



## Minnesota State Colleges and Universities System Procedures Chapter 6 – Facilities Management

---

### Procedures 6.5.5 Facilities Construction Contracts

**Part 1. Authority.** Board Policy 6.5, Capital Program Planning Including Construction Delegation and Facilities Construction Contracts, delegates to the chancellor authority to develop procedures on behalf of the board for facilities construction contracts.

This procedure is applicable to contracts between Minnesota State Colleges and Universities and construction contractors, whether they are general contractors or specific trades contractors, for the performance of construction, alteration, repair or remodeling of facilities.

This procedure is not applicable to professional/technical service contracts with architects, engineers, testing and inspection consultants for services which may be related to construction.

**Part 2. General Responsibilities.** The Office of the Chancellor is responsible for oversight, and in some cases the direct management of all facilities design and construction that takes place on campuses of the Minnesota State Colleges and Universities. Construction contracts are funded from a variety of sources, including but not limited to college and university operating budgets, gifts, grants, the Revenue Fund and other authorized accounts; the Higher Education Asset Preservation and Replacement (HEAPR) account; and individual capital projects.

State colleges and universities are authorized to enter into contracts for construction projects up to \$250,000 that maximize the use of financial resources at each institution. Approval must be obtained from the Vice Chancellor - Chief Financial Officer before incurring contractual obligations for projects in excess of \$250,000 except as noted below.

Capital, HEAPR and major Revenue Fund projects may be delegated to college and university presidents for execution of design and construction. In such cases, no further approval is required to enter into a contract or contracts that exceed \$250,000.

This system-wide procedure for facilities construction contracts, consistent with MS 136F.64, Construction improvement, and repair of facilities; MS 471.345, Uniform Municipal Contract Law; and other pertinent statutes provides, in part, detailed instructions for campus and Office of the Chancellor implementation.

Audits of contracts for construction projects shall be conducted according to the audit plan approved by the board.

**Part 3. Reporting.** The Office of the Chancellor shall develop necessary procedures and systems to administer, monitor and report on all facilities construction projects funded by capital, HEAPR, Revenue Fund or other major sources.

College and university presidents will be held accountable by the chancellor for complying with state statutes, board policy, and system-wide procedures for construction contracts under \$250,000, and for construction contracts in excess of \$250,000 when delegated or otherwise authorized.

Pursuant to MS 136F.64, subd 1, the legislature must be notified prior to incurring contractual obligations for any project with a cost in excess of \$50,000 financed with operating appropriation or institutional receipts. Colleges/universities must notify the Office of the Chancellor before incurring any contractual obligations. The Office of the Chancellor will make the required legislative notifications. For purposes of this paragraph, projects are considered to be "capital" type construction when either adding square footage (new building or addition to an existing building) and/or making major programmatic changes through renovations to an existing space.

**Part 4. Contract Definition.** For purposes of this procedure, a contract means an agreement entered into by the Office of the Chancellor or a college or university for the construction, alteration, repair or remodeling of real or personal property.

**Part 5. Requirements for Various Dollar Limitations for Contracts.** The following contract requirements are defined in MS 471.345, Uniform Municipal Contracting Law.

**Subpart A. Contracts less than \$10,000.** If the amount of the contract is estimated to be \$10,000 or less, the contract may be made either upon quotation or in the open market. If the contract is made upon quotation, it shall be based, in so far as practicable, on at least two quotations which may be obtained by telephone or in written form via facsimile (FAX), delivery service, or Internet. Quotations must have a specified date and time for submission. If quotations are obtained by telephone, they must be followed with a signed quote. Quotations obtained shall be kept on file until audited. The record to be retained must include the names of vendors providing quotes and the dollar amount of the quotations. The successful contractor's quote must be signed and dated.

**Subpart B. Contracts from \$10,000 to \$50,000.** If the amount of the contract is estimated to exceed \$10,000 but not to exceed \$50,000, the contract may be made either upon sealed bids or by direct negotiation by obtaining two or more quotations for the contracted goods and/or services when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. Quotations may be obtained by telephone or in written form via facsimile (FAX), delivery service, or Internet. Quotations must have a specified date and time for submission. If quotations are obtained by telephone, they must be followed with a signed quote. Quotations shall be kept on file until audited. The record to be retained must include the names of vendors providing quotes/bids and the dollar amount of quotes/bids. The successful contractor's quotes/bids must be signed and dated.

**Subpart C. Contracts over \$50,000.** If the amount of the contract is estimated to exceed \$50,000, sealed bids shall be solicited by public notice subject to the requirements of Part 8 below. Bids and documents pertaining to the award of the contract must be retained and made a part of the permanent file. The record to be retained must include the names of vendors providing bids and the dollar amount of the bids. The successful contractor's bid must be signed and dated.

**Part 6. Encumbrance.** Funds must be encumbered prior to making an obligation through an authorized employee certifying that the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet the contract funding amount. An expenditure or obligation authorized or incurred prior to encumbering funds is illegal, ineligible for payment until made valid, and is in violation of MS 16A.15, 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 MS 16A.15, subd. 3 is just cause for the employee's removal.

**Part 7. Prepayment.** MS 16A.065 prohibits the state from paying in advance. Diligence must be taken to ensure the contractor's invoices reflect work completed and in place. Materials stored on the job site may be invoiced and paid.

**Part 8. Solicitation of Bids.** Public notice shall be inserted at least once in a newspaper, Builder's Exchange, the State Register or Construction Bulletin not less than seven (7) days before the final date of submitting bids. Bid documents should also be provided to the Minority Contractor's Plan Room. Sealed bids may also be solicited by directly notifying prospective bidders not less than seven (7) days before the final date of submitting bids. This notice shall state the time and place of receiving bids and contain a brief description of the subject matter. Bid bond requirements are stated in Part 11. Bids must be sealed, and opened and read in public at the time stated in the notice.

Bid tabulations for delegated or otherwise authorized capital, HEAPR and Revenue Fund projects should be faxed to the Office of the Chancellor, Construction Division for information purposes.

**Part 9. Minimum Labor Standards.** The minimum labor standards for facilities construction contracts shall be those defined in MS 177.42 and MS 177.43. These sections establish a minimum standard for wages, hours, and working conditions prevailing for the largest number of workers engaged in the same class of labor within the area. This represents minimum standards for contractor employees to which contractors must comply for the furnishing of labor, material, supplies, or services.

The prevailing wage rate is defined as the hourly basic rate of pay plus the contribution for health and welfare, vacation, pension and other benefits paid to the largest number of workers in the same class in the area. It includes rental rates for truck hire paid to owners and operators.

Prevailing hours of labor is defined as not more than eight hours per day or more than 40 hours per week. A laborer cannot be permitted or required to work more hours than the prevailing hours of labor unless paid for all hours in excess of the prevailing hours at a rate of at least 1/1/2 times the hourly basic rate of pay which shall not be less than the prevailing wage rate.

MS 177.43 does not apply to a contract, or work under a contract, where the estimated total cost of completing the project is less than \$2,500 and only one trade or occupation is required to complete it, or the estimated total cost of the project is less than \$25,000 and more than one trade or occupation is required to complete it.

**Part 10. Procurement from Targeted Group Businesses.** Procurement practices for construction projects will include provisions, whenever practicable, for procurement from targeted group businesses as defined in MS 471.345, subd. 8 and MS136F.581, subd. 3.

Targeted businesses are certified as such by the Department of Administration. A vendor list is available from the Department of Administration.

The accounting system for the Minnesota State Colleges and Universities shall serve as the basis for tracking payments to targeted groups, economically disadvantaged and other business enterprises.

**Subpart A. Purchases under \$50,000.** If construction services are available from targeted group businesses, the Office of the Chancellor and colleges and universities should make every effort to purchase from these vendors. These services should be purchased directly when a single contractor is required, or negotiated with the prime contractor when multiple contractors are required to complete a project.

**Subpart B. Purchases over \$50,000.** All construction projects over \$50,000 must contain bidding instructions regarding targeted group businesses.

## **Part 11. Insurance, Bond, and Human Rights Compliance Requirements**

**Subpart A. Insurance.** Facilities construction contracts shall stipulate that contractors provide evidence of carrying sufficient insurance to meet state requirements for various forms of bodily injury, property damage, products liability, workers' compensation, and builder's risk.

**Subpart B. Bonds.** Bid bond and performance and payment bonds shall be required for construction contracts estimated to cost over \$50,000. Bid bonds for projects over \$50,000 shall be five percent of the bid. Performance and payment bonds for projects under \$50,000 are optional.

**Subpart C. Human Rights.** Businesses with more than 40 Minnesota Employees. Consistent with MS 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 ore then 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 certify that the business is in compliance with federal affirmative action requirements in order to receive awards exceeding \$100,000.

**Part 12. Design and Construction Standards.** The Office of the Chancellor will develop and maintain current Facilities Design and Construction standards. All campus facilities projects shall comply with these standards. A written request for variance must be submitted and approved by the Office of the Chancellor if warranted. A copy of the request and approval must be kept with the project file.

### **Part 13. State Building Codes.**

**Subpart A.** Construction contracts shall adhere to the provisions of the state building code under MS 16B and the Uniform Fire Code under MS 299F.

**Subpart B.** Plans and specifications for the construction, alteration, repair or enlargement of state college and university buildings, structures and improvements shall be developed by professional architectural and engineering firms employing architects, engineers and other design professionals licensed by the state of Minnesota in accordance with MS 326.

### **Part 14. Contract Awards.**

**Subpart A. Lowest Responsible Bidder.** Contracts must be awarded to the lowest responsible bidder taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract is intended, the status and capability of the vendor, and other considerations imposed in the invitation for bids. The principles of life cycle costing may be used, when appropriate, in determining the lowest overall bid. Any or all bids may be rejected.

**Subpart B. Alterations and Erasures.** A bid containing an alteration or erasure of any price, which is used in determining the lowest responsible bid, must be rejected unless the alteration or erasure is crossed out and the correction is printed in ink or typewritten adjacent to it and initialed in ink by the person signing the bid.

**Subpart C. Special Circumstances.** A bid may be rejected if the bidder has failed to perform a previous contract and such failure to perform is documented on record. If identical bids are received from two or more bidders, the conditions of the contract may be negotiated with the tied low bidders so long as the final contract cost does not exceed the tied low bid price or the award may be decided by a flip of a coin.

**Subpart D. Cooperative Agreements.** The Office of the Chancellor, colleges and universities may enter into cooperative contracting agreements with other municipalities as defined in MS 471.345, Subd. 1.

**Part 15. Contract Standards.** Contract procedures and contract forms must conform to the most current MnSCU contracting policies and procedures. Requests for deviations to MnSCU form contracts must be requested in writing and approved by the Office of the Chancellor in consultation with the Office of the Attorney General in advance of entering into a contractual obligation. Forms can be obtained at the MnSCU Facilities website <http://www.facilities.mnscu.edu/>.

The Department of Administration, Materials Management Division, acquires goods, services, and utilities needed by state agencies. Institutions and the Office of the Chancellor may request use of these services directly through the Department of Administration, and must follow the Authority for Local Purchase (ALP) procedures and instructions to make direct purchases. Under Department of Administration policies, purchases are allowed under this procedure to a maximum of \$25,000.

## **Part 16. Ethics.**

**Subpart A.** State employees are covered by MS 43.38 and MS 43A.39 which covers such topics as acceptance of gifts, conflicts of interest, and use of confidential information.

**Subpart B.** MS 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: (1) have any financial interest or have any personal beneficial interest directly or indirectly in the contracts or purchase orders for goods or services used by, or purchased for resale or furnished to the Office of the Chancellor, college, or university; or (2) 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 make any promise, obligation or contract for future reward.

**Part 17. Accountability.** The chancellor for the Office of the Chancellor and the president of each college and university shall each designate an employee who shall have overall responsibility for developing and administering the facilities design and construction contract program.

The Office of the Chancellor and each college and university shall develop internal procedures for assuring compliance with state and federal laws, Board policy, and system procedures.

Audits of facilities design and construction contracts will be conducted in accordance with the audit plan approved by the Board.

---

*Approval Date: 06/19/96,  
Effective Date: 07/01/96,*

*Date and Subject of Revision:*

- 11/18/05 – Added paragraph 2 & 3 to Part 1, Cleaned up language in Part 4, Contract Definition,*
- 07/15/03 – Expanded Part 2, General Responsibilities; and Part 3, Reporting; clarified Part 7, Prepayment; increased dollar minimum from \$25,000 to \$50,000 in Part 10 and 11; added subpart B in Part 13; updated Part 15, Contract Standards; changed "system office" to "office of the chancellor"*
- 06/22/02 – Changed \$25,000 to \$50,000 in Part 5, Subparts B and C, due to legislative changes.*
- 06/21/00 – Contains language formerly in system procedure 6.2.1 and Board policy 6.2;*
- 04/99 – System procedure 6.2.1 Part 9, Subp. C was modified because of changes in MS 363.073*
- 07/97 – System procedure 6.2.1 Part 9, subd C, dollar figure went up from \$50,000, due to Legislative changes.*