

## ADMINISTRATIVE SERVICES DEPARTMENT[11]

### Notice of Intended Action

#### **Proposing rule making related to purchasing thresholds for state agencies and providing an opportunity for public comment**

The Administrative Services Department hereby proposes to amend 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 proposed 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.3 and 17A.4.

#### *Purpose and Summary*

These amendments are proposed to address supply chain constraints in purchasing of goods and services. The proposed amendments increase purchasing thresholds for state agencies in an effort to provide purchasing flexibility while also comporting with existing procurement training, which addresses progressive levels of process responsibility and complexity for agencies and their purchasing agents.

#### *Fiscal Impact*

It is impossible to determine the overall fiscal impact of the various procurements of goods and services completed by different agencies under these proposed amendments.

#### *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.

#### *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 Department no later than 4:30 p.m. on February 15, 2022. Comments should be directed to:

Tami Wiencek  
Department of Administrative Services  
Hoover State Office Building  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Phone: 515.725.2017  
Fax: 515.281.6140  
Email: [tami.wiencek@iowa.gov](mailto:tami.wiencek@iowa.gov)

### *Public Hearing*

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

February 15, 2022  
11 a.m. to 12 noon

Procurement Conference Room, A Level  
Hoover State Office Building  
Des Moines, Iowa

Or

Via conference call  
Dial: 1.866.685.1580  
Conference code: 0009991200

Persons who wish to make oral comments at a 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 Department and advise of specific needs.

### *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 actions are proposed:

ITEM 1. Amend subrule 117.15(1) as follows:

**117.15(1) *Agency direct purchasing—basic level.*** An agency may procure non-master agreement goods costing ~~up to \$1,500~~ not greater than \$15,000 without competition. ~~An agency shall procure non-master agreement goods costing between \$1,501 and \$5,000 in a competitive manner, using either informal or formal competition. If an informal process is chosen, the agency shall follow the process described in the definition of “informal competition” in rule 11—117.2(8A). The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format.~~

ITEM 2. Amend subrule 117.15(2) as follows:

**117.15(2) *Agency direct purchasing—advanced level.*** An agency may procure non-master agreement goods up to \$50,000 per transaction in a competitive manner using either informal or formal competition provided the agency personnel engaged in the purchase of goods have completed enhanced procurement training established by the director or designee. If an informal process is chosen, the agency shall follow the process described in the definition of “informal competition” in rule 11—117.2(8A). The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format.

ITEM 3. 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~~ \$15,000. Agencies shall use competitive selection to acquire services from private entities when the estimated ~~annual~~ value of the service contract is greater than \$5,000 ~~or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is greater than \$15,000~~ unless there is adequate justification for a sole source procurement pursuant to rule 11—118.7(8A) or emergency procurement pursuant to rule 11—118.8(8A) or unless awarded to a targeted small business pursuant to

11—paragraph 117.5(2) “a” or procured pursuant to another exception to competitive selection under another provision of law.

**118.5(1)** No change.

**118.5(2)** When the estimated annual value of the service contract is greater than \$5,000 ~~but less than \$15,000~~ and not greater 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 greater than \$5,000 ~~or when the estimated value of the multiyear service contract in the aggregate, including renewals, is 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 4. 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 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 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. No change.

ITEM 5. Amend subrule 118.8(2) as follows:

**118.8(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~~ \$15,000, a state agency shall be required to complete an emergency justification form. The head of the state agency or 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 rule 11—119.4(8,8A), ~~uniform terms and conditions for service contracts~~, or rule 11—119.5(8,8A), ~~special terms and conditions~~.