

CHIEF INFORMATION OFFICER, OFFICE OF THE [129]

Notice of Intended Action

Proposing rule making related to procurement of information technology and providing an opportunity for public comment

The Office of the Chief Information Officer hereby proposes to adopt new Chapter 10, “Procurement of Information Technology,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 8B.4(5), 8B.4(6), 8B.21(1)“d,” 8B.24(4), 8B.24(5)“f,” and 8B.24(6) and section 8B.11(8) as amended by 2019 Iowa Acts, House File 772, section 10.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 8B.

Purpose and Summary

This proposed rule making sets forth the methods the Office may utilize in procuring information technology devices and services on behalf of state government, including the establishment of master information technology agreement and prequalification processes, and the related decisional framework governing how to decide which acquisition method to deploy. Further, this proposed rule making specifies the dollar thresholds and related conditions and methods under and by which participating agencies may procure information technology directly. This proposed rule making also establishes processes requiring participating agencies to seek and obtain the Office’s approval before procuring information technology directly and establishes that, as required by Iowa Code section 8B.23(2), the office of the Governor and the offices of elective constitutional or statutory officers must consult with the Office prior to procuring information technology, that those offices must consider the information technology standards adopted by the Office, and that those offices must provide a written report to the Office relating to decisions regarding such acquisitions upon request by the Office. This rule making establishes performance review and suspension and debarment processes and procedures applicable to information technology vendors selling information technology devices and services to state government.

Fiscal Impact

The Office finds that these rules will have a positive fiscal impact. Providing clarity and a more uniform process involving information technology acquisitions will reduce transaction costs to the State and other governmental entities.

Jobs Impact

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

Waivers

As required by Iowa Code section 8B.21(5)“a,” the Office has initiated a separate Notice of Intended Action (**ARC 4712C**, IAB 10/23/19) that proposes to establish a uniform process for the granting of information technology waivers requested by a participating agency from information technology governance requirements developed and administered by the Office, including the requirements of this new chapter, simultaneous with this Notice. In addition, the Office has initiated a separate Notice of

Intended Action (**ARC 4710C**, IAB 10/23/19) that proposes to adopt general waiver processes pursuant to Iowa Code section 17A.9A(1) simultaneous with this Notice.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Office no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

Matt Behrens
Office of the Chief Information Officer
Hoover State Office Building, Level B
1305 East Walnut Street
Des Moines, Iowa 50319
Phone: 515.281.5503
Fax: 515.281.6137
Email: cio@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 12, 2019
1 to 2 p.m.

Hoover State Office Building, Level A
OCIO Innovation Lab, Room 12
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Office and advise of specific needs by calling 515.281.5503.

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).

The following rule-making action is proposed:

Adopt the following **new** 129—Chapter 10:

CHAPTER 10
PROCUREMENT OF INFORMATION TECHNOLOGY

129—10.1(8B) General provisions.

10.1(1) Applicability. This chapter governs:

a. The process for participating agencies and other governmental entities to obtain approval from or consult with, as applicable, the office in connection with the acquisition of information technology; and

b. The procurement of information technology by and for the office; by the office for the benefit or use of participating agencies or other governmental entities; and by a participating agency directly, to the extent the participating agency possesses the procurement authority to make such purchases.

10.1(2) Funding. The office and participating agencies shall follow these procurement policies and information technology governance requirements promulgated by the office regardless of the funding source supporting the procurement. However, when these rules or information technology governance requirements promulgated by the office prevent the state from obtaining and using a federal grant, these rules and information technology governance requirements may be suspended pursuant to and in accordance with Iowa Code section 8B.21(5) and 129—Chapter 8 to the extent required to comply with the federal grant requirements.

129—10.2(8B) Definitions. The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also apply:

“Acquisition” or *“acquire”* means the same as “procurement,” “procure,” or “purchase.”

“Acquisition document” or *“procurement document”* means any document or instrument that effectuates an acquisition of information technology, including but not limited to a contract, agreement, purchase order, statement of work, bill of sale, invoice, or other similar document.

“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 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.

“American-based business” means an entity that has its principal place of business in the United States of America.

“American-made product” means product(s) produced or grown in the United States of America.

“Award” means the selection of a vendor to receive a contract, master information technology agreement, or order for information technology as the outcome of a competitive selection process.

“Chief information officer” or *“CIO”* means the state chief information officer or the state chief information officer’s designee.

“Competitive bidding procedure” or *“competitive selection process”* means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, evaluated, accepted, rejected, or awarded. A “competitive bidding procedure” or “competitive selection process” includes but is not limited to a reverse auction as permitted by subrule 10.3(4), any competitive selection process outlined in 11—Chapter 118, or any prequalification process or subsequent solicitation outlined in subrule 10.5(6). When used to refer to a competitive selection process administered by another governmental entity, a “competitive bidding procedure” or “competitive selection process” includes any competitive bidding procedure or competitive selection process the other governmental entity is authorized to use pursuant to its laws, rules, and regulations.

“Competitive selection documents” means documents prepared and issued that solicit information technology to be purchased through a competitive selection process. A competitive selection document may be an electronic document.

“Contract let by another governmental entity” means either:

1. A contract entered into by another governmental entity under which the office may order information technology on its own behalf or on the behalf of a participating agency or other governmental entity, or approve a participating agency’s or other governmental entity’s request to procure information technology in the same manner; or
2. A contract entered into by another governmental entity as the outcome of a competitive selection process conducted by that other governmental entity which contract the office, or a participating agency or other governmental entity as authorized by the office, may leverage by entering into a separate contract for the purchase of information technology based thereon (also referred to as a “leveraged contract”),

other than a contract entered into by the state board of regents or an institution under the control of the state board of regents. When the leveraged contract is the result of a competitive process administered by another governmental entity, such process may serve as a substitute for or in lieu of the office, or a participating agency or other governmental entity as authorized by the office, administering its own competitive selection process.

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

1. That threatens public health, welfare or safety;
2. In which immediate action must be taken to preserve critical services or programs;
3. That compromises the security of information systems or lifeline critical infrastructure, or otherwise poses a substantial risk or threat to the security, confidentiality, or integrity of sensitive or confidential information; or
4. In which the need is a result of events or circumstances not reasonably foreseeable.

“*Emergency procurement*” means an acquisition resulting from an emergency need.

“*Enterprise*” means most or all state agencies acting collectively.

“*Fair and reasonable price*” means a price that is commensurate with the extent and complexity of the information technology to be provided and is comparable to the price paid by other entities for projects of similar scope and complexity.

“*Formal competition*” means a competitive selection process other than informal competition, including without limitation a request for proposals or request for bids, and which results in the procurement of information technology.

“*Governmental entity*” means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

“*Informal competition*” means a streamlined competitive selection process in which the purchasing entity makes an effort to contact at least three prospective vendors identified by the purchasing entity as qualified to perform the necessary work to request that vendors provide bids or proposals for the information technology the purchasing entity needs.

“*Information technology governance documents*” or “*information technology governance requirements*” means compulsory information technology statutes, rules, policies, standards, processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies’ acquisition, utilization, or provision of information technology.

“*Information technology services*” shall mean the same as defined in Iowa Code chapter 8B. In addition, the term “information technology services” shall include:

1. Cloud services, including software, platform, or infrastructure services delivered or accessed from a remote location through an Internet- or web-based interface. Such delivery or access models are commonly referred to as “software-as-a-service,” “platform-as-a-service,” “infrastructure-as-a-service,” or other variations of “as-a-service.”
2. Service provided in connection with the provisioning of broadband.
3. Value-added services.

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

“*Iowa-based business*” means an entity that has its principal place of business in Iowa.

“*Iowa product*” means a product(s) produced in Iowa.

“*Life cycle cost*” means the expected total cost of ownership during the life of a product, including disposal costs.

“*Master information technology agreement*” means a contract entered into by the office which establishes prices, terms, and conditions for the purchase of information technology. These contracts may involve the needs of one or more state agencies or other governmental entities.

“*Material modification*,” as it relates to a previously approved information technology procurement, means a change in the procurement of 10 percent or \$25,000, whichever is less, or a change of sufficient

importance or relevance so as to have possible significant influence on the outcome. Participating agencies shall not break purchasing into smaller increments in order to avoid the thresholds in this rule.

“*Negotiated contract*” means an agreement that meets the requirements of Iowa Code section 8B.24(5)“b.”

“*Order*” means a direct purchase or a purchase from a state contract, master information technology agreement, or contract let by another governmental entity.

“*Participating agency*” shall mean the same as defined in Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

“*Procurement*,” “*procure*,” or “*purchase*” means the acquisition of information technology through lease, lease/purchase, acceptance of, contracting for, obtaining title or license to, use of, or any other manner or method for acquiring information technology or an interest therein.

“*Procurement authority*” means a state agency authorized by statute to purchase information technology directly; or a state agency that has been delegated the authority to or has otherwise been authorized to procure information technology directly by the office, including but not limited to as such procurement authority is delegated to a participating agency or such procurement is otherwise authorized by the office by and pursuant to this chapter.

“*Responsible bidder*” means a vendor that has the capability in all material respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the purchasing entity may consider various factors, including but not limited to the vendor’s competence and qualification for the type of information technology required, the vendor’s integrity and reliability, the past performance of the vendor relative to the information technology to be provided, the past experience of the purchasing entity or other governmental entities in relation to the vendor’s performance, the relative quality of the information technology as compared with similar information technology available from other sources, the proposed terms of delivery, and the best interests of the state.

“*Reverse auction process*” or “*reverse auction*” means a repetitive competitive bidding process that allows vendors to submit one or more bids, with each bid having a lower cost than the previous bid.

“*Sole source*” includes, but is not limited to, a circumstance in which a purchasing entity determines that:

1. One service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the information technology;
2. The information technology being purchased involves 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 information technology;
3. The federal government or other provider of funds for the information technology being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the purchasing entity’s use of the funds in a way that restricts the state agency to only one information technology provider;
4. Applicable law requires, provides for, or permits use of a sole source procurement;
5. The procurement is for 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;
6. Any other circumstance as the office may identify from time to time.

“*Sole source procurement*” means an acquisition occurring when one of the circumstances set forth in the definition of “sole source” in this chapter is satisfied.

“*Targeted small business*” or “*TSB*” means a targeted small business as defined in Iowa Code section 15.102 that is certified by the department of inspections and appeals pursuant to Iowa Code section 10A.104 and as authorized by Iowa Code chapter 73.

“*Upgrade*” means additional hardware or software enhancements, extensions, features, options, or devices to support, enhance, or extend the life or increase the usefulness of previously procured information technology.

“*Vendor*” means a person, firm, corporation, partnership, business or other commercial entity that offers or provides information technology for sale, lease, or license.

129—10.3(8B) Methods of procurement.

10.3(1) *Methods.* The office may procure information technology on its own behalf or on behalf of participating agencies or other governmental entities using any of the methods set forth in Iowa Code section 8B.24(5) or authorize participating agencies to procure information technology in a similar manner (including but not limited to subject to applicable approval processes and requirements, as such procurement authority is delegated to a participating agency by the office elsewhere in this chapter). Such methods include but are not limited to:

- a.* A cooperative procurement agreement pursuant to Iowa Code section 8B.24(5) “*a.*”
- b.* A negotiated contract under any of the circumstances set forth in Iowa Code section 8B.24(5) “*b*”(1) to 8B.24(5) “*b*”(3).
- c.* A contract let by another governmental entity pursuant to Iowa Code section 8B.24(5) “*c*” if:
 - (1) The contract authorizes other governmental entities to procure information technology therefrom or leverage the contract by entering into a separate contract based on the contract, as applicable;
 - (2) The purchasing entity notifies the other governmental entity of the purchasing entity’s intent to use or leverage the other governmental entity’s contract;
 - (3) The purchasing entity follows applicable procedures under the contract required for other governmental entities to purchase therefrom or leverage the contract; and
 - (4) The vendor provides written assurances to the purchasing entity that any contemplated purchases or resulting leveraged contract would not adversely impact the governmental entity which was the original signatory to the contract.
- d.* A reverse auction process in accordance with the requirements of Iowa Code section 8B.24(5) “*d.*”
- e.* A competitive selection process in the same manner as outlined in 11—Chapter 118 and in accordance with the requirements identified in rule 129—10.12(8B).
- f.* Other agreements for the purchase, disposal, or other disposition of information technology, including but not limited to the following:
 - (1) Intergovernmental agreement. An intergovernmental agreement with a governmental entity which has the resources available to supply the information technology sought.
 - (2) Emergency procurement. An emergency procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of “emergency” as set forth in this chapter is satisfied. The following requirements shall apply to an emergency procurement:
 1. 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 purchasing entity should consider price and availability of the information technology so that the purchasing entity obtains the best value for the funds spent under the circumstances.
 2. Justification for the emergency procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the reasons the purchase is an emergency. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.
 3. The head of the purchasing entity shall sign all emergency justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign an emergency contract or amendment.
 4. Use of an emergency procurement does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.
 - (3) Sole source procurement. A sole source procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of “sole source” as set forth in this chapter is satisfied. The following requirements shall apply to a sole source procurement:

1. Justification for the sole source procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the reasons the purchase qualifies as a sole source. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.

2. The head of the purchasing entity shall sign all sole source justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign a sole source contract or amendment.

3. Use of a sole source procurement method does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.

10.3(2) Request for information (RFI). A request for information (RFI) is a nonbinding method the office or a participating agency may use to obtain market information from interested parties for a possible upcoming purchase. Information may include but is not limited to best practices, industry standards, technology issues, qualifications and capabilities of potential suppliers, current pricing, or existing contract vehicles. Agencies considering the use of an RFI may contact the office for information and guidance in using this process.

129—10.4(8B) Master information technology agreements.

10.4(1) Master information technology agreements. In furtherance of the office's duty to cooperate with other governmental entities in the procurement of information technology and in an effort to make such procurements in a cost-effective, efficient manner, the office may enter into master information technology agreements to procure information technology for participating agencies and other governmental entities, or may authorize participating agencies and other governmental entities to procure information technology thereunder, pursuant to any of the methods set forth in rule 129—10.3(8B). The office may procure information technology for participating agencies and other governmental entities from such master information technology agreements or may authorize participating agencies and other governmental entities to procure information technology directly therefrom. Master information technology agreements for particular information technology or a particular class of information technology may be awarded to a single vendor or to multiple vendors, in the sole discretion of the office, irrespective of the procurement method utilized.

10.4(2) Use of master information technology agreements.

a. If the office has entered into a master information technology agreement, a participating agency shall procure information technology through the master information technology agreement, unless:

- (1) The contract states that use of the master information technology agreement is optional;
- (2) An information technology governance document provides otherwise; or
- (3) The participating agency has obtained a waiver from the office pursuant to Iowa Code section 8B.21(5) and corresponding information technology waiver rules in 129—Chapter 8.

b. Unless otherwise stated in the master information technology agreement, any governmental entity may purchase from a master information technology agreement held by the office.

c. All governmental entities must notify the office of their intent to utilize a master information technology agreement held by the office and consult with the office about any proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations, restrictions, requirements, or obligations found in the master information technology agreement, of which the governmental entity should be aware. A participating agency that obtains approval from the office for an acquisition as required by rule 129—10.7(8B) does not need to separately consult with the office as required by this paragraph before making a purchase under a master information technology agreement held by the office.

129—10.5(8B) Prequalification of vendors. In accordance with Iowa Code section 8B.24(4), using an invitation to qualify, the office may prequalify a list of vendors capable of delivering particular information technology or a class of information technology. The office, in its sole discretion, may

determine for what information technology or classes of information technology it would be appropriate to use an invitation to qualify.

10.5(1) Purpose. The purpose of an invitation to qualify for information technology acquisitions includes but is not limited to the following:

- a. Standardizing the terms and conditions relating to all information technology provided by vendors, thereby avoiding repetition and duplication of efforts.
- b. Accomplishing information technology assignments in a manner consistent with information technology governance requirements prescribed by the office.
- c. Reducing the time required for the solicitation of proposals from vendors for individual projects.

10.5(2) Evaluation criteria. The office shall develop the evaluation criteria for vendor prequalification based upon its expertise, information and research, and the needs of the office, participating agencies, and other governmental entities. The office shall develop evaluation criteria for each invitation to qualify. Examples of evaluation criteria include but are not limited to:

- a. Affirmative responses to mandatory agreement questionnaires.
- b. Ratings on professional/technical personnel questionnaires.
- c. Scoring in a specified range on client reference surveys.
- d. Competitive cost data by type of service.
- e. Acceptable vendor financial information.
- f. Ability to comply with information technology governance requirements, other applicable industry standards, regulatory requirements, or any combination thereof.
- g. Willingness and ability to submit personnel to background checks.

10.5(3) Issuance and time to respond. The office may issue invitations to qualify as needed. The office shall provide notice of the issuance of an invitation to qualify pursuant to rule 129—10.12(8B). In addition to the applicable evaluation criteria and other substantive requirements contained within the invitation to qualify, the office shall specify in the invitation to qualify:

- a. The date and time at which vendors may begin submitting responses.
- b. The form and manner in which responses shall be submitted to the office.
- c. The date and time at which vendor responses will no longer be accepted.

10.5(4) Response and evaluation. Vendors may apply for eligibility on a continuous basis during the time period the invitation to qualify remains open. The office will not accept vendor responses after the response window has closed but may extend or reopen the window if the best interests of the state would be served. The office may evaluate vendor responses for placement on a prequalified vendor list during the period that the invitation to qualify remains open or after the response window has closed. Vendors seeking to qualify must meet all the evaluation criteria established by the office for a particular category or type of solicitation. The office retains the sole discretion to determine whether vendors that submit responses meet the evaluation criteria established by the office and to weigh the evaluation criteria in the manner it deems appropriate to determine whether such vendors are responsible bidders and able to provide the particular information technology or class of information technology sought. An approved vendor shall remain prequalified for the period specified by the office in the invitation to qualify, unless the vendor fails to meet any minimum acceptable performance levels established by the office as permitted by subrule 10.5(7) or breaches any terms and conditions included in any contract agreed to by the vendor.

10.5(5) Not an award and execution of contracts. Vendor prequalification is not an award and does not create an obligation on the part of the office. However, prior to conducting subsequent solicitations pursuant to subrule 10.5(6), prequalified vendors may be required to negotiate and agree to general terms and conditions which may be applicable to subsequent solicitations conducted pursuant to subrule 10.5(6).

10.5(6) Subsequent solicitations. Following the completion of the prequalification process, the office or governmental entities may select a prequalified vendor to provide specific information technology pursuant to a scaled-down competitive selection process without public notice. Such solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required

by paragraph 10.12(1)“d.” Prequalified vendors receiving an award may be required to negotiate and agree to additional terms and conditions applicable to the specific information technology acquired.

10.5(7) Acceptable performance levels. The office may establish and notify prequalified vendors of minimum acceptable performance levels and institute performance tracking mechanisms on prequalified vendors. If a vendor’s performance falls below the minimum acceptable level, the vendor may be removed from the prequalified list.

10.5(8) Approval/consultation required.

a. In addition to the requirements of paragraph 10.5(8)“b,” before a participating agency may acquire information technology from a prequalified vendor, the participating agency must receive the approval(s) required by rule 129—10.7(8B).

b. All governmental entities must notify the office of their intent to acquire information technology from a vendor prequalified by the office pursuant to the office’s processes hereunder and consult with the office about the proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations, restrictions, requirements, or obligations found in any applicable contracts, of which the governmental entity should be aware.

10.5(9) Appeal rights. A vendor that does not prequalify or that is removed from the prequalified list due to the vendor’s performance has the right to appeal pursuant to 129—Chapter 11.

129—10.6(8B) Method of procurement, how determined. In determining which of the procurement methods set forth in Iowa Code section 8B.24(5) and rule 129—10.3(8B) to utilize or to authorize a participating agency to utilize in acquiring information technology, whether to establish a master information technology agreement pursuant to rule 129—10.4(8B), or whether to prequalify vendors pursuant to the prequalification process outlined in rule 129—10.5(8B), the office may consider the following nonexclusive list of factors:

1. The manner in which such decision would further the state’s information technology strategic plan.
2. The manner in which such decision would enhance the security of state information-technology systems, and the immediacy of the need to do so.
3. The manner in which such decision would improve compatibility, interoperability, and connectivity between state agencies.
4. The manner in which such decision would further improve statewide efforts to standardize data elements and better encourage or facilitate the sharing of data across state agencies.
5. The manner in which such decision would likely affect the cost to the state for the information technology.
6. The need to standardize the terms and conditions relating to the information technology provided by vendors with respect to a specific information technology or a class of information technology.
7. The administrative costs/overhead associated with pursuing an alternative method.
8. The likelihood that an alternative method would result in a different or better outcome.
9. The likely willingness and ability of state agencies to follow the office’s decision and leadership with respect to a particular information technology acquisition.
10. The needs of all state agencies.
11. The need to avoid repetition and duplication.
12. Whether such decision would improve compliance with the information technology standards and policies prescribed by the office, other applicable industry standards, state or federal regulatory requirements related to information security, or any combination thereof.
13. Whether such decision would reduce the time required to solicit proposals from vendors to obtain the required information technology.
14. Whether there is an emergency or other pressing need.
15. The competitiveness of the market for the particular information technology sought and the likelihood vendors would supply thorough and meaningful proposals in response to a solicitation as part of a competitive selection process.

16. Any other factors deemed relevant by the office.

129—10.7(8B) Approval process for participating agencies.

10.7(1) Approval, when required. Any procurement of information technology, an information technology project, or information technology outsourcing satisfying any or all of the following conditions must receive prior approval from the office before a participating agency issues a competitive selection document; issues any order or other acquisition document, including an order under a master information technology agreement; or otherwise seeks to procure information technology through the office or on its own procurement authority (including but not limited to where such procurement authority is delegated by the office to a participating agency elsewhere in this chapter). Prior approval is required when the information technology acquisition, project, or outsourcing satisfies any or all of the following conditions:

- a. Costs \$25,000 or more; or
- b. Is projected to involve 750 agency staff hours or more; or
- c. Involves substantial information-security concerns, including but not limited to the sensitivity or confidentiality of the data involved; the location of the system, data to be stored therein, or both; or the data involved is subject to state or federal regulatory requirements governing data security, confidentiality, or integrity; or
- d. Involves significant compatibility, interoperability, or connectivity concerns.

The participating agency's approval request shall be submitted in the form and manner identified by the office. Participating agencies shall not break purchasing into smaller increments in order to avoid the threshold requirements of this rule.

10.7(2) Office's review of proposed procurement. When the office's prior approval is required by subrule 10.7(1), the office will review a proposed information technology procurement regardless of funding source, method of procurement, or agency procurement authority. The office will review a proposed procurement, without limitation:

- a. To determine whether the proposed procurement complies with applicable information technology governance requirements prescribed by the office, including but not limited to those of or relating to information security.
- b. To determine whether the proposed procurement method is advisable, considering the factors set forth in rule 129—10.6(8B), including but not limited to whether an established master information technology agreement may be utilized to procure the proposed information technology.
- c. To determine whether the proposed procurement is a necessary purchase or in the best interests of the state, considering, without limitation, the factors set forth in rule 129—10.6(8B).

10.7(3) Conditions. The office may place any condition the office finds desirable on an approval to protect the best interests of the state. For example, the office may condition its approval on:

- a. The incorporation of contractual protections or implementation of compensating controls to safeguard sensitive or confidential data to be stored, processed, or transmitted by or through the information technology.
- b. The ability of vendors to comply with state or federal regulatory requirements governing data security, confidentiality, integrity, or other similar requirements.
- c. The ability to achieve the necessary compatibility, interoperability, or connectivity with enterprise systems.
- d. Any other condition deemed desirable to protect the best interests of the state.

10.7(4) Outcome of review and requests for waiver.

a. If the office approves a procurement proposed by a participating agency, in whole or in part, the procurement may proceed, subject to any conditions imposed by the office in accordance with subrule 10.7(3).

b. If the office denies a procurement proposed by a participating agency, the office will notify the participating agency of the available options, which may include modifying and resubmitting the request, canceling the request, or requesting an information technology waiver from the office pursuant to 129—Chapter 8.

c. A participating agency may not appeal or otherwise complain about an adverse decision rendered by the office unless or until the participating agency has requested a waiver from the office's decision pursuant to 129—Chapter 8.

10.7(5) Ongoing approval—when required. Once a procurement proposed by a participating agency is approved by the office, ongoing approval is not required, unless:

- a. There is a material modification to a previously approved procurement; or
- b. Communicated by the office to the participating agency in writing.

If additional approval is required pursuant to this rule, such approval shall follow the same process outlined in subrules 10.7(1) to 10.7(4).

129—10.8(8B) Consultation.

10.8(1) When required for nonparticipating agencies. The office of the governor and the offices of elective constitutional or statutory officers are not required to obtain prior approval from the office before acquiring information technology pursuant to rule 129—10.7(8B). However, pursuant to Iowa Code section 8B.23(2), the office of the governor and the offices of elective constitutional or statutory officers must consult with the office prior to procuring information technology, consider the information technology standards adopted by the office, and provide a written report to the office relating to decisions regarding such acquisitions upon request by the office.

10.8(2) Encouraged for non-information technology acquisitions. Even where an information technology acquisition is not appropriately deemed an information technology acquisition, the office may provide advice to or consult with any governmental entity regarding the acquisition of goods, services, or an outsourcing of state functions when the acquisition includes a substantial information-technology component, includes a substantial information-security component, or would grant a third party access to the state's sensitive or confidential information. Such consultation is generally encouraged to ensure, by way of example only:

- a. Appropriate contractual protections or compensating controls are incorporated or implemented to safeguard sensitive or confidential data or information.
- b. The chosen vendor is able to comply with any applicable state or federal regulatory requirements governing data security, confidentiality, integrity, or otherwise.
- c. The vendor's information-technology systems comply with applicable information technology governance requirements.
- d. The vendor's information-technology systems are adequately designed or architected in a manner that will adequately safeguard the state's sensitive or confidential information.
- e. The vendor information-technology systems will be capable of adequately and securely connecting to or interfacing with state information-technology systems, to the extent necessary.

10.8(3) Master information technology agreements and invitations to qualify. In accordance with and as further set forth in paragraphs 10.4(2)“c” and 10.5(8)“b,” all governmental entities must notify the office of their intent to utilize master information technology agreements or to acquire information technology from a vendor prequalified by the office in accordance with the office's prequalification and subsequent solicitation processes and to consult with the office about any such proposed acquisition.

129—10.9(8B) Delegated procurement authority. Subject to the approval and consultation processes and requirements set forth in rules 129—10.7(8B) and 129—10.8(8B), participating agencies may procure information technology through a competitive selection process administered by the participating agency consistent with the purchasing thresholds and requirements established by this rule.

10.9(1) Agency direct purchasing—basic tier. For information technology purchases that do not exceed the following dollar thresholds, participating agencies may procure information technology without competition:

- a. Non-master-information-technology-agreement information technology devices costing less than \$1,500.
- b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is less than \$5,000, or when the

estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is less than \$15,000.

c. Non-master-information-technology-agreement information technology devices or services from a TSB for purchases of less than the amount determined by the department of administrative services by rule, but not to exceed \$25,000. Participating agencies shall search the TSB directory on the web and purchase directly from a TSB if it is reasonable and cost-effective to do so. A participating agency must confirm that the vendor is certified as a TSB by the department of inspections and appeals prior to making a purchase pursuant to this subrule.

10.9(2) Agency direct purchasing—middle tier. For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using either formal or informal competition:

a. Non-master-information-technology-agreement information technology devices costing greater than or equal to \$1,500 but less than \$5,000.

b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to \$5,000 but less than \$50,000, or when the estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is greater than or equal to \$15,000 but less than \$150,000.

10.9(3) Agency direct purchasing—advanced tier. For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using only formal competition:

a. Non-master-information-technology-agreement information technology goods costing greater than or equal to \$5,000.

b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to \$50,000, or when the estimated value of the multiyear information technology services contract in the aggregate, including any extensions or renewals, is greater than or equal to \$150,000.

10.9(4) Training, when required. Participating agency personnel engaged in the purchase of information technology at the middle or advanced tier shall have completed enhanced procurement training identified by the office.

10.9(5) Misuse of agency authority.

a. Participating agencies shall not break purchasing into smaller increments for the purpose of avoiding the purchasing thresholds established by this rule.

b. Except as otherwise authorized or permitted by the office, purchasing authority delegated to participating agencies by this rule shall not be used to avoid the use of master information technology agreements.

10.9(6) Other methods where authorized by office. The office may authorize participating agencies to make direct purchases utilizing any other procurement methods outlined in rule 129—10.3(8B) on a case-by-case basis.

129—10.10(8B) Duration of master information technology agreements. The initial term of a master information technology agreement shall be as determined by the office. Following the initial term, a master information technology agreement may be extended or renewed by the office for a number of periods and in durations as determined by the office.

129—10.11(8B) Duration of information technology contracts. Each contract signed by the office or a participating agency shall have a specific starting and ending date and may be structured in a manner that includes an initial term and option(s) for renewal terms. The initial term, renewal term, and total term may be of a duration as determined by the office or participating agency making the purchase. Unless otherwise authorized or permitted by the office, information technology contracts entered into by the office or a participating agency shall not exceed ten years. Information technology contracts should be assessed on a regular basis so the enterprise obtains the best value for the funds spent;

avoids inefficiencies, waste or duplication; and is able to take advantage of new innovations, ideas, and technologies.

129—10.12(8B) Requirements applicable to competitive selection process.

10.12(1) Notice of competitive selection.

a. Opportunity posting. The office and each participating agency shall provide public notice of solicitations by posting notice of every formal competitive selection opportunity to the official centralized procurement website operated by the department of administrative services. Alternatively, a participating agency may add a link to the centralized procurement website that connects to the website maintained by the agency on which requests for bids and proposals for that agency are posted. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state website operated by the department of administrative services.

b. Other forms of notice. In addition to the requirements and options set forth in paragraph 10.12(1) “a,” notice of competitive bidding opportunities and proposals may also be provided by print, telephone or fax, email or other electronic means, or by other means that give reasonable notice to vendors.

c. Bids voided. A formal competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this subrule is void and shall be rebid.

d. 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.

e. Vendor intent to participate. In the event the office 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.

10.12(2) Specifications in competitive selection process. Specifications shall be as set forth in the applicable competitive selection documents but shall generally comport with the following guidelines. Such guidelines shall not be construed or interpreted as limiting the office or participating agencies in developing specifications or terms and conditions in competitive selection documents that are necessary to effectively and efficiently procure information technology.

a. Limitations on brands and models. Specifications used in competitive selection documents shall generally be written in a manner that encourages competition. Specifications shall be written in general terms without reference to a particular brand or model unless the reference is clearly identified as intending to illustrate the general characteristics of the item or a specific brand or model is necessary to maintain compliance with an information technology requirement; to maintain or improve compatibility, interoperability, or connectivity with or across state information-technology systems and equipment; or to adequately safeguard the confidentiality, integrity, or availability of confidential or sensitive data or information or information systems.

b. Life cycle cost and energy efficiency. The office or participating agencies shall consider life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

c. Financial security. The office or participating agencies may require bid, appeal, litigation, fidelity, or performance security or bond, or any combination thereof, as designated in the competitive selection documents or by rule. When required, a security may be by certified check, cashier’s check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the office or participating agency. When required, security shall not be waived.

10.12(3) Award.

a. How determined. In determining which vendor(s) should receive an award following a competitive selection process, the office or participating agency shall select a vendor(s) on the basis of criteria contained in the competitive selection documents.

b. Intent to award. After evaluating responses to a solicitation using formal competition, the office or participating agency shall notify each vendor that submitted a response to the solicitation of its intent to award to a particular vendor(s) subject to execution of a written contract(s). Such notice may be made by

electronic means, including to the vendor's authorized representative and corresponding email address as identified in the vendor's proposal. This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s).

c. Rejection of bids. The office and participating agencies reserve the right to reject any or all responses to solicitations at any time for any reason. New bids may be requested at a time deemed convenient to the office or participating agency involved.

d. Minor deficiencies and informalities. In addition to any waiver rights reserved or processes included in the competitive selection documents, the office and participating agencies reserve the right to waive minor deficiencies and informalities if, in the judgment of the office or participating agency, the best interest of the state will be served.

e. Tied bids and preferences. If an award is based on the highest score and there is a tied score, or if the award is based on the lowest cost and there is a tied cost, the award shall be determined as follows:

(1) Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, first preference will be given to the Iowa vendor. Tied bids involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing process outlined in subparagraph 10.12(3) "e"(3) will be held among the Iowa vendors only.

(2) If a tied bid does not include an Iowa vendor or Iowa-produced or Iowa-manufactured product, preference will be given to a vendor based in the United States or products produced or manufactured in the United States over a vendor based or products produced or manufactured outside the United States.

(3) If a tied bid neither includes an Iowa vendor or Iowa-produced or Iowa-manufactured product nor a United States vendor or United States-produced or United States-manufactured product, a drawing may be held in the presence of the vendors with the tied bids or in front of at least three noninterested parties. All drawings shall be documented.

129—10.13(8B) Performance reviews and suspension/debarment.

10.13(1) Review of vendor performance. The office, in cooperation with other governmental entities, may periodically review the performance of vendors. State agencies obtaining information technology from vendors are encouraged to document vendor performance throughout the duration of any contract and report any problems to the office as they are identified. Performance reviews shall be based on the specifications or service levels in the vendors' contract(s) or as set forth or identified in any applicable statement of work, order, or other applicable acquisition document. Performance reviews shall include but need not be limited to:

- a.* Compliance with applicable contract specifications or requirements;
- b.* On-time delivery; and
- c.* Accuracy of billing.

Performance reviews help determine whether vendors are responsible bidders for future projects.

10.13(2) Suspension or debarment. Prior performance on a state contract may cause a vendor to be disqualified or preclude a vendor from being considered a qualified or responsible bidder in future procurements. In addition, a vendor or subcontractor of a vendor may be suspended or debarred for any of the following reasons:

- a.* Failure to deliver within specified delivery dates without prior agreement of the office or applicable governmental entity;
- b.* Failure to deliver in accordance with contract specifications or requirements;
- c.* Attempts to influence the decision of any state employee involved in the procurement process;
- d.* Evidence of agreements by vendors to restrain trade or impede competitive bidding;
- e.* Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation, executive orders, or contract terms of conditions;
- f.* Evidence that a vendor has willfully filed or submitted a false certificate or information with or to the office or other governmental entities;
- g.* Suspension or debarment by the federal government;

h. Any other reason identified in the competitive selection documents or contract.

The office shall notify any vendor considered for suspension or debarment and provide the vendor an opportunity to respond to and cure any deficiencies prior to suspending or debarring any vendor. If the vendor fails to remedy the situation after receiving such notice, the office may suspend the vendor from eligibility for state information technology acquisitions for a period of time as specified by the office or debar the vendor from all future state business. The office may notify the department of administrative services of the office's final decision, which, in the department of administrative services' discretion, may take reciprocal action as it relates to the acquisition of goods and services of general use.

129—10.14(8B) Additional requirements and authorizations to information technology acquisitions and agreements.

10.14(1) Information technology shall not be performed or obtained pursuant to a contract until all parties to the contract have signed a written contract. If an information technology contract requires the execution of orders or statements of work to effectuate individual transactions, information technology shall not be performed or obtained until the appropriate transactional document(s) is executed by both parties in a signed writing. A vendor that provides information technology to a governmental entity prior to the execution of a contract or appropriate transactional document shall not be entitled to any payment for the information technology.

10.14(2) Except to the extent of any conflict or inconsistency with this chapter, all information technology service contracts shall, to the extent applicable, comply with the requirements of 11—Chapter 119.

10.14(3) The office and participating agencies may enter into a contract for information technology in which a contractual limitation of vendor liability is provided for as authorized by and in accordance with 11—Chapter 120.

10.14(4) All information technology contracts shall comply with the requirements of 11—Chapter 121, which, among other requirements, requires state agencies entering into contracts to include a clause in every contract prohibiting employment discrimination and requiring compliance with applicable laws, rules, and executive orders governing equal opportunity in employment and affirmative action.

129—10.15(8B) Confidential information in a solicitation response. Unless material submitted in response to a solicitation is identified as proprietary or confidential by the vendor in accordance with Iowa Code section 22.7, all submissions by a vendor are public information. To facilitate a fair and objective evaluation of proposals, submissions by vendors will not be released to competitors or the public prior to issuance of the notice of intent to award or final disposition of any vendor appeal taken in accordance with 129—Chapter 11, whichever occurs later. Aggrieved or adversely affected vendors may only obtain proposals or other relevant evidence or information in furtherance of an appeal pursuant to the disclosure/protective order processes set forth in 129—Chapter 11. If a vendor's claim of confidentiality is challenged by a competitor or through a request by a citizen to view the proposal, it is the sole responsibility of the vendor to defend the claim of confidentiality in an appropriate venue. State agencies will not release the subject material while the matter is being adjudicated.

These rules are intended to implement Iowa Code chapter 8B.