

**11—117.5(8A) Exemptions from competitive procurement.** The director or designee may exempt goods and services of general use from competitive procurement processes when the procurement meets one of the following conditions. All procurements that are exempt from competitive processes shall be recorded as such, and appropriate justification shall be maintained by the agency initiating the action. Each of the following exemptions from competitive procurement procedures require additional review and approvals.

**117.5(1) Emergency procurement.**

*a. Justification for emergency procurement.* 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 department or agency should consider price and availability of the good or service procured so that the department or agency obtains the best value for the funds spent under the circumstances. The department and agencies shall attempt to acquire goods and services of general use with as much competition as practicable under the circumstances.

*b. Special procedures required for emergency procurements.* Justification for the emergency purchase shall be documented and submitted to the director or designee for approval. The justification shall include the good or service that is to be or was purchased, the cost, and the reasons the purchase should be or was considered an emergency.

**117.5(2) Targeted small business (TSB) procurement.**

*a. Justification for TSB procurement.* Agencies may purchase from a TSB without competition for a purchase up to \$25,000 if the purchase would contribute to the agency complying with the targeted small business procurement goals under Iowa Code sections 73.15 through 73.21.

*b. Special procedures for TSB procurements.* Agencies must confirm that the vendor is certified as a TSB by the economic development authority. An agency may contact the TSB directly.

*c. Reporting requirements for TSB procurement.* By December 1 of each year, each agency shall provide the department with an annual report of procurements made in the previous fiscal year pursuant to paragraph 117.5(2)“a.” The annual report will be in a format prescribed by the department.

**117.5(3) Iowa Prison Industries (IPI) procurement.**

*a. Justification for IPI procurement.* If IPI manufactures or formulates a product, agencies shall purchase the product from IPI or obtain a written waiver in accordance with Iowa Code section 904.808, except as otherwise permitted in paragraphs “b” and “c.”

*b. Purchase of standard modular office systems and related components.* Purchase of standard modular office systems and related components and other furniture items shall be in accordance with 11—subrule 100.6(6).

*c. Procurement of product manufactured in Iowa.* An agency may conduct a competitive procurement for a product that IPI manufactures or formulates if the competitive procurement requires that the product must be manufactured in Iowa. In such procurements, IPI shall be allowed to submit a bid to provide the product. If a vendor other than IPI is the lowest responsible bidder, the agency shall obtain written verification that the vendor’s product is manufactured in Iowa before making the award.

*d. Special procedures for IPI purchases.* An agency may contact IPI directly.

**117.5(4) Procurement based on competition managed by other governmental entities.**

*a. Justification for procurement based on competition managed by other governmental entities.* The department may utilize a current contract, agreement, or purchase order issued by a governmental entity to establish an enterprise master agreement or make a purchase without further competition. The department may join a contract or agreement let by a purchasing consortium when the department reasonably believes it is in the best interest of the enterprise and reasonably believes the contract, agreement, or order was awarded in a fair and competitive manner.

*b. Special procedures for procurement based on competition managed by other governmental entities.* The department shall notify the other governmental entity and the requesting agency of its intent to use a contract, agreement, or purchase order prior to procuring the good or service in this manner. The department may purchase goods or services from contracts let by other governmental entities provided that the vendor is in agreement and the terms and conditions of the purchase do not adversely impact the governmental entity which was the original signatory to the contract.

**117.5(5) Sole source procurement.**

*a. Justification for sole source procurement.* A sole source procurement shall be avoided unless clearly necessary and justifiable. The director or designee may exempt the purchase of a good or service of general use from competitive selection processes when the purchase qualifies as a sole source procurement as a result of the following circumstances:

(1) One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good or service; or

(2) The procurement is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the good or service; or

(3) Applicable law requires, provides for, or permits use of a sole source procurement; or

(4) The federal government or other provider of funds for the goods and services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the use of the funds in a way that restricts the procurement to only one vendor; or

(5) The procurement is an information technology device or service that is systems software or an upgrade, or compatibility is the overriding consideration, or the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation; or

(6) Other circumstances for services exist as outlined in rule 11—118.7(8A).

*b. Special procedures required for sole source procurement.* For exemption from competitive processes, the requesting agency shall submit to the director justification that the procurement meets the definition of sole source procurement. Use of a sole source procurement does not relieve the department or an agency from negotiating a fair and reasonable price, investigating the vendor's qualifications and any other data pertinent to the procurement, and thoroughly documenting the action. The agency initiating the procurement shall maintain in a file attached to the order the justification and response from the director. The justification, response, and order shall be available for public inspection.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15; **ARC 3676C**, IAB 3/14/18, effective 4/18/18; **ARC 4097C**, IAB 10/24/18, effective 11/28/18; **ARC 4845C**, IAB 1/1/20, effective 2/5/20]