

CHAPTER 106
PURCHASING STANDARDS FOR SERVICE CONTRACTS

[Prior to 9/17/03, see 401—Chapter 12]

11—106.1(8A) Authority and scope. This chapter is adopted for the purpose of establishing a system of uniform standards for purchasing services in state government. The department of administrative services has adopted these uniform standards in cooperation with other state agencies.

The rules address when state agencies must use competitive selection to purchase services and when it is acceptable to use a sole source or emergency procurement instead of a competitive selection process. The rules provide a mechanism that allows state agencies to use an informal competitive process for purchases of services when the estimated annual value of the contract is less than \$50,000 and when the estimated value of the multiyear contract in the aggregate, including renewals, is less than \$150,000. The rules also include guidance to state agencies about additional requirements and procedures they should follow when purchasing services.

11—106.2(8A) Applicability. This chapter shall apply to all state agencies purchasing services unless otherwise provided by law.

106.2(1) When a state agency that is also a “participating agency” as defined by rule 11—105.2(8A) intends to procure “information technology services” as defined by rule 11—105.2(8A), the provisions of rule 11—105.10(8A) shall also apply to procurement of the services.

106.2(2) When a state agency that is subject to the applicability requirements of rule 11—105.1(8A) intends to procure “services of general use” as defined by rule 11—105.2(8A), the provisions of 11—Chapter 105 shall apply to the procurement.

11—106.3(8A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“Agency” or “state agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code Supplement section 7E.5. However, “agency” or “state agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

“*Competitive selection*” means a formal or informal process engaged in by a state agency to compare provider qualifications, terms, conditions, and prices of equal or similar services in order to meet the objective of purchasing services based on quality, performance, price, or any combination thereof. During a competitive selection process, a state agency may weigh the relevant selection criteria in whatever fashion it believes will enable it to select the service provider that submits the best proposal. The lowest priced proposal is not necessarily the best proposal.

“*Duration*” means the specific length of a service contract.

“*Emergency*” includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the state agency must act to preserve critical services or programs or in which the need is a result of events or circumstances not reasonably foreseeable.

“Emergency procurement” means an acquisition of a service or services resulting from an emergency need.

“Formal competition” means a competitive selection process that employs a request for proposal or other competitive selection process authorized by applicable law resulting in a service contract.

“Informal competition” means a streamlined competitive selection process in which a state agency makes an effort to contact at least three prospective service providers identified by the purchasing state agency as qualified to perform the work described in the scope of work to provide bids or proposals to provide the services the state agency is seeking.

“Intergovernmental agreement” means an agreement for services between a state agency and any other governmental entity whether federal, state, or local and any department, division, unit or subdivision thereof.

“Private agency” or *“private agencies”* means an individual or any form of business organization authorized under the laws of this or any other state or under the laws of any foreign jurisdiction.

“Selection documents” means documents prepared for a competitive selection by a state agency to purchase services. Selection documents may include requests for proposal, invitations to bid, invitations to bid with best value considerations, invitations to qualify, requests for strategy, auctions, reverse auctions, negotiated selection, or any other type of document a state agency is authorized to use that is designed to advise service providers that a state agency is interested in procuring services for state government.

“Service” or *“services”* means work performed for a state agency or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work. By way of example and not by limitation, these services may include the following: accounting services; aerial surveys; aerial mapping and seeding; appraisal services; land surveying services; construction manager services; analysis and assessment of processes, programs, fiscal impact, compliance, systems and the like; auditing services; communications services; services of peer reviewers, attorneys, financial advisors, and expert witnesses for litigation; architectural services; information technology consulting services; services of investment advisors and managers; marketing services; policy development and recommendations; program development; public involvement services and strategies; research services; scientific and related technical services; software development and system design; and services of underwriters, physicians, pharmacists, engineers, and architects; or

2. Services provided by a vendor to accomplish routine functions. These services contribute to the day-to-day operations of state government. By way of example and not by limitation, these services may include the following: ambulance service; charter service; boiler testing; bookkeeping service; building alarm systems service and repair; commercial laundry service; communications systems installation, servicing and repair; court reporting and transcription services; engraving service; equipment or machine installation, preventive maintenance, inspection, calibration and repair; heating, ventilation and air conditioning (HVAC) system maintenance service; janitorial service; painting; pest and weed control service; grounds maintenance, mowing, parking lot sweeping and snow removal service; towing service; translation services; and travel service.

“Service contract” means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists and these rules apply. “Service contract” includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision or rendering of services.

“*Service provider*” means a vendor that enters into a service contract with a state agency.

“*Sole source procurement*” means a purchase of services in which the state agency selects a service provider without engaging in a competitive selection process.

11—106.4(8A) Intergovernmental agreements. In the event another governmental entity has resources available to supply a service sought by a state agency, the state agency may enter into an intergovernmental agreement with the other governmental entity and is not required to use competitive selection.

11—106.5(8A) Use of competitive selection. State agencies shall use competitive selection to acquire services from private entities when the estimated annual value of the service contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000 unless there is adequate justification for a sole source or emergency procurement pursuant to rule 106.7(8A) or 106.8(8A) or another provision of law.

106.5(1) When the estimated annual value of the service contract is equal to or greater than \$50,000 or the estimated value of the multiyear service contract in the aggregate, including any renewals, exceeds \$150,000, a state agency shall use a formal competitive selection process to procure the service.

106.5(2) When the estimated annual value of the service contract is equal to or greater than \$5,000 but less than \$50,000 and the estimated value of the multiyear service contract in the aggregate, including any renewals, does not exceed \$150,000, a state agency, in its sole discretion, shall use either a formal or informal competitive selection process to engage a service provider.

106.5(3) The requirement to use competitive selection to select a service provider when the estimated annual value of the service contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than \$15,000 applies even when the state agency purchases services from a private entity and designates the contract it enters into with the private entity as a 28E agreement.

11—106.6 Reserved.

11—106.7(8A) Sole source procurements.

106.7(1) *When justified.* A sole source procurement shall be avoided unless clearly necessary and justifiable. A state agency may purchase services using a sole source procurement under the following circumstances:

a. A state agency determines that one service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to perform the service; or

b. The services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or

c. A state agency is hiring a service provider to provide peer review services for a professional licensing board pursuant to Iowa Code chapter 272C; or

d. A state agency is hiring the services of experts, advisors, counsel or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or

e. The federal government or other provider of funds for the services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the state agency's use of the funds in a way that restricts the state agency to only one service provider; or

f. Applicable law requires, provides for, or permits use of a sole source procurement.

106.7(2) *Special procedures required for sole source procurements.*

a. When the annual value of the service contract exceeds \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than \$15,000, the head of a state agency or designee shall sign the sole source contract or the amendment. Use of sole source procurement does not relieve a state agency from negotiating a fair and reasonable price and thoroughly documenting the procurement action.

b. When the annual value of the service contract exceeds \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than \$15,000, a state agency shall be required to complete a sole source justification form. The director of the state agency shall sign the sole source justification form. The claim for the first payment on a contract requires a copy of the signed original contract, a copy of the precontract questionnaire, a copy of the sole source justification form, and an original invoice or original claimant signature.

c. The contract for the sole source procurement shall comply with 11 IAC 107.4(8,8A), uniform terms and conditions for service contracts, or 11 IAC 107.5(8,8A), special terms and conditions.

11—106.8(8A) Emergency procurements.

106.8(1) *When justified.* An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the state agency may consider price and availability of the service procured so that the state agency obtains the best value for the funds spent under the circumstances. State agencies should attempt to acquire services with as much competition as practicable under the circumstances.

106.8(2) *Special procedures required for emergency procurements.*

a. The head of a state agency shall sign all emergency contracts and amendments regardless of value or length of term. If the head of a state agency is not available, a designee may sign an emergency contract or amendment. Use of an emergency procurement does not relieve a state agency from negotiating a fair and reasonable price and documenting the procurement action.

b. When the value of the service contract exceeds \$5,000, a state agency shall be required to complete an emergency justification form. The director of the state agency or the director's designee shall sign the emergency justification form.

c. If an emergency procurement results in the extension of an existing contract that contains performance criteria, the contract extension shall comply with 11 IAC 107.4(8,8A), uniform terms and conditions for service contracts, or 11 IAC 107.5(8,8A), special terms and conditions.

11—106.9(8A) Informal competitive procedures.

106.9(1) When utilizing an informal competition as defined in rule 106.3(8A), the state agency may contact the prospective service providers in person, by telephone, fax, E-mail or letter. When the state agency is not able to locate three prospective service providers, the state agency must justify contacting fewer than three service providers. The justification shall be included in the contract file.

106.9(2) A state agency may send copies of the scope of work to service providers that it has identified as qualified to perform the work described in the scope of work.

11—106.10 Reserved.

11—106.11(8A) Duration of service contracts.

106.11(1) Each service contract signed by a state agency shall have a specific starting and ending date.

106.11(2) State agencies shall not sign self-renewing service contracts that do not have a specific ending date.

106.11(3) A service contract should be competitively selected on a regular basis so that a state agency obtains the best value for the funds spent, avoids inefficiencies, waste or duplication and may take advantage of new innovations, ideas and technology. A service contract, including all optional renewals, shall not exceed a term of six years unless the state agency obtains a waiver of this provision pursuant to rule 106.16(8A).

11—106.12(8A) Additional procedures or requirements.

106.12(1) State agencies, whether utilizing informal or formal competition, shall provide a notice of each procurement for services to the targeted small business Web page located at the Iowa department of economic development's Web site in conformance with Iowa Code section 73.16(2).

106.12(2) Except in an emergency procurement, services shall not be performed pursuant to a service contract for a state agency until all parties to the contract have signed the contract.

106.12(3) At the conclusion of the competitive selection process, all service providers shall be required to sign a service contract.

106.12(4) Each state agency shall maintain a contracting file for each service contract signed by the state agency.

11—106.13 and 106.14 Reserved.**11—106.15(8A) Exclusions and limitations.**

106.15(1) These rules do not apply to contracts for both goods and services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the purchase of goods with service incidentally involved. However, in no event shall state agencies designate contracts as contracts for goods to avoid the application of these rules.

106.15(2) Nothing in this chapter is intended to supplant or supersede the requirements adopted by the department of administrative services relating to the processing of claims. State agencies entering into personal services contracts should refer to procedure 240.102, Miscellaneous—Services Contracting, of the department of administrative services, state accounting enterprise policy and procedure manual.

11—106.16(8A) Waiver procedure.

106.16(1) For the purpose of this chapter, a “waiver or variance” means an action by the director of the department of administrative services that suspends, in whole or in part, the requirements or provisions of a rule in this chapter as applied to a state agency when the state agency establishes good cause for a waiver or variance of the rule. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

106.16(2) Requests for waivers. A state agency seeking a waiver shall submit a written request for a waiver to the director. The written request shall identify the rule for which the state agency seeks a waiver, the contract or class of contracts for which the state agency seeks a waiver, and the reasons that the state agency believes justify granting the waiver.

106.16(3) Criteria for waiver. In response to a request for a waiver submitted by a state agency, the director may issue an order waiving in whole or in part the requirements of a rule in this chapter if the director finds that the state agency has established good cause for waiving the requirements of the rule. “Good cause” includes, but is not limited to, a showing that a requirement or provision of a rule should be waived because the requirement or provision would likely result in an unintended, undesirable, or adverse consequence or outcome. An example of good cause for a waiver is when a contract duration period of longer than six years is more economically feasible than a six-year contract in light of the service being purchased by the state agency.

11—106.17(8A) Effective date. This chapter shall apply to service contracts with a starting date on or after October 1, 2002.

These rules are intended to implement Iowa Code Supplement sections 8A.101, 8A.104, 8A.301, 8A.302, and 8A.311.

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