



**Minnesota State Colleges and Universities
System Procedures
Chapter 5 – Administration
Procedures associated with Board Policy 5.14**

5.14.2 Consultant, Professional or Technical Services Contracts

Part 1. Authority. Board Policy 5.14, Procurement and Contracts, delegates to the chancellor authority to develop procedures on behalf of the board for entering into consultant, professional or technical services contracts.

Part 2. Contracting Authority. State colleges and universities have authority to enter into individual contracts with a value of up to and including \$15,000 without system office approval.

Contracts over \$15,000 must be reviewed and approved by the system office unless the college or university has received increased authority. Increased authority to enter into contracts up to \$50,000 per contract may be requested from the vice chancellor-chief financial officer. The request must be in writing and shall include verification that employees have received appropriate contract administration training from the system office.

Contracts over \$50,000 require system office approval from the vice chancellor-chief financial officer. Institutions must submit a memorandum explaining the need for the contractor, the proposed process to be used in selecting a contractor, estimated cost, and verify that funds are available for paying the contractor. The vice chancellor-chief financial officer will review the memorandum and respond in writing to the institution.

Each college and university shall develop procedures for entering into contracts in consultation with the system office. Employees and their exclusive bargaining representatives shall also be consulted on the proposed procedures and must address topics such as employee protection, information availability and reporting, conflict of interest, and renewal restrictions.

Part 3. Contract Preparation. Contracts must be prepared on forms approved by the system office to assure that they include all state required contract language. Any modification of forms approved by the system office or the use of a non-system office form require the review of the Attorney General's Office and approval of the vice chancellor-chief financial officer.

Part 4. Encumbrance. Funds must be encumbered prior to making an obligation. An authorized employee must certify that the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it. College, university, and system office administration must assure proper authorization is on file for employees charged with encumbering funds. An expenditure or obligation authorized or incurred prior to encumbering funds is illegal and ineligible for payment until made valid and is in violation of M.S. 16A15, Subd. 3). An employee authorizing or making the payment, or taking part in it, is liable to the state for the amount paid. A knowing violation of M.S. 16A.15, Subd. 3, is just cause for the employee's removal. The State

cannot agree to indemnify third parties or hold them harmless (M.S. 10.17; Minn. Const. Art. XI, Sec. 1).

Part 5. Prepayment. M.S. 16A.41, Subd. 1, prohibits the state from paying in advance. The state can only make prepayments for software or software maintenance contracts for state-owned or leased computer equipment, sole source maintenance agreements, exhibit space, subscription fees for newspapers and magazines, and the Library of Congress.

Part 6. Consultant, Professional, or Technical Services Contract Definition. A consultant, professional or technical contract means any agreement entered into for consultant, professional, or technical services usually on a short-term basis for a finite period of time and for a specific purpose(s).

Subpart A. Consultant, professional, or technical services contracts are predominately intellectual in character which could include consultation analysis, evaluation, prediction, planning or recommendation; that do not involve the provisions of supplies or materials; and that result in the production of a report or the completion of a task.

Subpart B. Contracts that are renewed will not usually exceed five years. Contracts must show any renewal information including the amount previously paid. Any contract or amendments to original contracts that a campus or the system office proposes to continue beyond five years shall be reviewed by the vice chancellor-chief financial officer.

Subpart C. Public notice of Request for Proposals (RFP) shall be given for contracts over \$50,000 in an official newspaper. The official newspaper may be the State Register. In addition to the public notice, requests for proposals may be solicited by directly notifying prospective bidders not less than seven (7) days before the final date of submitting bids.

Part 7. Contracts in Excess of \$100,000.

Businesses with More than 40 Minnesota Employees. Consistent with Minnesota Statute 363.073, vendors who intend to bid on any purchases or contracts exceeding \$100,000 and have had on any single working day in the previous twelve (12) months more than forty (40) full-time employees *within* Minnesota, must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. Bids or proposals on purchases or contracts exceeding \$100,000 from vendors who have *not applied* for this certificate cannot be accepted. An award exceeding \$100,000 cannot be made to vendors who have not *obtained* this certificate.

Businesses with More than 40 Employees Outside Minnesota. Consistent with Minnesota Statute 363.073, vendors who do not have more than forty (40) full-time employees in Minnesota, but who have had on any single working day in the previous twelve (12) months more than forty (40) full-time employees *in the state in which their principal place of business is located*, must have a Minnesota Certificate of Compliance or must certify that the business is in compliance with federal affirmative action requirements in order to receive awards exceeding \$100,000.

Part 8. Contracting with Targeted Group Businesses. These businesses fit the definition in state law as being small, targeted because of race, gender or disability, or economically

disadvantaged. Purchasing practices will include provisions whenever practicable, for procurement from small targeted group businesses as defined in Minnesota Statute 471.345, Subd. 8. Targeted businesses are certified as such and a list is available from the Department of Administration.

The chancellor shall annually establish goals and guidelines for procurement from targeted group businesses consistent with M.S. 471.345, Subd. 8.

The accounting system for the Minnesota State Colleges and Universities shall serve as the basis for tracking payments to targeted group businesses, economically disadvantaged businesses, small businesses, and other business enterprises owned by women, minorities, and people with disabilities.

Part 9. Customized Training Contracts and Short-Term Leases of Instructional Space and Equipment. College and university presidents may enter into contracts to provide customized training instruction or for short-term leases of instructional space or equipment without additional authorization.

Part 10. Restrictions.

Subpart A. Contracts with Law Firms or Lawyers. Only the Attorney General's Office has the authority to represent the state. Colleges, universities, and the system office may enter into contracts with a law firm or a lawyer for non-legal services subject to the review by the Attorney General's Office and the approval of the executive vice chancellor/chief operating officer. The following language must be included in any contract entered into with a law firm or a lawyer for non-legal services: "Contractor's duties do not include providing legal services to the state within the meaning of Minnesota Statute 8.06."

Subp. B. Contracts for Banking Services and Banking Related Services. Minnesota Statute 16A.27 gives to the commissioner of finance the authority to "control the amount and manner of deposit of state funds." The system office, colleges, and universities must work with the Department of Finance when seeking any services related to the handling of state funds, banking, or banking services.

Subp. C. Contracts for Audits with a Public Accountant. Minnesota Statute 3.972, Subd. 3) places a restriction on contracting with public accountants for audits. It requires that "a contract shall not be negotiated unless the contract has been reviewed by the legislative auditor." If an institution seeks to hire an auditor as provided for in the mandates reduction bill, it is encouraged to consult with the office of the legislative auditor and the executive vice chancellor-chief operating officer.

Subp. D. Employer-Employee Relationship. A contract must not establish an employer-employee relationship as defined in Internal Revenue Service rules.

Part 11. Code of Ethics.

Subp. A. State employees are covered by M.S. 43A.38 and M.S. 43A.39. It covers such topics as acceptance of gifts, conflicts of interest, and use of confidential information.

Subp. B. M.S. 15.43 states that no employee of the state in direct contact with suppliers or potential suppliers to the state, or who may directly or indirectly influence a purchasing decision or contract by establishing specifications, testing purchased products, evaluating contracted services, or otherwise has official involvement in the purchasing or contracting process may:

- Have any financial interest or have any personal beneficial interest directly or indirectly in contracts or purchase orders for goods or services used by, or purchased for resale or furnished to the system office, college, or university; or
- Accept directly or indirectly from a person, firm, or corporation to which a contract or purchase order has been or may be, awarded, a rebate, gift, money, or anything of value other than items of nominal value. No such employee may further accept any promise, obligation or contract for future reward.

Textbooks, software, and other course materials authored by an employee of the Minnesota State Colleges and Universities may be used as required course material. Instructors may accept free samples of textbooks and related teaching materials.

Part 12. Accountability. The chancellor for the system office and the president of each college and university shall designate an employee who shall have overall responsibility for complying with state and federal laws, board policy, bargaining agreements and systemwide procedures for all consultant, professional, and technical contracts.

Audits of consultant, professional and technical services contracts will be conducted according to the audit plan approved by the board.

Statute Reference(s): M.S. 16A.15, Subd. 3; M.S. 10.17; Minn. Const. Art. XI, Sec. 1; M.S. 16A.41, Subd. 1; M.S. 471.345, Subd. 8; M.S. 8.06; M.S. 16A.27; M.S. 3.972, Subd. 3; M.S. 43A.38; M.S. 43A.39; M.S. 15.43

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