



State Procurement Manual

Department of Administration, State Bureau of Procurement

Number
PRO-204

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SCOPE: The scope of this policy is to establish the unique requirements and procedures related to the procurement of contractual services.

POLICY: The State Bureau of Procurement and agencies have the responsibility to promote maximum competition and to comply with unique requirements applicable to the purchase of contractual services.

Cost Benefit Analysis and Continued Appropriateness Reviews

Agencies may purchase services which can be performed more economically or efficiently by contract. See PRO-205, Cost Benefit Analysis (CBA), Continued Appropriateness and Justification of Need for Services.

American Services

Pursuant to s. 16.705(1r), Wis. Stats., services must be performed within the United States unless excepted.

Protests and Appeals

For contractual services procurements over the official bidding threshold, the aggrieved bidder, procuring agency, and the Department of Administration have specific roles and responsibilities related to the appeals process. For protests related to RFPs, the subjective judgment of evaluators is not appealable.

Justification of Need Documentation

For contractual services procurements over the official bidding threshold, agencies must provide justification to enter into contracts for services pursuant to s. 16.705(2)(c), Wis. Stats. and contracts for services cannot be



Legal Authority

Wis. Stats. s. 16.705; 16.71; 16.72(4)(a)
Wis. Admin Code Adm 10

Authorized:
Cheryl Edgington, Director
State Bureau of Procurement

Agencies Affected: All, unless otherwise noted



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approved unless the justification conforms to such requirements, and those of ss. 16.71 to 16.77, Wis. Stats.

Independence of Relationship

Agencies will establish processes to ensure services contracts include a review of the independence and relationship, if any, of the contractor to employees of the agency, disclosure of any former employment of the contractor or employees of the contractor with the agency, and a procedure to minimize the likelihood of selecting a contractor who provides or is likely to provide services to industries, client groups or individuals who are the object of state regulation or the recipients of state funding to a degree that the contractor's independence would be compromised.

Employee-Employer Relationship

An essential element of the purchase of services is the independent entrepreneurial relationship between the contractor and the state, i.e., exclusion of any element of an employer-employee relationship. The existence of a contract alone does not negate the possible existence of an employee-employer relationship.

An employee under the Social Security Act is "any person who under the usual common law rules applicable in determining employer-employee relationship has the status of an employee." Agencies will ensure they are practicing due diligence to avoid establishing an employee-employer relationship in services contracts.

Contract Administrator

All contracts for services must have a named person responsible for administering the contract. See PRO-405, Contract Administration.



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Background Checks

If services are performed by individual(s) with access to federal tax information received directly from the Internal Revenue Service (IRS), or a source authorized by the IRS to provide it, agencies will ensure a background check is performed for each individual pursuant to s. 16.705(1s), Wis. Stats.

Banking, Security and Legal Services

Procurement of contractual services is delegated to agencies through formal delegation; see PRO-102, Delegation. However, certain services procurements cannot be delegated or must be approved alternatively. See PRO-512, Services Requiring Special Approval Authority: Banking and Security Services and PRO-511, Legal Services.

Exceptions:

This policy does not apply to any contracts under ss. 16.75(2)(b) for utilities; 16.87 for construction and environmental consultant services; or 84.01(13) for engineering, consulting, surveying or other specialized services; or Chapter 35, Wis. Stats., for printing.

PROCEDURE:

- I. American Services
 - A. Contractual services must be performed within the United States except under the following circumstances:
 1. Contractual services are not available to be performed within the United States.
 2. If the payment for any part of the contractual services is made from federal moneys.



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3. The renewal, modification, or extension of any contract in effect on or prior to March 18, 2010.
 4. Contractual services purchased by the Board of Regents of the University of Wisconsin System with moneys appropriated under s. 20.285 (1) (ge), (u), or (w).
 5. Contractual services purchased by the University of Wisconsin-Madison with moneys appropriated under s. 20.285 (1) (ge), (u), or (w).
- B. For contracts that are not excepted under I, A, procuring agencies will incorporate specifications into solicitations in accordance with PRO-202, Specifications and Standards.

II. Protest and Appeals

- A. Procuring agencies will include a standard provision related to protest and appeals rights in applicable solicitation documents for contractual services. The provision must align with required timelines and official procedures for handling protests and appeals as prescribed herein.
- B. A bidder or proposer who is aggrieved in connection with 1) a solicitation or 2) the notice of intent to award a contract may protest to the procuring agency.
- C. Protestors will make their protests as specific as possible and identify statutes and Wisconsin Administrative Code provisions that are alleged to have been violated.
 1. A notice of intent to protest will be submitted in writing to the head of the procuring agency, or designee within



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five (5) working days after issuance of the solicitation or the notice of intent to award.

2. The protest will be submitted in writing to the head of the procuring agency, or designee, within ten (10) working days after issuance of the solicitation or the notice of intent to award.
 3. The head of the procuring agency, or designee, has the authority to resolve a protest concerning the solicitation or the intent to award a contract. If the head of the procuring agency delegates his/her authority related to handling protests, the designee must be appointed in writing.
 4. The head of the procuring agency, or designee, will issue a decision in writing to the protestor and a copy to the Secretary of the Department of Administration.
 5. Upon issuance of the protest response, the procuring agency's special designated agent will provide a copy of the response to the Director of the State Bureau of Procurement.
- D. The protestor may appeal the decision of the procuring agency to the Secretary of the Department of Administration within five (5) working days of issuance of the decision, with a copy of such appeal filed with the procuring agency, if the protestor alleges a violation of applicable Wisconsin State Statute or Wisconsin Administrative Code. The agency will be notified immediately if an appeal is received. The Secretary will take necessary action to settle and resolve the appeal and will



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promptly issue a decision in writing to the individual appealing and the procuring agency.

- E. When a timely notice of either an intent to protest, a protest, or an appeal is received, the state will not proceed further with the solicitation or with the award of the contract until a decision is rendered in response to the protest or appeal, or unless the Secretary of the Department of Administration, after consultation with the head of the procuring agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

III. Independence of Relationship

Agencies will incorporate clauses from the Supplemental Standard Terms and Conditions as provided for in PRO-404, Standard Terms and Conditions.

IV. Performance Reviews

As applicable, agencies will report unsatisfactory contract performance as required by the Bureau. See PRO-413, Reporting Supplier Complaints.



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