirety. The Bureau will arrange for the agency to present its recommendation for cancellation to the State Use Board.
- C. If the Board suspends a WC's eligibility to provide specific commodities/services in the program, this information will be reflected in the State Use Program Directory.

REFERENCE: Cost Analysis and Appreciable Contribution Work Sheet—*Price Increase* (SUB-007)
Appreciable Contribution Work Sheet – *Initial Cost* (SUB-008)



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