



*South Dakota*

# Procurement Procedures Manual

Office of Procurement Management  
Bureau of Administration

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# Definitions Used In State Supplies and Services Procurements

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## **Agency**

Includes all agencies, departments, divisions, institutions, boards and commissions of South Dakota state government.

## **Authorized Signature**

Signature authority recognized by the accounting department to obligate funds from a designated account.

## **Award Basis**

After evaluating all bids or proposals, an award is made based on the evaluation factors listed in the invitation for bids or request for proposals.

## **Bidder**

A company, corporation or an individual submitting a response to an Invitation to Bid.

## **Bid Bond**

Bond issued by a third party, which ensures that the bidder will enter into the contract for which a formal written bid has been submitted.

## **Bid Letting**

The process allowed for bidders to review and respond to an invitation for bids or a request for proposals.

## **Bid Opening**

The process of opening and reading bids, conducted at the time and place specified in the Invitation for Bids and/or the advertisement, and in the presence of anyone who wishes to attend.

## **Bid Request/Invitation for Bid**

After receiving and accumulating requisitions of like commodities or products, a solicitation is prepared on the e-procurement system, and issued by a Purchasing Specialist, which includes specifications or descriptions, quantity needed, delivery date, address and other pertinent information. The Bidder receives an email notification that the solicitation has been issued, then logs into the vendor portion of the e-procurement system to enter their selling price and other requested information. The bidder then submits the bid electronically through the e-procurement system to the Office of Procurement Management as a formal quotation.

If a bidder does not have access to the e-procurement system, the Office of Procurement Management will provide the bidder with a bid form that contains all the information included in the e-procurement system. The bidder can enter their selling price on the form and submit a paper response as outlined in the terms and conditions of the bid.

## **Bid Response**

A price provided by a bidder on a specified commodity requested by the purchaser.

## **Bid Sample**

A sample required of a bidder for examination, comparison, testing, and evaluation by the purchaser.

## **Bidders List**

A list maintained by Procurement Management setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

## **Buyer**

A Purchasing Specialist whose responsibility is to authorize the purchase or lease of items for State agencies.

## **Change Notice**

A document issued by Procurement Management that changes the original entries of a purchase order.

**Competitive Bidding**

Process where prospective bidders compete for the sale or lease of items by submitting sealed bids, either in response to formal or informal notification on behalf of the state.

**Commodity**

See "Item" on page 5.

**Commodity Codes**

Numbers assigned to categories of items that are the subject of contracts or awards executed by Procurement Management. These codes (numbers) are used by Procurement Management to group similar items for bidding purposes, to ensure that bidders are notified when a bid is issued for commodities the bidder wishes to sell to the State.

**Confirmation**

Information received by a vendor stating that set items of the Purchase Order have been purchased and delivered to ensure items are not duplicated.

**Confirmation Order**

A purchase order type. This means that the order has been placed. The confirmation order is released to confirm the pricing and delivery under which the purchase order was originally contracted.

**Contract, Term**

A binding legal document, executed by Procurement Management with one or more vendors, which establishes prices for an item or service for a specified period of time.

**Contract Number**

Following the award to a vendor, a number is assigned by Procurement Management to the ensuing contract.

**Direct Purchase Order or Voucher**

A form in the same format as a purchase order that is issued by designated agencies according to delegated authority.

**Encumbrance**

Process where the Purchase Order sets aside funds for the purchase of supplies or equipment by virtue of an entry in the General Ledger for the specified fund source given in the RQ transaction of the State's accounting system.

**Emergency Purchase**

An unscheduled purchase of an item or service urgently needed by an agency, where formal advertising and competitive bidding are not used, and which cannot be met through normal procurement methods.

**Escalation Clause**

Language placed in some contracts which provides for contract price adjustments if specified contingencies occur, such as changes in the vendor's raw material or labor costs.

**Formal Sealed Bid or Proposal**

A response to an invitation for bids or request for proposals submitted in a manner where the contents of the bid or proposal cannot be opened or viewed before the date and time of the formal opening without leaving evidence that the bid or proposal has been opened or viewed.

**Guarantee**

To warrant, stand behind, or insure performance or quality of a product.

**Informal Bid or Quote**

An unsealed competitive offer conveyed by letter, telephone, telegram, or other means and under conditions different from those required for formal bidding.

**Item Number**

A number assigned by Procurement Management to a particular supply item. The number may be used in the state procurement system for requisitioning the item or receipting its delivery. Also known as the commodity code.

**Lead Time**

The period of time from date of ordering to date of delivery during which the buyer must reasonably allow the vendor to prepare goods for shipment; period of time needed by central procurement to process agency purchase requisitions for bidding and award of a contract.

**Lease**

A contract by which one conveys equipment, or facilities, for a specified term and for a specified rent.

**Line Number**

The number assigned by Procurement Management to designate a particular item within a solicitation or contract.

**List Price**

The published price at which a seller offers an item for sale.

**Local Purchasing**

A procedure established by the Bureau of Administration and the Office of the State Auditor where agencies may purchase items on their own, without going through Procurement Management, subject to certain restrictions.

**INFOR (Formerly MSA/DBS/GEAC)**

Mainframe accounting system.

**No Bid**

A response to an Invitation for Bids stating that the bidder does not wish to submit a bid.

**Non-Cash Voucher**

A form used to transfer funds from expending agency to billing agency.

**Non-responsive Bid or Proposal**

A bid or proposal that does not conform to the essential requirements of the Invitation for Bids or Request for Proposals.

**Notice of Award**

Term used to describe the establishment of a contract with one or more vendors, who are to furnish an item or items, at their selling price.

**Offeror**

A company, corporation or an individual submitting a response to a Request for Proposals.

**"Or Equal"**

A term used when referencing a make or model in a brand name or equal specification, informing a bidder that you will accept a different brand, as long as it is equal in quality, performance and other essential characteristics.

**Period Letting**

The time period between receiving a requisition at Procurement Management and when it is arranged with like items for the scheduled bid letting.

**Prepaid**

A term denoting that transportation charges have been, or are to be, paid at the point of shipment.

**Procurement**

The process for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment. The acts of preparing specifications, evaluating bids or proposals, making awards, and administering contracts are involved.

**Proposal**

A formal offer by a supplier to provide certain goods and services. A proposal documents the response to the requirements of a request for proposals (RFP), describes the proposed solution, identifies the costs, and often indicates acceptance of contractual terms and conditions stated in the RFP.

**Purchase Order**

A purchaser's document to formalize a purchase transaction with a vendor. The purchase order should contain statements as to the quantity, description, and price of the goods or services ordered; applicable terms as to payment, discounts, date of performance, and transportation; and other factors or suitable references pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

**Purchasing Specialist**

The Office of Procurement Management personnel that review purchase requests, prepare solicitations, obtain bids or proposals, evaluate and award contracts.

**Quotation**

A statement of price, terms of sale, and description of goods or services offered by a prospective seller to a prospective purchaser, usually for purchases below the amount requiring formal bidding.

**Receiving Voucher Final Audit Copy**

The portion of a purchase order that is used as the payment document for the purchase order and to indicate actual receipt of the item ordered. This may also be accomplished by submitting a receiving report generated through the state procurement system.

**Request for Proposal**

All documents, whether attached or incorporated by reference, used for soliciting competitive sealed proposals.

**Requisition**

The procedure used by agencies to communicate to Procurement Management their need for an item or service. The agency creates a requisition on the state e-procurement system and sends Procurement Management the completed requisition, which must contain the information regarding where the ordered item is to be sent.

**Requisition Due Date**

A date identified in the schedule of lettings as the final date a requisition for a class of items is due to Procurement Management.

**Responsible Bidder**

A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

**Responsive Bidder**

A person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

**Restrictive Specification**

A specification or purchase description that unnecessarily limits competition by precluding items that would be capable of satisfying the intended need.

**Schedule of Letting**

A listing issued by Procurement Management of the due dates for requisitions of items regularly used by agencies and the dates when bids will be opened.

**Sole Source**

When a supply or service is available only from one vendor and not available in like and necessary manner from other vendors.

**Specification**

A written description of requirements for a particular supply or service.

**Supplies**

Furniture, fixtures, equipment, printing, stationary, fuel, clothing, staple foodstuffs, utilities and all other commodities purchased, leased, hired or lease-purchased for the state or its agencies.

**Surplus Property**

Items no longer needed by an agency regardless of their value or condition.

**Tabulation of Bids**

A recording of bidders and their listing of prices in response to a specific solicitation. Made for the purpose of comparing and record keeping.

**Vendor**

A person, firm or corporation, authorized by contract or purchase order, to sell to the State or its agencies, supplies or services pursuant to the procurement laws of South Dakota.

**Written or In Writing**

The product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.



# Procurement Procedures

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## Bid Limits and Use of Other Government Contracts

State agencies and institutions are to utilize established state contracts for purchases of goods and services. If a state contract is not available, an agency may:

1. Make purchases of supplies or services that do not exceed **\$4,000 and are not available on a state contract**, by using their best discretion to obtain the best value for the taxpayers;
2. Make purchases of supplies not exceeding **\$25,000 and not available on a state contract**, by obtaining three written quotes. Purchases of supplies under this provision require the agency to submit a requisition to the Office of Procurement Management. A purchase order issued by OPM will authorize the purchase. State agencies may make purchases of services not exceeding \$25,000, by using their best discretion to obtain the best value for the taxpayers; agencies are responsible to issue their own contracts or service purchase orders for services;
3. Make purchases of supplies exceeding \$25,000 by submitting requirements to OPM which will be placed on a schedule bid letting;
4. Enter into contracts for services exceeding \$25,000 by advertising for competitive sealed bids or competitive sealed proposals in compliance with SDCL 5-18A;
5. Make purchases of supplies or services, other than professional services, from active contracts that have been awarded by any government entity by competitive sealed bids or competitive sealed proposals, or from any contract that was competitively solicited and awarded by any government entity within the previous twelve months. Such purchases require a requisition to Procurement Management. A purchase order issued by OPM will authorize the purchase; or
6. Make purchases from contracts issued by the United States General Services Administration (GSA) that are open to state and local government purchasing. Such purchases require a requisition to Procurement Management. A purchase order issued by OPM will authorize the purchase.

## Purchase from Contracts Utilizing Multiple Authorized Dealers/Resellers

State agencies making purchases of supplies and/or services from contracts that utilize multiple resellers, and are authorized for use by the Bureau of Administration, shall make such purchases as follows:

1. Purchase directly from the manufacturer if allowed and no reseller expertise or assistance is required;
2. Utilize the reseller identified by the Bureau of Administration, Office of Procurement Management as the sole reseller authorized for state government purchases.
  - a. Procurement Management may conduct a competitive process among authorized resellers to determine a sole reseller for state government purchases;
  - b. Procurement Management may identify resellers authorized to service specific geographical locations in the state.
  - c. For information technology contracts, Procurement Management may rely on the Bureau of Information and Technology to identify resellers to be used by state government agencies.
3. Utilize the manufacturer authorized reseller closest to the location that supplies will be delivered to, and that related services are, or may be, required.
  - a. Agencies may utilize a different reseller than the reseller closest to the delivery location if a written determination is made that the closest reseller is not appropriate for the specific purchase, and explaining

the reasons therefore. Such determination must be approved by the Office of Procurement Management before completing the purchase.

### **Purchase of Environmentally Preferable Products**

State agencies and institutions shall procure environmentally preferable products as outlined in ARSD 10:02:05:01 through 10:02:05:09 inclusive. The rules establish certification standards and requirements for specifications when purchasing the following:

1. **Paper products and printing projects** - Paper products, including paper used in any state government printing project, shall be Green Seal certified, Ecologo certified, or comply with the minimum requirements for recycled content as published in the US EPA Comprehensive Procurement Guidelines for Paper Products dated October 2007.
  - a. For state printing projects, the statement "Printed on Recycled Paper" must be included somewhere on the document, unless the agency has received a waiver from the requirement to use recycled content paper from the Office of Procurement Management.
2. **Cleaning and maintenance products** - Cleaning and maintenance products purchased by state agencies shall be Green Seal certified, Ecologo certified, designated for preferred procurement through the US EPA Designed for the Environment labeling program, biobased using ASTM Method D6866 including products listed in the USDA BioPreferred program catalog, or be certified as meeting or exceeding the requirements of any of the other listed criteria through independent third party testing.
  - a. US EPA registered antimicrobial products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act are exempt from the requirement if necessary to protect public health.
3. **Energy consuming products** - Energy consuming products purchased by state agencies shall be Energy Star qualified, Green Seal certified or Ecologo certified.
4. **Water consuming products** - Water consuming products purchased by state agencies shall be WaterSense qualified or Ecologo certified.

State agencies and institutions may submit a request for waiver of the requirement to purchase an environmentally preferable product, documenting the reasons for purchasing an alternate product. The waiver request must be submitted to the Office of Procurement Management before the purchase is made, on a form provided by OPM.

The following requirements apply to the request for waiver:

1. For **procurement of any paper product or printing project**, the request shall provide justification for the use of virgin paper stock as an alternative to the requirement for recycled content paper;
2. For any **cleaning and maintenance product**, the request shall document the reasons for selecting the alternative product. The request shall be submitted through the state agency's facilities director;
3. For any **energy consuming product**, the request shall document that no energy efficient product is reasonably available that meets the functional requirements of the agency or that no energy efficient product is cost effective over the life of the product taking energy cost savings into account; and
4. For any **water consuming product**, the request shall document that no water efficient product is reasonably available that meets the functional requirements of the agency or that no water efficient product is cost effective over the life of the product taking water cost savings into account.

The Office of Procurement Management will automatically grant a waiver if it is apparent that no environmentally preferable product is available after reviewing bids or proposals received in response to a request for sealed bids or proposals.

## Schedule of Lettings

A schedule of lettings is prepared by Procurement Management for each calendar year to include virtually all classes of items used by agencies. These schedules are constructed so that agency requirements can be planned to coincide with one of several requisition due dates. A lead time of 30 to 45 days is provided in this schedule for most requirements. Agency planning should include this lead time plus delivery time, thus avoiding the expense of an emergency purchase.

The need for the time between the requisition due date and the bid opening involves the following: The buyer must review the requisitions for a pooled letting, check for accuracy and add necessary instructions and information for the bidder. An invitation for bids is created on the State's e-procurement system based on the submitted requisitions, then released to registered bidders through the system. Bidders that are not registered may request a copy of the bid form, which is emailed or faxed to them by Procurement Management. Scheduled lettings must be advertised.

**NOTE:** Requisitions received after the due date established will be held for next scheduled date, unless an unscheduled bid letting is necessary.

## Requisitions

A written request used by agencies for procurement of commodities. Three areas of vital importance are delivery time, description and detailed specification of commodities. When requisitioning an item found on a state contract, it is important to note the contract number, line number, item number and invoice/ship to codes. Purchases made from a contract catalog on the state e-procurement system usually contain all the required information automatically.

All requisitions are created in the State's e-procurement system. There are two types of requisitions: Catalog and Non-Catalog.

**Catalog** requisitions are used to purchase items from the same contract catalog or if the same vendor will be supplying items available from more than one contract catalog. Procurement Management places the state contract number in the item description for catalog items purchased through the e-procurement system. This information will appear on a purchase order that results from a catalog requisition. **NOTE: THIS DOES NOT APPLY TO CATALOGS THAT MAY BE HOSTED BY THE VENDOR OUTSIDE OF THE STATE'S E-PROCUREMENT SYSTEM.**

**Non-Catalog** requisitions are used when purchasing non-contract items from a single vendor, or when purchasing contract items for which there is no catalog created in the e-procurement system. The agency must ensure that the vendor they are wishing to purchase from is in the state accounting system and identified as a "purchasing vendor". This will ensure that the vendor is also loaded in the e-procurement system to allow a requisition to be created.

It is very important that requisitions are filled out properly if you wish to acquire the item needed in a timely fashion.

**For manual requisitions of state contract items, the requesting agency should ensure that they have noted the appropriate contract number in the requisition.**

Please refer to this guide for instructions on how to create catalog and non-catalog requisitions [https://boa.sd.gov/central-services/procurement-management/docs/requester\\_guide\\_new\\_ui.docx](https://boa.sd.gov/central-services/procurement-management/docs/requester_guide_new_ui.docx)

Remember you can only use a catalog requisition with items from a contract catalog that is established in the e-procurement system, and all the items needed are coming from the same vendor. If you need to purchase items from another vendor you will need to create a separate requisition.

Non-catalog requisitions must have quotes attached to the requisition. The person creating the requisition should attach electronic copies of the quotes to the requisition, using the "Notes and Attachments" function. The requisitioner can communicate with the buyer or internal approvers by using the "Internal Notes" function of the requisition process. See the ESM Training Manual for more detail.

Items that are not on a contract or quotes are unattainable need to be bid on a formal bid and advertised by Procurement Management. Complete specifications of the item(s) to be bid must be submitted by email to the appropriate Purchasing Specialist with Procurement Management who handles that particular commodity being requested. The specification document must indicate the quantity required and the ship to locations, along with any other specific information related to the purchase of the item. Examples of the different types of specifications are listed below:

**1. General Item Description Using Performance/Functional Specification:**

UTILITY TRACTOR. 35 HP DIESEL ENGINE. LIFT CAPACITY AT LIFT POINT 1900 LBS. ROLL OVER PROTECTIVE STRUCTURE. POWER STEERING. HYDROSTATIC TRANSMISSION. THREE POINT HITCH.

**2. Brand Name or Equal Specification:**

KAWASAKI MULE 610 4X4 UTILITY VEHICLE OR EQUAL. MINIMUM 6.5 INCH GROUND CLEARANCE. ONE YEAR WARRANTY. OTHER ACCEPTABLE BRANDS/MODELS: POLARIS RANGER 400; HONDA BIG RED MUV; JOHN DEERE GATOR HPX. OTHER BRANDS/MODELS MAY BE OFFERED AS LONG AS THEY ARE EQUIVALENT IN QUALITY, FUNCTION AND PERFORMANCE TO ANY OF THE LISTED ACCEPTABLE MODELS.

**3. Brand Name Only Specification – No Alternates Allowed:**

SCHUTT ION 4D ADULT FOOTBALL HELMET WITH FACEGUARD. NO ALTERNATES. MUST MATCH EXISTING HELMETS.

SUGGESTED BIDDERS (LIST AS MANY AUTHORIZED DISTRIBUTORS FOR THE SOLE BRAND REQUIRED AS POSSIBLE, IN THE FOLLOWING MANNER):

HELMETS INC.  
123 S 10<sup>TH</sup> STREET  
ANYTOWN, IA 99999  
PHONE: 555-555-5555  
EMAIL: [JDOE@HSDS.COM](mailto:JDOE@HSDS.COM)  
CONTACT PERSON: JOE DOE  
VENDOR # 12555555

**NOTE: THE USE OF A BRAND NAME OR EQUAL, OR BRAND NAME ONLY SPECIFICATION REQUIRES SUBMISSION OF THE BOA "JUSTIFICATION/REQUEST FOR USE OF BRAND NAME SPECIFICATION FORM" (SEE ATTACHED SAMPLE AVAILABLE ON THE OPM INTRANET SITE AT:**

[https://boa.sd.gov/central-services/procurement-management/docs/OPM\\_BRANDNAME\\_SPEC\\_FORM.pdf](https://boa.sd.gov/central-services/procurement-management/docs/OPM_BRANDNAME_SPEC_FORM.pdf)

If you have been working with a particular company on obtaining information of a stated item, please put the name of the company and address below the specification. Procurement Management will then send a copy of the solicitation to the company, or give them access to the e-procurement system to allow them to bid on the item. Or if you know of a bidder(s) that is able to supply the item needed, put them down as a suggested bidder. Be sure to include the correct address, contact person, e-mail address, fax, and telephone number. Requirements that must be put out for bid should be sent to the appropriate Procurement Management Specialist by email and not by requisition through the e-procurement system.

When providing recommended bidders to Procurement Management, it is the agency's responsibility to make sure the bidders are registered on the Vendor Short Name Lookup screen (VSL) of the State Accounting System if the vendor is successful. If not on VSL, the agency must send a W9 form to the bidder and upon return, send it to the Bureau of Finance and Management. If the recommended bidder is successful, but has not been added to the state accounting system, a purchase order will not be able to be issued to them, until they are added. Bidders that are recommended by agencies must be listed at the end of the specifications. If needed list the bidders on a separate document attached to the email sent to Procurement Management. Include the company name, address, city, state, zip code and a contact person with an email address.

Agencies may purchase from a previous bid award that is no older than one year, after verifying the vendor will honor the bid price, and that all other terms and conditions remain the same as the original purchase. This is called "Piggybacking". The previous solicitation number, purchase order or contract number must be stated on the requisition.

### **Sole Source Procurements**

An agency must provide complete written documentation to the **Procurement Management Director** that a supply is only available from one source and give the reasons for there being only one source. Stating that it is the "only known source" is not acceptable without publicly advertising for bids or proposals. A sole source justification form must accompany the requisition for sole source purchases. This form is located on our website at <https://boa.sd.gov/central-services/procurement-management/docs/OPMSoleSourceRequestForm.pdf>

It is the responsibility of Procurement Management to negotiate for and execute a sole source contract for supplies, unless such actions are delegated by Procurement Management.

The Office of Procurement Management may issue a Notice of Intent for Sole Source Purchase whenever any agency requests such authority. The notice will be posted on the State's e-procurement system for seven (7) days, providing documentation of the supplies requested along with the requesting agency's justification for the sole source request. OPM will allow vendors to submit written objections to the requested sole source which will be evaluated by the Procurement Director. The Procurement Director will then make a final decision on the sole source request, which may include that the items be subject to a request for competitive sealed bids or proposals.

### **Bid Request/Invitation for Bids**

When requisitions are received and reviewed by Procurement Management, the commodities are listed in a document called an Invitation for Bids. This document is then distributed to qualifying bidders through the e-procurement system, or by email or fax, for their bid proposal and sent back to the Office of Procurement Management as a sealed bid.

The Invitation for Bids contains the purchase description or specification covering the items needed, the terms and conditions of the proposed purchase, the manner in which bids are to be submitted, the criteria for evaluating the bids and awarding a contract, and the place and time for opening the bids.

### **Process for Advertisement of Scheduled Lettings**

No bid letting required to be publicly advertised pursuant to SDCL 5-18A-14 may be released for bids or proposals until the advertisement has been sent to the required newspapers for publication in accordance with SDCL 5-18A-14.

OPM Purchasing Specialists will provide written notification of lettings to be advertised to the OPM staff person responsible for advertising. Purchasing Specialists will be provided with a copy of the advertisement notice after it has been sent to the newspapers as required.

OPM Purchasing Specialists will review the advertising notice to ensure that the letting to be released is included on the listing of lettings in the current advertisement. Once the Purchasing Specialist has confirmed the letting is included in the current advertisement, they are free to distribute the bid documents to interested bidders.

This process will provide for a double check of the advertisement notice by the staff person responsible for advertising, and the Purchasing Specialist responsible for the specific letting, to ensure that public notice is provided as required.

State agencies are responsible for complying with SDCL 5-18A-14 when solicitation bids or proposals for contracts for services.

### **Notice of Awards**

This notice establishes a contract with the State and vendor to furnish supplies awarded from a bid or proposal. When using competitive sealed bids, awards are based on the lowest responsive and responsible bidder who can meet specifications and quality of the supplies or services required, and who can meet the conditions of the solicitation,

including delivery requirements or completion of services.

A notice of awards or a contract may be for the following:

- One-time purchase order;
- 6 months; or
- One year or more.
- Any time period less than one year as determined to be in the best interest of the State of South Dakota.

## Purchase Orders

The final document sent to vendor for procuring supplies and some services that have been awarded.

This document has more than one form and may have a slightly different title. The two common versions are:

- The Purchase Order issued by Procurement Management
- The Local Purchase Order issued by agencies, usually for items found on a state contract, but it is also used for other types of procurement at the local level.

**NOTE:** Questions concerning requisitions, proposals and contracts need to be directed to your purchasing department. When calling about a purchase order, please give the purchase order number and not the buyer name.

## SD Prompt Payment Act (SDCL 5-26)

"5-26-2. An agency of the state of South Dakota which acquires property or services pursuant to a contract with a business shall pay for each complete delivered item of property or service on the date required by contract between the business and agency or, if no date for payment is specified by contract, within forty-five days after receipt of property or services and receipt of the invoice covering the delivered items or services."

Please note that the 45 day period is not automatic. Many contracts specify 30 days or less.

The act defines "contract" as an "invoice, purchase order or vendor contract."

"5-26-3. Interest on overdue payments - Rate - Compounding. Proper invoices not paid within forty-five days shall accrue interest beginning on the thirtieth day after receipt of property or service and receipt of the invoice covering the delivered items or services. Interest shall accrue and be charged on payments overdue under §5-26-2 at one and one-half percent per month or at the rate specified by contract.

Interest which is unpaid at the end of each sixty-day period or at the end of any specified period provided by contract shall be added to the principal amount of the debt and shall thereafter accumulate interest."

## Purchase/Receipt Of and Payment for Identified Contract Items

Purchases made from certain contracts executed by Procurement Management may be with a local purchase order or the state purchasing card. An agency may wish to use a requisition and send it to Procurement Management, but that is a decision to be made by the agency. A requisition must be prepared and submitted to Procurement Management for certain contract purchases as identified in the Local Purchase Policy.

**IMPORTANT NOTE - When the items are received by the agency, the receipt is to be entered on the State Accounting System.**

When an agency pays for items in the States accounting system the quantity is always "1" only the dollar amount is the concern.

## **Discounts**

Vendors often offer discounts on their invoice for items delivered to the State. In most instances the discounts offered apply only if payment is made in a stated number of days from the date of the invoice. Since the discount is a means of saving money and an incentive for prompt payment, an agency has the responsibility to process the payment document at the earliest opportunity. If needed, the agency may use the state purchasing card for this purpose, if the items are acceptable for purchase in that manner. Contact Procurement Management if purchasing card limit modifications are needed, or if you have questions on how to take advantage of prompt payment discounts.

## **Partial Payments**

When circumstances beyond the control of a vendor prevent completing delivery of a purchase order, you must make partial payment for the items delivered. Whenever delivery of items on a purchase order is incomplete and you know the balance will not be completed for more than 30 days, you must process a partial payment of the purchase order or advise Procurement Management why payment is being delayed.

## **Shipping Damage Claims**

Settling of concealed damage claims with carriers can be troublesome. In order to assure that such claims, as well as apparent damage claims are properly settled the following should be standard procedure for receiving merchandise.

1. Be certain that all incoming shipments are carefully inspected at the time of delivery.
2. Make a written notation on the carrier's freight bills in all cases where cartons indicate the slightest possible concealed damage. By taking this action you are verifying that the cartons were damaged at the time of delivery and your claim will then be processed on other than a concealed damage basis.
3. Insist on prompt carrier inspection after damage is discovered. Save container packaging material and the damaged article for the carrier's inspection. DO NOT remove the shipment from the point of the initial delivery before the carrier inspection is complete.
4. All claims for damage must be filed within 15 days of receipt of shipment.

It is strongly suggested that an agency designate a person(s) to inspect received items. Training of these individuals is extremely important. Procurement Management will be pleased to assist in this training.

## **Vendor Performance**

Procurement Management must be apprised, in writing, of non-performance, non-delivery, invoice problems, delivery of sub-standard equipment/materials or supplies in order to intercede and protect the best interests of the State of South Dakota. A vendor who consistently furnishes sub-standard performance will be counseled by Procurement Management and may be removed from future bidding.

## **Exempt and Emergency Purchases**

South Dakota law identifies certain supplies, services and agencies that are not subject to public notice requirements and the sealed bid or proposal processes outlined in SDCL 5-18A. Agencies making purchases of exempt items without competition should identify the specific exemption they are claiming when submitting invoices to the State Auditor for payment.

The list consists of:

1. Purchases from General Services Administration contracts that are open to state and local governments;
2. Purchases of supplies and services, other than professional services, from other government contracts that are currently active or were bid out in the past 12 months;
3. Equipment repair contracts;
4. Purchases of electric power, water or natural gas;
5. Chemical and biological products;
6. Laboratory apparatus and appliances;
7. Published books, maps, periodicals and technical pamphlets;
8. Works of art for museum and public display;
9. Medical supplies;
10. Communications technologies,
11. Computer hardware and software, peripheral equipment, and related connectivity;
12. Tableware or perishable foods
13. Supplies or services for externally funded research projects at institutions under the control of the Board of Regents;
14. Seeds, fertilizers, herbicides, pesticides, feeds, and supplies used in the operation of farms by institutions under the control of the Board of Regents;
15. Property or liability insurance or performance bonds;
  - **NOTE:** Procurement of insurance and performance bonds shall be made under the supervision of the Bureau of Administration.
16. Materials needed by the Department of Human Services or prison industries for the manufacturing of products;
17. Printing jobs involving student activities, paid for from student fees, at institutions under the control of the Board of Regents;
  - **NOTE:** Printing for other activities at such institutions are subject to SDCL 5-18.
18. Purchase of surplus property from another purchasing agency;
19. Animals
20. Purchases by authority authorized by chapters 1-16A, 1-16B, 1-16E, 1-16G, 1-16H, 5-12, or 11-11;

### **Emergency Procurement Procedure**

A requisition for an emergency procurement must include an Emergency Purchase Justification Form signed by the head of the respective department, bureau, board, commission, institution or constitutional office, or their designee, before being sent to the Procurement Management Director. The form or letter must provide an explanation of the facts that dictate an emergency. This form is located on our website at: <https://boa.sd.gov/central-services/procurement-management/docs/OPMEmergencyPurchaseRequestForm.pdf>



After gathering the information, you must have written approval and the signature of the Procurement Management Director.

- Requisitions received without written explanation and the justification form for emergency purchases will be held and processed with a regularly scheduled letting. The agency submitting the emergency requisition will be advised when an item is held for a scheduled letting.

Procurement Management may authorize agencies to make emergency procurement when there exists a threat to public health, welfare or safety, provided that such emergency purchases shall be made with as much competition as is practicable under the circumstances. An emergency condition creates an immediate and serious need that cannot be met through normal procurement methods.

### **General Services Administration (GSA) Contracts**

Agencies have access to GSA contract items without competitive bidding, as long as the specific GSA contract in question is open for use by state and local governments. Several GSA schedules are open only under certain conditions. Agencies must be certain they can comply with the required conditions before making a GSA contract purchase.

The acquisition of the GSA contract items must be through a requisition to Procurement Management if the total purchase exceeds \$4,000. Agencies must provide documentation of the GSA contract, along with their requisition, to allow Procurement Management to verify that the GSA contract is valid and open to state and local government use.

### **Lease, Lease Purchase or Rental Agreements**

As provided in the South Dakota Codified Laws, chapter 5-18A-34, the Bureau of Administration, through the Procurement Management Director, shall authorize the leasing, hiring or lease-purchase of all equipment. To comply with the above statute, all proposed leases, lease purchase or rental of equipment must be submitted in writing to Procurement Management.

The procedures are as follows:

- a) A written justification on paper or by e-mail must be submitted to Procurement Management except for maintenance and farm equipment, which are leased for "seasonal or one-time" usage.
  - b) Upon receiving written approval from Procurement Management, the authorized personnel may sign and process the agreement. It shall be the responsibility of each agency to advise the Procurement Management Director of the name of the authorized individual.
  - c) A central file will be maintained at each agency on all lease, lease-purchase or rental agreements.
1. All leases are approved to form by the Attorney General's Office. Appropriate legal counsel reviews all leases.
  2. All leases must address the "funding out clause".

All leases/agreements must be cleared by Bureau of Administration especially when refurbishment or remodeling with a third party is involved.

### **Lease Agreements**

Leases will be competitively bid with a termination at the end of the fiscal year. Lease and rental agreements may exceed (12) twelve months duration only if a "funding out clause" is included. State, non-State and Federal fund leases may be renewed if sufficient justification exists and will not exceed four (4) years duration. Procurement Management will be the final authority.

## Office Copiers

Except for small convenience copiers, most office copiers should be rented or leased. Depreciation and obsolescence is very rapid on this type of equipment.

## Trade-In of Used or Surplus Machines and Equipment

All trade-ins must be approved through Property Management. Agencies wishing to trade-in old equipment or machines must obtain approval for the trade-in as follows:

1. Contact Property Management to inform them of your intent to trade-in used state equipment and request appraisal of the equipment.
2. If the item being traded in is a capital asset (original purchase cost of \$5000 or more), the agency must complete a "Fixed Asset Maintenance Form, Transfers and Retirements" form and submit it to Property Management.
3. Obtain quotes from vendors for outright purchase with no trade-in and quotes for purchase after trade-in of the equipment for comparison to determine the actual value of the trade-in.

A copy of the appraisal sheet from Property Management must be attached to the requisition to ensure timely processing of the purchase request. Procurement Management will NOT process any purchase request requiring a trade-in unless the agency has obtained an appraisal from Property Management and bids or quotes clearly document the amount being offered by the vendor for the equipment being traded.

➤ **NOTE:** Motor vehicles and office furniture will not be considered as trade-in merchandise.

## Purchase of Used Equipment

On occasion an agency may find it desirable or even necessary to procure used equipment. However, we normally discourage such acquisitions. Nevertheless, all used items will be competitively bid. Therefore, approval from Procurement Management is required before proceeding with acquisition of any used equipment.

Specifications or proposals for the purchase of used equipment must include (a) an original purchase price, if known; (b) date of manufacture and serial number, (c) date of original procurement, if known (d) record of maintenance or repairs, if available, and (e) the bid price to the State. All invitations to bid on used equipment must include the language "subject to the inspection and acceptance by the using agency."

## Guarantees and Warranties

Nearly all machines have a guaranteed life or a warranty period. Be sure you know comparative offerings by various brands in which you may be interested and carefully document date of installation. It is your responsibility to make sure that guarantees or warranties stated are performed as stated. Many dollars can be saved by careful attention to performance standards as stated and actual performance even to the point of replacement of the machines.

Lease/purchase is discouraged because it is expensive when you consider interest rates. Generally guarantees, warranties and service and competition are often limited.

However, we do recognize that agencies are sometimes forced into situations when installment or lease-purchase is the only practical means of acquisition. In this event, the procurement process is the same as any other purchase.

## Writing Specifications

The purpose of this section is to provide a guideline for writing functional or performance specifications to be used for the procurement of supplies and services. These guidelines apply to all procurements, whether the procurement is: (1) a purchase, (2) a lease with option to purchase, (3) a straight lease, or (4) a rental.

Not all steps, methods and techniques described herein are required. Which to use will be based on the complexity and dollar value of the specific procurement. If you have any questions regarding specifications, please do not hesitate to contact Procurement Management for assistance.

Remember it is your responsibility to provide the necessary specification and information to allow Procurement Management to fulfill your requirements correctly and efficiently. Incomplete or vague specifications allow vendors to furnish items that do not meet an agency's requirements. Requisitions received that do not contain complete or detailed specifications will be returned to the requesting agency for completion.

- **NOTE:** It is advised that old specifications are reviewed and upgraded before requesting a commodity. Specifications cannot be changed after a proposal has been advertised and bid out.

### **Restrictive Specifications**

Restrictive specifications, which hinder competition, must be explained. Therefore, if a state agency determines that equipment, supplies or services require specifications of a limited scope, which would preclude competitive bidding, a justification must be submitted with the requisition. This justification must contain a comprehensive review of those areas of the specification that are restrictive, why it is necessary to retain such technical restrictions in the specifications and why alternative solutions are not possible for accomplishing the same purpose.

### **Use of Brand Names in Specifications**

If an agency wishes to use a specification that contains a brand name, the agency must submit written justification using the Office of Procurement Management's Request/Justification for Brand Name Specification Form. This form applies to each of the brand name specification examples described below:

1. **Brand Name or Equal Specifications:** When an agency uses a "brand name or equal" specification, the agency must attempt to identify at least two additional brand names and models considered to be equivalent to the brand name requested. Other equivalent items offered by vendors must be considered when evaluating bids. The use of a brand name or equal specification is only to describe the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
2. **Brand Name Only Specifications:** If an agency must limit bidding to a specific brand name product, the agency must attempt to identify multiple distributors or other sources for the brand name requested. If the purchase is under \$25,000, quotes from three different authorized distributors are required.

### **Invitation for Bid/Request for Proposal**

After receipt of a properly prepared specifications and requirements, Procurement Management will prepare either an Invitation for Bid (IFB) or a Request for Proposal (RFP), based upon the information provided by the requesting agency. The IFB/RFP may be organized and consist of the parts described below. However, Procurement Management may delete, add or reorganize the parts, if clarity or circumstances require.

Listed below are parts of an IFB/RFP. The categories may or may not be applicable for all procurement's, depending on the complexity and dollar value of the procurement.

Part A:	General Provisions
Part B:	Technical Specifications
Part C:	Contractual Requirements
Part D:	Special Instructions to Bidders
Part E:	Exhibits & Attachments (if Applicable)
Part F:	Pricing Tables

### **Part A: General Provisions**

This part contains those standard provisions that apply to all IFBs and RFPs. These are typically not modified in any way, but may be superseded or further clarified by information stated in the "Special Provisions" section.

## Part B: Special Provisions

This part contains those provisions that are specific to the IFB or RFP being released. Information in this section would include: 1) special instructions to bidders; 2) state agency contact information for the solicitation; 3) the length of the contract and renewal terms; 4) whether or not bid, proposal or performance bonds are required; 5) contract price adjustment requirements; 6) information that should be submitted with the bid or proposal, and 7) any other special provisions related to the competitive process itself.

## Part C: Specifications and Requirements

**Purchase of Supplies:** It is the responsibility of the state agency to submit appropriate specifications to Procurement Management to prepare an IFB or RFP for the procurement of supplies. The specifications shall be based on function or performance, and should not be overly detailed. Discussions with prospective bidders regarding specifications should include a representative of Procurement Management.

Upon receipt of a properly approved requisition, along with the technical specifications, Procurement Management has the responsibility to ensure that all technical specifications issued to potential bidders are: (1) quantified or structured to secure an economic advantage, (2) clearly stated, (3) contractually sound, (4) unbiased and non-prejudicial toward bidders, and (5) permit free and open competition to the extent possible. The bidder products or services subsequently selected must satisfy the needs and requirements of the state agency so it is able to accomplish its objectives.

Listed below are examples of broad categories of functional/performance specifications for procurement of supplies.

1. General Nomenclature for Description of Products.
2. Required Minimum and Maximum Performance Characteristics; i.e., speed, storage, production capacity, usage and ability.
3. Equipment Operational Requirements: Such as requirements or limitations on environment, water or air conditioning, electrical requirements or magnetic-free operation.
4. Site Preparation Requirements: Any requirements for which the contractor will be responsible, such as electricity or plumbing. Also indicate any requirements for which the State will be responsible.
5. Compatibility Requirements: Such as requirements for compatibility with existing equipment.
6. Conversion Requirements: Such as maintaining the operation of a system while installing a unit and then switching to the operation of new equipment.
7. Installation Requirements.
8. Delivery Date.
9. Maintenance Requirements.
10. Expendable Supplies and Parts Requirements.
11. Quantity and Methods of Pricing.
12. Warranty on Parts and Labor.
13. Service Locations and Response Requirements.
14. Brand Name: The use of brand names will not be permitted as a substitute for performance or functional specifications, except when such specifications are not ascertainable. If a brand name is used, the phrase "or equal" shall be written immediately thereafter. See SDCL 5-18A-18 through 5-18A-20, inclusive.

**Purchase of Services:** It is the responsibility of the requesting agency to prepare proper specifications and requirements for the procurement of services. If an IFB is being used, and the contract will be awarded to the low responsive and responsible bidder, the specifications and requirements should be prepared in the same manner as for the procurement of supplies.

If an RFP is being used, the agency should describe the problem that they want solved (statement of work), ask potential offerors for their proposed solutions, describe the key criteria which will be used in evaluating proposals, and outline the terms and conditions under which the successful offeror will operate or supply goods or services. It is important that the agency provide as much information as possible regarding the agency's desired outcome to the potential offeror. In many cases, an RFP would be used when the agency cannot prepare specifications because they don't know what is required to solve their problem.

Listed below is an outline and description of the types of performance/functional specifications necessary for procurement of general services. The technical specifications (scope of work) will form the basis for and governing language of a subsequent contract.

1. **General Requirements:** This section describes the contractor's overall and general responsibility to produce a specific design, or to provide a service for a specific state agency. A typical example of such language is: "The contractor shall research, document, analyze and recommend to the (agency's name) an appropriate design for (name of project) in accordance with all requirements stated herein".
2. **Specific Requirements:** This section must address: (1) specific tasks, (2) sub-tasks, and (3) parameters and limitations restricting such tasks or sub-tasks which must be accomplished, considered by the contractor or included in the final product. Obviously, this section is one of the most important parts of the specifications or RFP. Consequently, each task should be numbered and organized in such a manner so as to identify it as an individual task among many.

If applicable, the following should be included in this section:

- \* Details of work environment.
- \* Minimum or desired qualifications.
- \* Amount of service needed.
- \* Location of service.
- \* Definition of service unit.
- \* Time limitations.
- \* Travel regulations or restrictions.
- \* Special equipment required.
- \* Training required.
- \* Other factors affecting scope of work or working environment.
- \* Invoicing requirements.

3. **State Agency Materials or Services:** If applicable, list any materials or services that may, or must; be utilized by the contractor in the performance of the contract. Examples are: state plans, statistical reports, office space or personnel. If the list is long, such as a list of documents, an attachment to the RFP may be used. However, if used, the attachment must be identified in this section by reference.
4. **Deliverables, Reports and Delivery Dates:** This section must identify the specific delivery date, all documentation and reports that the contractor must furnish. In writing this section, the following language examples are provided:
  - a) The contractor shall provide the documentation described hereinafter for approval by the agency.
  - b) The contractor shall provide a (weekly, monthly) progress report outlining the following:
    1. The specific accomplishments achieved during the reporting period.
    2. The specific tasks completed pursuant to the provisions of the contact and the completion dates of such tasks.

3. The specific tasks remaining to be completed and their projected completion date(s).
- c) Within thirty (30) calendar days after the award date of the contract, the contractor shall furnish a preliminary outline of the organizational structure of the final report.
  1. The preliminary outline shall delineate the main topics and subtopics, which will later be described in detail in the final report.
  2. Following each topic and subtopic, the contractor shall furnish a brief narrative of the subject matter encompassed by the topic or subtopic.
  3. The state agency shall have the right to edit, modify or rearrange the organizational structure, topics and subtopics to ensure the inclusion of all work required by the contract.
- d) At least two (2) weeks prior to the submission of the final report, the contractor shall present a preliminary draft of the final report. The state agency shall have the right to modify or require additional elaboration as it deems necessary to ensure a comprehensive and thorough written study of all work required by the contract.
- e) On or before the date specified in the contract, the contractor shall submit a final report, plus ten (10) copies, to the agency for its approval.
- f) The contractor shall make at least one (1) oral presentation of the final report to (person or organizations) selected by the state agency.

**Use of Background Information:** Background information should be provided with caution due to the potential for misinterpretation. A brief narrative describing the historical events leading up to the present situation may be beneficial, but is not required. If utilized, the narrative must be in the past tense and not address future intentions for any contractual requirements in the IFB/RFP.

## **Do's and Don'ts for Writing Technical Specifications**

### Do's

1. DO use the words "must" or "shall" to describe a command or mandatory requirement.
2. DO use the words "should" and "may" to describe advisory or optional requirements.
3. DO be as specific and detailed as possible in stating mandatory requirements.
4. DO state a requirement of fact only once, and avoid repetition.

### Don'ts

1. DON'T make something a mandatory requirement if it is simply an optional enhancement.
2. DON'T write specifications that apply restrictions.
3. DON'T place bid requirements or bidder information in the technical specification section, since this section addresses the bidder responsibilities after the award of the contract.

## **Part D: Contractual Requirements**

This part of the IFB/RFP is designed primarily for language commonly referred to as the "legal boilerplate." Such language is not directly related to the technical specifications, but is needed to minimize the liability of the state, and to ensure clarity of the rights and remedies available to the state, as well as to the bidder.

1. The contents of this part will vary on the IFB/RFP's, depending on the potential liability of the state in relationship to a particular requirement such as a one-time purchase, as opposed to a long-term design project.
2. Procurement Management is responsible for this language in the procurement of supplies and the solicitation of legal counsel when applicable. The state agency may recommend clauses for incorporation in Part C, and must notify Procurement Management of any special clauses mandated by law or regulation which are imposed upon the state agency for inclusion. Any additional clauses are subject to the approval of Procurement Management.
3. The state agency is responsible for this language in the procurement of services, unless the agency has requested the Procurement Management conduct the solicitation on their behalf. The agency should review all contract language with their legal counsel prior to issuing an RFP or entering into a contract.

The following requirements must be included in any contract for services:

1. **Hold Harmless:** Contractor agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

2. **Insurance Requirements:**

**Commercial General Liability Insurance:** Contractor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

**Professional Liability Insurance:** Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability Insurance with a limit not less than \$1,000,000.00.

**Business Automobile Liability Insurance:** Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

**Worker's Compensation Insurance:** Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

**Certificates of Insurance:** To verify that the contractor has insurance coverage required in the contract, certificates of insurance should be required. Sample language is below.

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by the State.

## Part E: Evaluation

This part of an IFB/RFP is used to explain specifically how the successful bidder or offeror will be determined. For an IFB, the successful bidder will always be the low responsive and responsible bidder. If an RFP process is used, the successful offeror will be the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the purchasing agency taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. For RFPs, it is important that the agency state all evaluation factors that will be used to make an award decision, the relative importance of each factor, including price. If an agency uses a point system in its evaluation process, the points assigned to each factor should be stated in the RFP.

## Part F: Pricing Table

Part F includes all tangible cost-related items.

1. *Invitation For Bid (IFB)*
  - purchase price
  - monthly lease charges
  - monthly maintenance charges
  - percentage of accrual toward purchase
  - renewal options
  - installation charges
  - buy-out prices
  - other costs
  
2. *Request For Proposal (RFP)*
  - firm, fixed hourly, daily, monthly charges
  - firm, fixed prices per task/deliverable/phase
  - total firm, fixed price
  - percentage fees
  - not-to-exceed prices
  - per diem and expenses
  - renewal prices
  - other prices