

POLICY OF STATE OF DELAWARE DEPARTMENT OF CORRECTION	POLICY NUMBER 8.64	PAGE NUMBER 1 of 8
	RELATED ACA STANDARDS:	
CHAPTER: 8 Administration	SUBJECT: CONTRACT MANAGEMENT	
APPROVED BY THE COMMISSIONER:	<i>Robert M. Coyne</i> 04/04/13	
EFFECTIVE DATE:		
APPROVED FOR PUBLIC RELEASE		

- I. **AUTHORITY:** 29 Del. C. c. 69; 29 Del. C. 8903(S).
- II. **PURPOSE:** To outline the responsibilities of all parties involved in contract management, including the procedures to be followed in the preparation, review, execution and monitoring of all Department of Correction (DOC) contracts.
- III. **APPLICABILITY:** All DOC employees.
- IV. **DEFINITIONS:**

Contract/Agreement – An agreement which is intended to be binding and legally enforceable between two or more parties describing the terms and conditions of said agreement. Contracts/Agreements include Memorandums of Understanding (MOU), Memorandums of Agreement (MOA) as well as general contracts and agreements.

Contract Tracking Form – A cover sheet attached to each contract/agreement in circulation for signature by the respective Bureau Chief, Purchasing Services Administrator (PSA), Bureau Chief of Management Services and Commissioner. The Contract Tracking Form will include the name of each person required to sign the contract/agreement, the date and a comment field. The Contract Tracking Form must be attached to the front of the contract/agreement throughout the entire signature process. (See Exhibit A.)

Material & Nonprofessional Services – Materials, equipment, tools, supplies or any other personal property, but does not include real property, electric, gas, water, telephone or similar utilities. Nonprofessional services do not require specialized education, training or knowledge and do not involve intellectual skills.

Professional Services – Services which generally require specialized education, training or knowledge and involve intellectual skills. Examples of professional services include, but are not limited to, engineering, environmental engineering, environmental monitoring, land surveying, landscape architecture, geology,

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architectural, archaeologists, architectural historians, historians, educational consultants, management, medical, teaching, planning, computer information management, financial, accounting, auditing, construction management and arbitration services.

Public Works – Construction, renovation, demolition, alteration/repair work and maintenance work paid for, in whole or in part, with public funds.

Emergency Procedures and Critical Need – The procurement of material, non-professional and professional services by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for material and/or nonprofessional and professional services that cannot be met through normal procurement methods for the protection of public health, safety or property.

Sole Source Procurement - The procurement of material, nonprofessional and professional services without competition requiring the DOC Commissioner's approval where there is only one source for the required material or nonprofessional and professional service.

V. **POLICY:** It is the policy of the DOC that any contract involving a legally binding commitment between the DOC and another party shall be prepared, reviewed, executed and monitored in a consistent manner to ensure legal adequacy and financial viability.

VI: **PROCEDURES:**

Contracts/Agreements for Material & Nonprofessional Services with a cumulative annual expenditure of \$25,000.00 or more must be formally bid in accordance with 29 Del. C. c. 69. Budget Units (BU) must contact the PSA to initiate this process. The formal bid process may take up to 90 days to award.

BU Responsibilities:

- Determine Material/Nonprofessional Service needed.
- Estimate annual dollar amount required.
- Determine funding availability.

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PSA Responsibilities:

- Review Office of Management and Budget (OMB), Government Support Services (GSS) central contract list to determine if material/service available and when available, advise BU to utilize central contract.
- Contact GSS regarding the need for material/ services and if other agencies require the same need, GSS will aggregate and bid central contract.
- Request bid specifications and identification of user group committee members from BU for DOC specific contracts.
- Work with BU contact to determine best method of obtaining desired materials/services either Request for Proposal (RFP) or Invitation to Bid (ITB).
- Prepare and advertise bid document according to Office of Management and Budget, Government Support Services' procedures.
- Conduct pre-bid meeting when required by ITB or RFP.
- Gather bid packages and conduct bid opening with at least one (1) Department employee as a witness.
- Create bid tab spreadsheet detailing all bidder names and associated bid price and distribute to user committee for review and approval of lowest cost or most responsive vendor.
- Organize meeting with user group committee if additional discussion is required.
- Prepare and distribute notification letter(s) of award or non-award.
- Prepare contract for winning bidder.
- Contract will require signatures of the respective Bureau Chief, PSA, Bureau Chief of Management Services and Commissioner, in that order.
- Provide copy of signed contract to BU.
- Ensure Purchase Order is initiated by BU after receipt of fully executed vendor contract.
- Assist BU in resolving issues with contract or vendor.

Contracts/Agreements for Material & Nonprofessional Services with a cumulative annual expenditure of \$24,999.99 or less do not require an official bid process; however, a minimum of three (3) quotes from prospective vendors

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are required for material & nonprofessional services. The three quotes must be documented in a memo by the BU to the PSA, including all vendors contracted, the vendors' contact information and the quoted amount. The PSA must review all BU contracts/agreements 30 days prior to approval. The PSA will review the documentation for completeness, objectivity, and regulatory compliance. Upon satisfactory review of documentation, authorization will be granted to the BU to enter into negotiations with the preferred bidder(s). All BU contracts and agreements must be reviewed and signed by the respective Bureau Chief, PSA, Bureau Chief of Management Services and Commissioner, in that order. The PSA will work with the BU on all aspects of contracting and negotiations until a successful contract/agreement is established.

Emergency Procedures and Critical Need for Material and Nonprofessional Services. The Commissioner may waive any or all provisions of 29 Del. C. c. 69 to meet the critical needs of the BU as required by emergencies or other conditions where it is determined to be in the best interest of the DOC. The Commissioner may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for material and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety or property.

Any procurement pursuant to this subsection shall be limited to those materials and/or nonprofessional services necessary to satisfy the emergency. A copy of each emergency determination processed under this procedure shall be kept on file by the PSA.

Sole Source Procurement. A contract may be awarded for material or nonprofessional services without competition if the Commissioner, prior to the procurement, determines in writing that there is only one (1) source for the required material or nonprofessional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only one (1) source for the required material or service and that no other type of material or service will satisfy the requirements of the DOC. The DOC shall examine cost or pricing data, which shall include lifecycle costing analysis if the sole source offers more than one (1) type or variety of equipment, prior to an award. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the Commissioner stating the basis for the sole source procurement shall be included in the agency contract file.

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BU's seeking sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The BU will submit this documentation to the PSA for review and comment prior to the intended date of award.

The BU shall negotiate with the single supplier, to the extent practical, a contract advantageous to the State. The BU shall enter into a formal contract stating the terms and conditions of the procurement, to be signed by the respective Bureau Chief, PSA, Bureau Chief of Management Services and Commissioner, in that order.

Contracts/Agreements for Professional Services with a cumulative annual expenditure of \$50,000.00 or more must be formally bid in accordance with 29 Del. C., c. 69. BU's must contact the PSA to initiate this process. Formal bid process may take up to 90 days to award.

BU Responsibilities:

- Determine Material/Nonprofessional Service needed.
- Estimate annual dollar amount required.
- Determine funding availability.

PSA Responsibilities:

- Review OMB/GSS central contract list to determine if material/service available and when available advise BU to utilize central contract.
- Contact GSS regarding the DOC need for services and if other agencies require the same need, GSS will aggregate and bid central contract.
- Request bid specifications and identification of user group committee members from BU for DOC specific contracts.
- Prepare and advertise RFP according to standard procedures of OMB/GSS.
- Conduct pre-bid meeting if required by RFP.
- Gather bid packages and conduct bid opening with at least one (1) Department employee as a witness; determine responsive vs. non-responsive vendors. A non-responsive

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- bid does not address the specifications or requirements included in the original RFP.
- Provide responsive bidder proposals to user committee members for review.
- Organize meeting of user committee to discuss each proposal, clarify information and review evaluation criteria; user group committee completes evaluations individually.
- Review evaluations and rank vendors.
- Contact top vendor and schedule negotiation meeting; obtain acceptance of terms of both DOC and vendor (if top vendor does not accept terms, process is repeated with second vendor).
- Prepare contract based on negotiated terms.
- Contract will require a signature from the respective Bureau Chief, PSA, Bureau Chief of Management Services and Commissioner, in that order.
- Prepare and distribute notification letter(s) of award or non-award.
- Provide copy of signed contract to BU.
- Ensure Purchase Order, if necessary, is requested by BU after receipt of fully executed vendor contract.
- Assist BU in resolving issues with contract or vendor.

Contracts/Agreements for Professional Services with a cumulative annual expenditure of no more than \$49,999.99 do not require a formal bid; however, a minimum of three (3) quotes from prospective vendors are required for professional services. The three quotes must be documented in a memo by the BU to the PSA, including all vendors contacted, the vendors' contact information and the quoted amount. The PSA must review all BU contracts/agreements 90 days prior to BU approval. The PSA will review the documentation for completeness, objectivity and regulatory compliance. Upon satisfactory finding, authorization will be granted to the BU to enter into negotiations with the preferred bidder(s). All BU contracts and agreements must be reviewed and signed by the respective Bureau Chief, PSA, Bureau Chief of Management Services and Commissioner, in that order. The PSA will be available to work with the BU on all aspects of contracting and negotiations until a successful contract/agreement is established.

Emergency Procedures and Critical Need for Professional Services. The Commissioner may waive any or all provisions of 29 Del. C. c. 69 of this chapter to meet a critical need of the DOC as required by an emergency or other condition

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where it is determined to be in the best interest of the DOC. The Commissioner may determine a critical need exists by reason of conditions or contingencies that could not reasonably be foreseen and guarded against. A critical need creates a need for professional services that cannot be met through normal procurement methods.

Any procurement pursuant to this subsection shall be limited to those professional services necessary to satisfy the critical need. A copy of each critical need determination processed under this procedure shall be kept on file by the PSA.

Sole Source Procurement contract may be awarded for professional service without competition if the Commissioner, prior to the procurement, determines in writing that there is only one (1) source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only one (1) source for the required professional service and that no other type of professional service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the BU on the basis for the sole source procurement shall be included in the contract file.

The BU seeking sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The BU will submit this documentation to the PSA for review and comment prior to the intended date of award.

The PSA shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the State. The DOC shall enter into a formal contract stating the terms and conditions of the procurement. The contract will require a signature from the respective Bureau Chief, PSA, Bureau Chief of Management Services and Commissioner, in that order.

Public Works Contracts/Agreements with a cumulative annual expenditure of \$100,000.00 or more must be formally bid in accordance with 29 Del. C. c. 69. All Public Works contracts/agreements of this nature are coordinated between the Department of Correction Facilities Maintenance Manager (FMM) and the Office of Management and Budget, Division of Facilities Management.

Public Works Contracts/Agreements with a cumulative annual expenditure of no more than \$99,999.99 do not require a formal bid. However, a minimum

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of three (3) letter bids from prospective vendors are required for public works services where applicable. The FMM will determine the list of three (3) prospective vendors, establish the specific requirements contained in the letter bid and submit information to the PSA. The PSA will establish the three (3) required letter bids to be sent to the prospective vendors. Further negotiations will be conducted by the FMM until an agreeable contract/agreement is established.

Other Contract and Agreements

All other contracts and agreements that do not fall within the categories listed above regardless of funding will require a signature from the respective Bureau Chief, PSA, Bureau Chief of Management Services and Commissioner, in that order, before proceeding.

DOC
CONTRACT TRACKING FORM

CONTRACT NUMBER/NAME: _____

CONTRACT SIGNEE	SIGNATURE	DATE	COMMENTS
Respective Bureau Chief			
Purchasing Services Administrator			
Bureau Chief of Management Services			
Commissioner			