



# **State Procurement Manual Policy Reform**

Frequently Asked Questions (FAQ)

Dated: September 6, 2019

The new State Procurement Manual policies were published on August 15, 2019 and become effective on September 16, 2019. During implementation, the State Bureau of Procurement is centrally receiving and responding to questions from agencies about the impacts of the new manual on their operations.

### **General Questions**

- Is there a policy covering whether or not we can require a site visit or pre-bid conference?

No, there is not specific policy on this matter. It is up to an agency if they consider it mandatory for a bidder to attend a site visit or conference. If attendance to a pre-bid event is a mandatory specification, it would be treated like any other mandatory specification. See PRO-202.

- Do we have to do additional notice to the supplier diversity program and certified work centers when we issue a bid?

No, your use of required procurement systems provides notice of bidding opportunities. When procurement plans are received, the Bureau also shares them with these noted programs.

### **PRO-101, Procurement Definitions and Thresholds**

- Does exactly \$5,000 go with best judgment or into a simplified bid? The manual used to say "\$5,000 or less" was best judgment but now says "less than \$5,000." I suspect this is related to the PO threshold now being "\$5,000+" but wanted to make sure of what happens at exactly \$5,000 - 1. A PO is required, but the purchase could still be best judgment, OR, 2. A PO and simplified bid are both required.

The intent was to 1) maintain the thresholds in place from the prior Manual as it relates to best judgment and 2) to align the threshold that triggers a required purchase order to align with that of best judgment. The threshold description for best judgment has been modified from "less than \$5,000" to "\$5,000 or less" to clarify how an agency should handle a transaction valued at exactly \$5,000.

- Is there a listing of the new terms identified in the procurement manual? Will you add the new umbrella terms to 101 or otherwise explain them? For example, "sustainability", "collaborative contracting", etc.

These are not definitions set forth in statute or admin code, but are terms created to provide clarity on related topics in procurement. They are explained and described in the individual policy that they apply to (e.g. "collaborative contracting" is PRO-502). We will review whether or not these need to be added to PRO-101 in the future. Official definitions are contained in PRO-101, Procurement Definitions and Thresholds.

## **PRO-102, Delegation**

- Does PPI apply to agencies and the tools they use to issue sub-delegation?

This form is only required by DOA for those agencies applying for direct, full procurement delegation. The Bureau does not require a PPI to be used by a delegated agency when it is extending sub-delegation authority to any office or program within its agency. However, this does not mean that the form cannot be used by an agency at the discretion of their special designated agent. Further, the Bureau does expect that agencies use a similar form and/or procedure in their sub-delegation activities to ensure that any sub-delegees understand the limits of their authority.

## **PRO-105, Procurement Record Retention and Access and New Form DOA-3840**

- Would you expect to see the 3840 checklist (attached) filled out for every best judgment hotel, airline, and conference registration transaction, even p-card? We are strategizing about what to say to our cardholders and travelers about their best judgment p-card purchases.

The form sets a standard for procurement recordkeeping and is intended to be a tool that standardizes proper recordkeeping across all agencies and campuses. However, we understand the potential inefficiency in requiring the form to be completed for every purchase in the best judgment range. The instructions for the form will be modified to indicate that the tool will be completed and kept on file for all records except best judgment.

- Will the new record checklist be retroactive?

No. The compliance date for use of the new DOA-3840 is September 16, 2019.

## **PRO-106, Unauthorized Purchasing**

- Is there a dollar threshold for this requirement to ask for an after the fact approval? For instance, if the program thought that a project was going to come in under \$5,000 but when all of the work on a time and material contract was concluded it came in at \$5,100. They did not do bidding. Does that require an after the fact approval?

Agencies with formal delegation from the Bureau of Procurement are expected to follow a review process similar to what the Bureau performs for unauthorized purchases at or below the official sealed bidding threshold. If the agency, in its review of the unauthorized purchase, determines that no competitive process was done and the value is over \$25,000, regardless of delegation status, the agency will send the transaction to the Bureau of Procurement.

The “after the fact” approval process for CAPS agencies is at all amounts, as CAPS agencies do not have direct, formal delegation to waive competitive bidding at any level; the same applies to agencies that are neither CAPS or formally delegated.

### **PRO-107, Serial Contracting**

- Does serial contracting apply just to satellite or central office?

Both depending on how an agency subdelegates (for those agencies with delegation from the Bureau).

- What does serial contracting “come down to”?

Beyond the standards set in the policy, agencies are expected to use the data they have access to to determine, in good faith, the proper procurement method based on the period of time you plan to spend with the selected supplier. For example, if your intent is to obligate your agency to make purchases over a 3 year period based on the language in a contract you sign, but your agency breaks up the 3 years of spend in 1-year increments to avoid the proper bidding process, that would be considered serial contracting.

- What about online ordering books on Amazon or other online retailers? Does serial purchasing depend on the exact item or the item category? Meaning if we’re ordering different books is that serial contracting?

This depends on whether there’s a competitive market for products you’re buying and if, looking at spend over a fiscal year, would a bid have been feasible.

### **PRO-108, Endorsement, Testimonial and Promotional Advertising**

- If a supplier asks to publish materials that promote the fact that they received a state contract, who is responsible for reviewing those materials—the agency or SBOP?

The procuring agency is responsible.

### **PRO-109, Unlawful Benefits to State Employees and Public Officials**

- Does the statement on procurement ethical principles apply outside of the purchasing function?

Yes, it applies to anyone who can make purchasing decisions or have an impact on the administration of a procurement contract.

### **PRO-201, Procurement Plans and Revised Form DOA-3720**

- Since the Bureau has been regularly asking if the agency will be conducting a CBA for services procurements during the process of approving a proc plan, would you add a section to the form for this?

Yes, it will be added.

### **PRO-202, Specifications and Standards**

- Can we keep internal standards (e.g. DOC program standards) even though we aren't issuing bids that contain "standard" specs (as provided by statute)?

Yes.

### **PRO-204, Contractual Services Procurement**

- In section II.C.4. on protests the section says we are to send a copy of our protest decision to the DOA Secretary. Are we to send this directly to the DOA Secretary, bypassing SBOP, or are we to send this to SBOP and SBOP will send it to the DOA Secretary?

A copy of the agency's written decision issued to the protestor is sent directly to the DOA Secretary. Further, the agency's special designated agent will provide a copy of the response to the SBOP Director.

### **PRO-205, Cost Benefit Analysis (CBA), Continued Appropriateness and Justification of Need for Services**

- Does justification of need apply at \$25,000?

No, it is tied to the official bidding threshold of \$50,000.

- RFB/RFP - if we estimate the annual spend to be less than \$50k on the Proc Plan but then the bids/proposals come in over \$50k - do we need to do a CBA or CA for the subsequent terms?

Yes. No modification to the proc plan is needed in this specific scenario, but if the agency sees that the results of a bid or RFP came in above \$50,000 annually, a CBA will be done and reported using applicable procedures and retained by the agency in the record.

- If we anticipate the annual spend to be less than \$50k how should we indicate this on the new CBA form (could a check box be added)? Will SBOP screen Proc Plans for those less than \$50k or should we indicate somewhere on the Proc Plan that a CBA will not be done due to estimated annual spend below \$50k.

The procurement plan form will be modified to include a field for an agency to identify it will either conduct a CBA or retain sufficient document to support an exemption. If the

annual amount of the procurement will be under \$50,000, the agency can identify that on the existing narrative form DOA-3821a.

- Waivers - if the DOA-3046 was intended to serve as the JON, can we refer back to this form when completing the DOA-3821A rather than duplicating information? Same questions as above, if we anticipate the waiver spend to be less than \$50k should we indicate this on the CBA form? If we do a request for service under the waiver and the quotes come in over \$50k (higher than our estimate of below \$50k) - should we do a CBA then?

Now that the Justification of Need and CBA narrative forms have been merged, section 4 of the current RPA form DOA-3046 will be removed to avoid duplication of content across official forms.

- If your service provider is another agency, do you have to do a CBA?

No. Because a payment made to another agency is considered a non-procurement transaction, a CBA is not required for this scenario.

### **PRO-303, Simplified Bidding**

- For example, an athletics department needs timers and they have reached out locally to vendors, but this bid is very dependent to the proximity of the vendor to the campus. Vendors who are outside of a location choose not to bid; that has been our experience. Do I need to identify that they choose not to bid, or do I need to still reach out to them (or alternate vendors) to request a bid?

The policy requires you to use “all reasonable efforts” to get at least 3 “appropriate bidders” and where those efforts don’t produce 3 bids, document your efforts. This documentation could come in multiple forms (post on systems; show outside-of-system outreach, etc). But yes, you do need to attempt to bid the service.

### **PRO-304, Official Sealed Bidding**

- When providing the required forms to bidders as part of the solicitation, is inserting a link to the general VendorNet forms page sufficient to count as “providing the form”?

The policy requires agencies to “provide the requisite forms, information and instruction on how to submit a responsive bid.” As such, we consider it most appropriate for you to provide them with the specific forms they need to complete rather than pointing them to a webpage to find them.

- Now that the procurement manual is done, do we need to revisit the RFB template?

We will review to determine if any language changes are required.

- Can you negotiate with those that aren't the lowest bidder?

If your method of award is established to allow a multiple award situation, and you subsequently issue a notice of award that identifies those multiple bidders, then yes you can negotiate the terms and price with all of them as they are all then classified as "lowest responsive, responsible bidders".

- If you are negotiating terms and conditions that were not a part of the mandatory requirements, and you cannot come to an agreement, what happens?

This is one of the reasons why the notice of award, as a standard, includes the statement "this letter does not constitute a contractual commitment". Yes, it is possible for a bidder who is identified as apt to be awarded a contract does not ultimately sign that contract if the parties can't agree.

- Can you accept information from a bidder after the bid due date?

Yes, through a clarification, you can as long as it does not constitute new pricing and aligns with the reasons to clarify a bid response as outlined in policy.

- What if an agency does not see the need to clarify a bid and is later challenged for not clarifying?

The policy states "the procuring agency reserves the right to clarify", it does not create an affirmative obligation.

### **PRO-307, Evaluation Committee (RFP)**

- In section I.C. it says that permission needs to be obtained if we want an "appointee" on an evaluation team. Can you define appointee?

This state employees as identified in 2006 Wisconsin Executive Order 137 (cited in the footer of the policy document), "any employee of the Office of the Governor, and any unclassified Agency Head, Commissioner, Deputy Agency Head, Executive Assistant, or Division Administrator."

### **PRO-308, Basis of Award for Competitive Negotiation (RFP)**

- Please clarify how we should treat a cost BAFO which was requested, but not revised from the original submission.

This policy changes the procedure for how cost scores are considered between the proposers who are invited to BAFO and those who are not (i.e. those not considered reasonably apt to receive an award). The policy clarifies that revisions to cost scores should be run only among those short-listed proposers.

However, proposers still have a right to decline a BAFO of any kind. If they do so, their original cost would remain the same. But if the other proposers invited to the BAFO do opt to change their costs, the actual cost score of the proposer who deferred may change based on how their price now compares to the modified costs submitted from the other proposers invited to BAFO.

### **PRO-402, Statewide Contracts: Standards and Utilization**

- Are you going to modify this PRO piece so that it no longer references the 150K approval process?

Any changes necessitated by the changes to the \$150K approval process announced by DOA on August 21, 2019 will be made as soon as practicable.

- Section II.B. states when a contract needs to be generated. Can you confirm that the following do not need to have a contract generated for them: Interagency procurement, intergovernmental procurement, collaborative purchases not on a procurement plan, simplified bids covering less than one year, best judgement POs?

Agencies are not required to generate transactional contracts for any of transactions not specifically listed in PRO-402. Agencies are not prohibited from creating transactional contracts for the types of purchases listed above but they are not required.

### **PRO-404, Standard Terms and Conditions**

- The new policy states that certain terms may be negotiable with legal review. What if you negotiate changes, but then the supplier sees the original version come through as part of the printed purchase order (because a short-form version of DOA-3054 is automatically sent with state purchase orders)? How would you handle that conflict?

This is not addressed in published policy. However, in practice you could address it with a governing “order of documents” or “order of precedence” on the purchase order, or a statement clearly identifying to the supplier that the terms that apply to your contract are the ones that were negotiated.

### **PRO-405, Contract Administration**

- Does the named Contract administrator need to be a person, or can it be a position?

It can be a position (e.g. Food Service Program Manager), but the agency would need to ensure that a named person then has the duties of contract administration as part of their responsibilities.

### **PRO-411, Contract Cancellation and Termination Procedures**

- Is the new contract termination option represented in language in the current RFP or bid template on VendorNet?

Not at this time. We will review whether a change is necessary.

### **PRO-413, Reporting Supplier Complaints**

- This PRO piece suggests there is a list of vendors that have failed to perform. Can we call to find out if our low bidder is on the list? Who do we contact for this? Is it posted somewhere?

PRO-413 indicates that SBOP has authority to place vendors on a list for unsatisfactory performance but no formal process exists for creating and maintaining a list. As such, there is no published list for agencies to reference at this time.

### **PRO-502, Collaborative Contracting**

- Is a purchase from tribal government considered intergovernmental or cooperative?

Cooperative.

- Is there a definition of “consortium”?

No. The language from applicable statute refers to allowable consortia contracting states “regional or national consortium composed of nonprofit institutions that support governmental or educational services, or through a contract established by one of those entities with one or more 3<sup>rd</sup> parties.”

- Is the visual guide a STAR tool or can UW campuses get the tool also?

The visual guide is not a STAR tool and is available to all agency and campus users and is located online at:

<https://doa.wi.gov/ProcurementManual/Documents/502CollabContractsVisualGuide.pdf>

### **PRO-507, Procurement from Wisconsin Bureau of Correctional Enterprises**

- BSI has always required other vendor quotes in order to grant waivers. How does this affect the policy of sharing quotes with all?

If an agency is unable to determine whether BCE/BSI is offering a market price, it may solicit bids/proposals or quotes prior to awarding an order or contract. However, the agency is required to obtain a waiver from BCE/BSI before proceeding with the purchase from another supplier. In this scenario, if the agency shared BCE price information with the vendors who provided quotes, then the agency must also share vendor quote information with BCE when requesting the waiver.

- Who determines if all three criteria for BCI are met?

The criteria included in this policy are all objectively quantifiable. This policy doesn't contemplate that there will be an approval party or other party in a position to make this determination. If there is a question about whether the criteria are met, the procuring agency and/or BCI will work together to determine a reasonable determination. For products covered by a statewide contract, the contract manager within the Department of Administration may also be involved.

- Are BCI written waivers required?

Since agencies are required to obtain a waiver from BCE, agencies should request the waiver in writing so it can be kept on file.

### **PRO-601, Legal and Public Notices**

- Is the 7 day minimum lead time for public notices measured in Business days or calendar days?

Calendar Days

### **PRO-604, World Trade Organization (WTO) Government Procurement Agreement**

- What is the turnaround and process you would want agencies to follow to inquire on World Trade?

If an agency has a procurement event that may be impacted by the rules of the WTOGPA, they should work through their special designated agent (if delegated); the CAPS Section Chief or CAPS staff (if supported by CAPS); or any member of the management team of the Bureau if they are neither delegated or CAPS supported. Because they situations are rare and unique, it is not possible to estimate a turnaround time.