

**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”* or *“responsible respondent”* 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 voidance 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.

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