

<b>POLICY # 105</b>	<b>SUBJECT: Bids and Contracts</b>
<b>EFFECTIVE DATE: 6/19/89</b>	
<b>REVISED: 5/1/94, 5/14/91, 12/31/03, 12/01/13, 6/19/14</b>	<b>PAGE 1 of 9</b>
<b>AUTHORIZED SIGNATURE:</b> 	

## DEPARTMENT POLICY

### I. PURPOSE

The purpose of this policy is to ensure that the Department makes effective and efficient use of State and other resources in purchasing services and organizational support services needed to fulfill its mission and goals.

This policy is intended to:

- A. Establish consistent standards, processes, formats, and language to be used in the purchase of services and organizational support services;
- B. Ensure equitable and reasonable competition; and
- C. Establish a standard procedure for the use of written contracts to purchase services and organizational supports.

### II. APPLICABILITY

#### A. Use of Policy

This policy shall apply to all Department purchases of services (as defined in Section III). The Cabinet Secretary (hereinafter referred to as "the Secretary") shall not sign any bid or contract that does not conform to the requirements of this policy.

#### B. Source Documents

This policy has been developed to ensure that the bid and contract process complies with applicable Federal laws and regulations, State laws (including Delaware Code, Title 29, Chapter 69) and regulations, and the State Accounting Manual.

#### C. Public Works

This policy is not intended to supersede bidding procedures applied to public works, which are defined in the Delaware Code (Title 29, Chapter 69, reference Public Works).

#### D. Supplies and Materials

This policy is not to be applied to the purchase of supplies and materials covered by small purchase procedures promulgated by the Office of Management and Budget, . (29 Delaware Code Ch 69 §6980)

### E. Conflicting Laws/Policies

If conflicts are found to exist, Federal or State Law or Regulations or the State Accounting Manual shall prevail over this policy. The invalidation of one section of this policy due to such a conflict shall not invalidate any other section of this policy.

## III. AUTHORITY

### A. Secretary as the Ultimate Authority

The Secretary retains ultimate authority and responsibility for review and approval of all Department bid and contract activities. The Secretary may delegate certain tasks and authority to the various Divisions.

### B. Roles/Responsibilities of Divisions

1. Each Division is responsible for the initiation of all contracts that it will fund with the exceptions listed below in B2. The Division of Management Support Services shall carry out contract administration, technical assistance, review and approval, and coordinating functions on behalf of the Secretary.
2. Only the Division of Management Support Services in consultation with the Office of Management and Budget will execute construction, renovation, maintenance, janitorial, and trash removal contracts.

### C. Contract Signature Authority

The Secretary, pursuant to the authority given to him/her by 29 Delaware Code Section 9005 (6), may delegate the authority to sign contracts with limited exceptions.

1. Secretarial signature is required in the following circumstances:
  - a. Those contracts and contract amendments in which the total value of the contract or amended contract exceeds \$500,000.
  - b. Contracts for consulting regardless of contract amount.
  - c. Contracts having duration of more than three years (36 months) and anticipated cumulative annual expenditures exceed \$100,000.
  - d. Contracts initiated within a specific Division when that Division Director is acting as the Secretary's designee for the purpose of signing contracts.
  - e. Contracts with current State employees and with former State employees who have left State service in the two years prior to the contract's signature date. Such contractors must first demonstrate compliance with Delaware Code Title 29, Ch. 58, Sec. 5805 by providing documentation of Public Integrity Commission approval.

- f. Contracts with individuals who are expected to perform a full time, ongoing task similar to that of a Full-Time Equivalency (FTE) employee.
  - g. Contracts with other State agencies outside of the Department.
  - h. Contracts which deviate from the Department's standard Statement of Agreement language in any way.
  - i. Contractual arrangements with providers which replace contracts that were discontinued due to unsatisfactory performance or cost considerations.
2. All contracts require a minimum of two levels of authorized signature. One is the Cabinet Secretary (or designee) and the other is the purchasing Division Director (or designee). Only the Secretary, Division Directors or their designees may sign contractual purchasing agreements of any type.
3. Additional Approvals

The following types of contracts or conditions will require additional approvals. These approvals must be obtained before the contract is routed to the contractor for signature.

- a. MIS services, hardware, and software: DSCYF MIS Unit and Department of Technology and Information (DTI), Dover
- b. Telecommunication equipment: DSCYF MIS Unit and Department of Technology and Information (DTI), Dover
- c. Training and Consultation Services: Office of Management and Budget
- d. Use of Fleet Vehicles in Contracts: Insurance Coverage Office and Fleet Services

#### IV. DEFINITIONS

For purposes of this policy, the terms below shall be deemed to mean the following:

- A. Budget: a systematic structured presentation of costs, usually by line item categories which governs how the provider can be reimbursed by the Department.
- B. Consultant: an individual with specified qualifications, experience, and skills who provides organizational support services to the Department on a non-employee basis, for a temporary period.
- C. Contract: a written agreement between the Department and the provider, the terms of which are contained completely within a document or included by reference, which has been signed by the Contractor and the Department and which both parties intend to be legally binding on the signatories. The agreement may specify the activities, expectations, conditions, terms, standards, costs, monitoring, and other actions to be taken by both parties to the agreement.

- D. **Contract Amendment:** a written agreement which, when executed, changes an existing contract. The amendment specifies the changes and requires at least the approval of all signatories to the original contract.
- E. **Contract Administrator:** the Department employee in the Division of Management Support Services' Grants & Contracts Unit designated to manage a contract's administrative responsibilities. This service can also be provided by a contractor.
- F. **Contract Summary Sheet:** data prepared by the Contract Administrator that explains services provided and costs which compares changes from the past to current contract periods. The data is made available when the contract documents are being reviewed.
- G. **Contractor:** any agency, organization, corporation, association, partnership, or individual, either for profit or not-for-profit, who agrees in writing to provide specific services or organizational supports to the Department or its clients.
- H. **Cost Reimbursable Contract:** a contract that secures services for an entire program or service and stipulates agreement to reimburse the cost for service based on an agreed upon budget and supporting narrative up to an agreed upon amount. (Sometimes referred to as "Program Funded").
- I. **Department:** as used in this policy, means the Department of Services for Children, Youth and Their Families.
- J. **Fixed Cost Contract:** a contract that delineates an agreed upon price for a specific work product or set of deliverables for a fixed period of time (i.e., month, summer, etc.).
- K. **Health/Safety Waiver:** a document used under special circumstances to waive a contract, a Request for Proposals (RFP) or both.
- L. **Invitation to Bid (ITB):** a public written solicitation of bids where the specifications of the product are clearly pre-defined.
- M. **Non-Competitive Award/Purchase:** procurement or acquisition of services where no Request for Proposals or Invitation to Bid was issued; procurement through the open market.
- N. **Open Market Purchase:** purchase made from a provider not awarded a contract by way of a competitive bidding process.
- O. **Organizational Support Services:** ancillary activities such as training or consultation needed to augment services provided by the Department.
- P. **Program Administrator:** the Department employee designated by a purchasing Division Director to have responsibility for development, implementation, monitoring, and management of a contract. This service can also be provided by a contractor
- Q. **Public Works:** construction, reconstruction, demolition, alteration and repair work and maintenance work paid for, in whole or in part, with public funds.

- R. Purchase Order (PO): an encumbrance against the accounts of the State for the purchase of a specific service or organizational support issued by the Department and approved by the Department of Finance prior to the expenditure of funds.
- S. Request for Letters of Interest (RFI): a public written solicitation only to determine the field of potential respondents to deliver a needed service. An RFI may not substitute for a required competitive bid process.
- T. Request for Proposals (RFP): a public written solicitation of proposals where the goals, objectives, target population are defined, however the methodology may be left to the bidder.
- U. Requisition: an initiating procurement action form, which includes information such as vendor, goods/services to be secured, and source of funding to finance the procurement. Upon review and approval, this may result in the issuance of a State of Delaware Purchase Order.
- V. Services: activities and programs procured to benefit the Department or its clients.
- W. Solicitation of Quotations: a request issued to potential contractors, inviting them to state their costs for providing services or organizational support services.
- X. Spending Plan: comprehensive data prepared and maintained by each purchasing Division and validated by the assigned Fiscal Unit Staff which accounts for the allocation of all contractual funds by contract or service area against the Division's authorized spending authority.
- Y. Supplies and Materials: goods, such as office and computer supplies, commodities (food, fuel, etc.), equipment, tools, and construction materials, used in support of the operations of the Department.
- Z. Training: activities designed to impart knowledge and/or skills to an individual or a group of individuals.
- AA. Unit Cost Contract: a contract that secures services based on pricing and reimbursement for units of service. A unit of service can be specified by a time period (i.e., hour, day, month) or by a specific service component (i.e., physical exam, x-ray, diagnostic evaluation).

## V. PROCEDURES FOR PROCURING SERVICES

### A. General Considerations

1. The Department selects providers on the basis of factors including, but not limited to, quality, cost, and geographic desirability.
2. Department purchases of services and organizational support services shall be made by means of a contract. Both must have a corresponding purchase order.
3. Purchase orders must be consistent with the provisions of the State Accounting Manual.

4. In keeping with the Delaware Code (Title 29, Ch. 58, Sec. 5805) the competitive negotiation procedures must be applied for all contracts with state employees for \$2,000 or more.
5. All contracts must be represented on the validated purchasing Division's Spending Plan.
6. In keeping with the Delaware Code (Title 29, Ch. 65, § 6512) service providers may not begin providing services until the contract is fully executed and the purchase order approved unless there are documented circumstances which create concerns for the health/safety of the client.

B. Use of Contracts/Contract Waivers and Purchase Orders/Requisitions

1. While a contract is always an available option, it will be required when:
  - a. The service is known or estimated to cost more than \$5,000 or;
  - b. The service is being purchased from a consultant and requires more than one day of the consultant's time in any calendar year or;
  - c. The service is being purchased from a trainer and requires more than four days of the trainer's time in any calendar year.
2. All contracts must be supported by a Purchase Order (PO). The contract will be used to initiate the purchase order.
3. Contracts are not required in the following situations, in which only a Requisition and Purchase Order (PO) are used:
  - a. For purchases where the service is known or estimated to cost \$4,999 or less and has no complicated specifications or terms,
  - b. To establish a temporary, short-term arrangement in a situation where the health or safety of a Department client could be jeopardized by waiting for completion of regular contracting procedures (DE Budget & Accounting Manual 7.3, 7.4.2). This exception requires an approved Health and Safety waiver and may last for up to 45 days at which time a contract must be executed.
  - c. When the service is being purchased from a consultant for a fee of \$2,500 or less for only one day of the consultant's time in a calendar year, or
  - d. When the service is being purchased from a trainer for a fee of \$2,500 or less, for less than five days of the trainer's time in a calendar year.
4. If a purchasing Division determines that an exception to the required use of a contract is appropriate and necessary, the purchasing Division staff shall document the reasons for the exception using the Health/Safety Waiver and Non-Competitive Award Request and obtain approval (and assistance, if needed) from the Division of Management Support Services.

## C. Selection of Providers

### 1. Open Market Purchase

- a. No competitive award process is necessary and procurement may be via the open market when anticipated cumulative annual expenditures for like services will be less than \$50,000. Departmental staff shall review the State's Office of Supplier Diversity online directory for vendor consideration for at least one certified minority, veteran or minority business enterprise when making such under-threshold procurement.

### 2. Competitive Awards

- a. For anticipated cumulative annual expenditures for like services of \$50,000 and above in any state or federal fiscal year, the following competitive award procedures must be implemented and be documented (29 Delaware Code Ch. 69 §6981):

- (1) The Department issues a written Request for Proposals (RFP).

- (2) The Request for Proposals is publicized to ensure public notice by submitting it to Government Support Services for posting on the State's Procurement Portal.

- (3) Bidders submit written proposals by the advertised deadline.

- (4) Proposals are reviewed in a closed panel convened by the Department.

- (5) The panel submits recommendations to the purchasing Division Director who documents the Division's final decision on the contract award(s).

- (6) A summary of the panel review proceedings is on file at the Department for public review.

- (7) Bidders are notified of the status of their bid within 60 days of close of bids. If such notice is expected to take more than 60 days, notice shall be provided to all bidders.

- b. The duration of a procurement award under this section shall be for an initial period not to exceed five (5) years or a lesser period if so stated in the RFP. At the end of the period designated in the RFP, the procurement shall again be subject to competitive negotiation procedures, unless continued procurement from the Contractor(s) can be justified using the Non-Competitive Negotiation Waiver procedure. Such a non-competitive award can extend for up to two (2) years before the next review is required.

### 3. Competitive Award Waiver

- a. A required competitive award process may be waived for contractual procurement of like services with anticipated cumulative annual expenditures of \$50,000 and above when:

- (1) The health or safety of a Department client could be jeopardized by waiting for the completion of competitive award procedures.

- (2) There exists sufficient evidence that there is only one source for the required professional services and that no other reasonable and appropriate sources are available. Instances might include clients with unique or unusual problems or circumstances.
  - (3) A competitive bid process fails to produce a successful bidder, the Department may seek out a provider on the open market and may consider the unsuccessful solicitation the basis for non-competitive purchase of the specified service for the term of three years.
  - (4) A critical need, not necessarily impacting on client health and safety, has been determined to exist as the result of an emergency or condition that could not be reasonably foreseen or guarded against or the service cannot be obtained through normal procurement procedures. Examples might include emergency medical or treatment services, an unanticipated service need for an out of state placement or an unsuccessful competitive bid process.
  - (5) A Federal agency approves the use of a specific contractor(s) in awarding a grant.
  - (6) The purchasing Division(s) is satisfied with the services being provided and believes the current costs reflect the current market value or a fair/reasonable cost. The waiver of the "rebid" of a service may be made for up to two years at a time.
- b. The purchasing Division's final decision on non-competitive contract awards is made by the Division Director who submits a request waiver which requires the approval of the Secretary or designee. The same purchasing Division Director may not sign the waiver as the Secretary's designee.
- (1) Use of the non-competitive negotiation process must be documented by the purchasing Division prior to contract execution and depending upon the circumstances may be necessary for each subsequent contract renewal or extension thereafter. Such documentation must demonstrate a substantive and defensible basis for not using the competitive negotiation process.
  - (2) The waiver documentation shall be reviewed by the Division of Management Support Services to ensure compliance with this policy and be kept on file once fully approved.

## **VI. CONTRACT LANGUAGE REQUIREMENTS**

Whenever a Contractor produces communications materials as part of the contract certain requirements may apply. See DSCYF Policy #115 for details.

## **VII. CONTRACT MONITORING**

A. At the beginning of each State Fiscal year, each purchasing Division shall establish a monitoring schedule to be implemented throughout the year to ensure that a reasonable sample

of provider services are examined. In any monitoring year, the focus of said monitoring may be on varying aspects of the service or organizational support service purchased through the contract, but must ensure that both contract compliance and client outcomes are reviewed.

- B. A written report of findings must be prepared for each completed monitoring activity and documentation must be prepared of follow-up actions related to any required corrective actions. The final monitoring report shall be stored in FACTS under the provider's name once finalized.
- C. Provider performance documented in a monitoring report may be included in the review process when making subsequent contract awards.

