

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Rule making related to procurement policies and procedures

The Department of Administrative Services hereby amends Chapter 103, “State Employee Driving Guidelines,” Chapter 117, “Procurement of Goods and Services of General Use,” and Chapter 118, “Purchasing Standards for Service Contracts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 8A.311, 17A.3 and 17A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8A.104, 8A.311, 17A.7, 26.3 and 26.9.

Purpose and Summary

As a part of its five-year review of administrative rules, the Department amends three administrative rules chapters to update procurement policies and procedures and address the topics of state employee driving guidelines, procurement of goods and services of general use, and purchasing standards for service contracts.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 10, 2018, as **ARC 4050C**. A public hearing was held on October 31, 2018, at 10 a.m. in the Procurement Conference Room, A Level, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. One change from the Notice was made. The Department did not adopt proposed Item 1 and plans further review of all of Chapter 103.

Adoption of Rule Making

This rule making was adopted by the Department on November 29, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department’s rules concerning waivers.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 103.16(1) as follows:

103.16(1) ~~All fuel~~ Fuel used in state-owned automobiles ~~shall~~ may be purchased at cost from the various state installations or garages such as but not limited to those of the state department of transportation, state board of regents, department of human services, department of corrections, or state motor pools throughout the state, ~~unless the state-owned sources for the purchase of fuel are not reasonably accessible.~~ Fuel may also be purchased at retail locations if a state fueling facility is not readily available. When possible, purchases shall be made using a fuel purchase card issued by the department.

ITEM 2. Adopt the following new definition of “Purchasing card” in rule ~~11—117.2(8A)~~:

“*Purchasing card*” means a statewide commercial credit card for electronic purchasing transactions by any agency, department, division, bureau, enterprise, unit or other state entity to facilitate the acquisition of goods, services and select travel expenses.

ITEM 3. Amend subrule 117.6(7) as follows:

117.6(7) *Targeted small businesses.* The department and agencies may buy from a targeted small business if a targeted small business is able to provide the good or service, pursuant to Iowa Code section 73.20. ~~When enterprise master agreements with targeted small businesses are available, purchases shall be made through these master agreements.~~

ITEM 4. Amend subrule 117.7(2) as follows:

117.7(2) *Delegation of procurement authority.* The department shall establish guidelines for implementation of procurement authority delegated to agencies. The department shall assist agencies in developing purchasing and purchasing card procedures consistent with central purchasing policy and procedures and recommended governmental procurement standards.

ITEM 5. Adopt the following new subrule 117.7(4):

117.7(4) *Purchasing card program.* The department shall establish and administer a purchasing card program available to any state agency, department, division, bureau, enterprise, unit or other state entity to facilitate the acquisition of goods, services and select travel expenses. The department shall establish program policies and procedures in accordance with state procurement and accounting policies, and any applicable statutory and regulatory authority. Except for state vehicle fuel purchase cards assigned by the department, the purchasing card shall be the only commercial credit card authorized by the department.

ITEM 6. Amend subrule 117.8(2) as follows:

117.8(2) *Targeted small business notification.* ~~Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa’s 48-hour procurement notice website for posting~~ State agencies, when using formal competition, shall provide a 48-hour notice of each procurement for goods to the targeted small business portal located at the Iowa economic development authority’s website in conformance with Iowa Code section 73.16(2).

ITEM 7. Amend subrule 117.8(4) as follows:

117.8(4) *Advertisement of construction procurement.* Construction solicitations shall be advertised ~~twice in a newspaper of general circulation published in the county within which the~~ when work is to be done ~~when~~ and the cost of the work exceeds \$100,000 or the adjusted competitive threshold established in Iowa Code section 314.1B. ~~Additional means of advertisement used shall be consistent with practices~~

~~in the construction industry. The department may shall publish an advertisement in an electronic format as an additional method of soliciting bids~~ notice to bidders in accordance with Iowa Code section 26.3.

ITEM 8. Amend subrule 117.8(5) as follows:

117.8(5) *Vendor intent to participate.* In the event the department elects to conduct any procurement electronically or otherwise, it may require that vendors ~~prequalify or otherwise~~ indicate their intention to participate in the procurement process.

ITEM 9. Amend subrule 117.14(5) as follows:

117.14(5) *Establishment of agency internal procedures and controls.*

a. Agencies shall establish internal controls and procedures to initiate purchases, complete solicitations, make awards, approve purchases, and receive goods. The procedures shall address adequate public recordings of the purchases under the agency's authority consistent with law and rule. Internal controls and security procedures that are consistent with the requirements of the department and state auditor, including staff authority to initiate, execute, approve, and receive purchases, shall be in place for all phases of the procurement.

b. Agencies participating in the department's purchasing card program shall comply with the program policies and procedures in accordance with state procurement and accounting policies, and any applicable statutory and regulatory authority.

c. If an agency develops internal policies and procedures specific to its use of purchasing cards, the policies and procedures may be more, but not less, restrictive than the department's. In the event of a conflict between the agency and department policies and procedures, the department's shall take precedence.

ITEM 10. Amend subrule 117.15(3) as follows:

117.15(3) *Preference to targeted small businesses.* Agencies shall search the TSB directory on the ~~Web~~ Iowa economic development authority's website and ~~may purchase a good or service directly from the TSB source if it is reasonable and cost-effective to do so~~ the cost is equal to or less than the spending limit set forth in Iowa Code section 8A.311(10). Agencies shall comply with the TSB notification requirements in subrule 117.8(2).

ITEM 11. Amend rule 11—118.5(8A) as follows:

11—118.5(8A) Use of competitive selection. State agencies ~~may procure non-master agreement services from private entities without competition when the estimated value does not exceed \$5,000.~~ 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 11—118.7(8A) or 11—118.8(8A) or another provision of law.

118.5(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.

118.5(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.

118.5(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.

ITEM 12. Amend subrule 118.7(1) as follows:

118.7(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. to *e.* No change.

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

g. The procurement is an information service that is systems software or an upgrade, or compatibility is the overriding consideration, or the procurement would prevent avoidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation.

ITEM 13. Amend subrule 118.7(2) as follows:

118.7(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 director of a state agency or designee shall sign the sole source contract or the amendment. In the absence of the director of a state agency or designee, the sole source contract shall be signed only by the DAS director or designee. 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 or designee shall sign the sole source justification form. In the absence of the director of the state agency or designee, the sole source justification form shall be signed only by the DAS director or designee. 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—119.4(8,8A), uniform terms and conditions for service contracts, or 11—119.5(8,8A), special terms and conditions.

ITEM 14. Amend subrule 118.11(3) as follows:

118.11(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; however, information technology service contracts entered into by the department or office of chief information officer may have a term length not to exceed ten years. Service contracts shall not exceed the term lengths set forth herein unless the state agency obtains a waiver of this provision pursuant to rule 11—118.16(8A).

ITEM 15. Amend subrule 118.12(1) as follows:

118.12(1) State agencies, ~~whether when~~ utilizing ~~informal or~~ formal competition, shall provide a 48-hour notice of each procurement for services to the targeted small business ~~Web page portal~~ located at the Iowa ~~department of economic development's development authority's~~ development authority's website in conformance with Iowa Code section 73.16(2).

[Filed 11/30/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.