

# **State of Ohio Procurement Handbook for Supplies and Services**

# Foreword...

Each fiscal year, state agencies spend more than two billion dollars to purchase supplies and services necessary for their daily operation. Purchases range from computers to vehicles to uniforms to food.

Although procurement of supplies and services may appear to be as simple as placing an order with a local supplier, agencies must be aware of Ohio laws governing the process. Laws place significant penalties upon the individual when purchases are made outside of the established policies and procedures. These laws, policies and procedures may be intimidating to both the novice and the seasoned procurement professional.

A good procurement system balances *fairness, value, accountability, and flexibility*. Vendors competing for state business want equal opportunity and *fairness* in the awarding of contracts. State agencies stretching their budget dollars want the best *value* and lowest price. Taxpayers want *accountability* to ensure that their hard-earned tax dollars are spent wisely and ethically. And purchasers want the *flexibility* to use their best judgment and experience to accomplish all of these.

Procurement is both art and science. This Handbook attempts to capture the science: laws, procedures, thresholds, and other objective guidance. That being said, there is no attempt made to capture the “art” of common sense. For every guideline, it is not difficult to formulate an exception where the rule may not seem to apply. For these cases, agencies are encouraged to contact the respective procurement offices of the Department of Administrative Services for further guidance.

This Handbook is specific to Ohio law and is designed to supplement generally accepted procurement practices. The Handbook is a living document updated to reflect the needs of state agency customers. For those agencies who prefer an electronic version, DAS will maintain the Handbook at the following web site address:

[http://procure.ohio.gov/pdf/pur\\_procmanual.pdf](http://procure.ohio.gov/pdf/pur_procmanual.pdf)

We encourage your input in continuing to improve this document.

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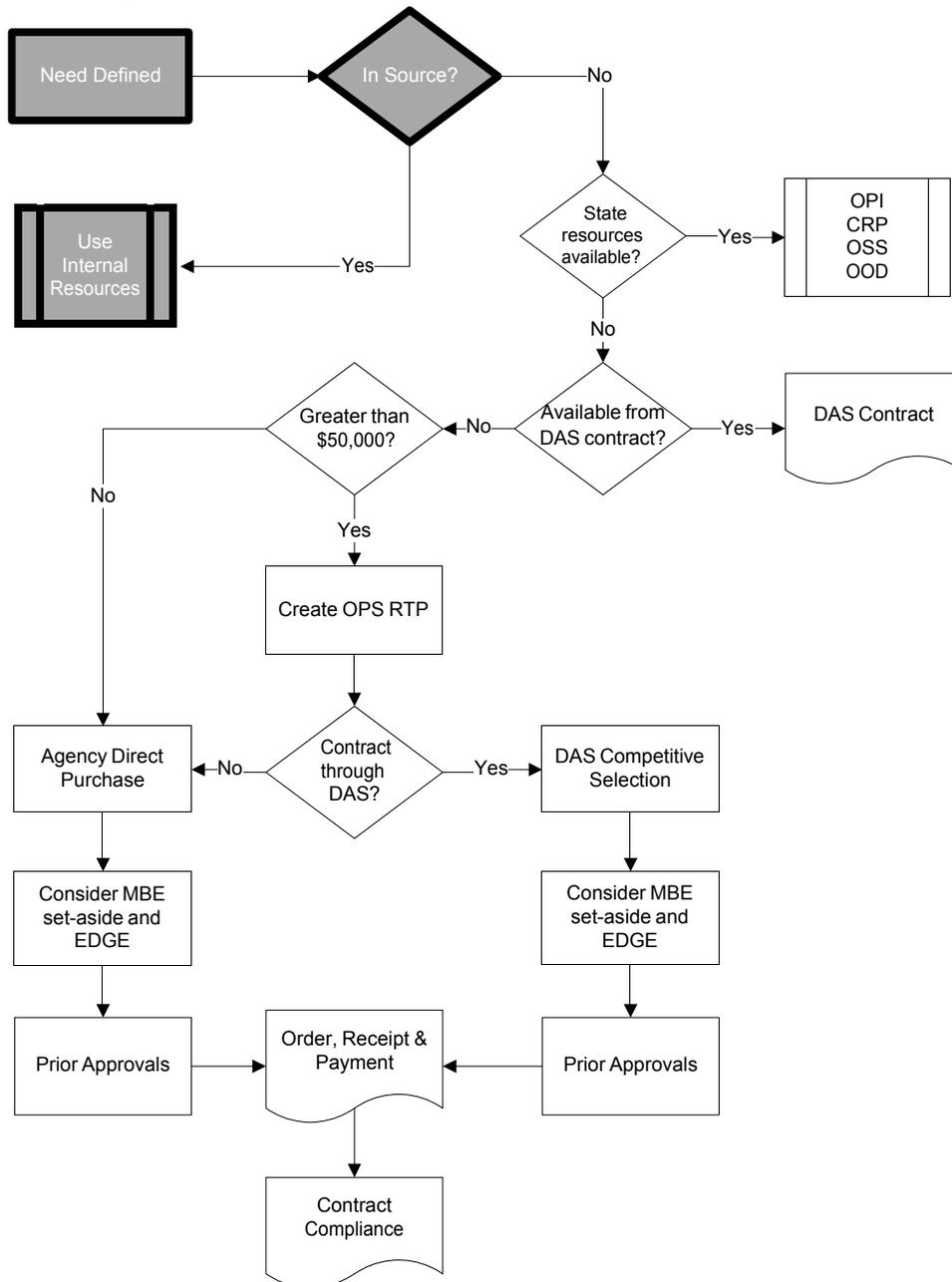
PUR-005 Selecting term contracts for set aside

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## 1.0 Overview

You are now at the first step in making a purchase – defining your need and if the need can be met by using internal or external resources. In this chapter you will receive guidance on how to define your need and what you should consider when using internal or external resources to supply the need.



## 1.1 Preliminary Definition of Need

The first step in any procurement is to define what is needed, when it is needed, and in what quantity. It is the responsibility of the buyer to review specifications, locate a supplier and have the product or services delivered within required time frames and at competitive prices. The success or failure of this effort will determine if the agency is able to meet its daily operational needs and remain within budget.

Where does one begin to locate a supplier and obtain the products or services being requested? The first inclination may be to pick up a telephone and begin calling known suppliers. There are times, however, when this approach results in incorrect items, delays and additional costs to the agency. If the need is urgent, price and quality may also be sacrificed in an effort to meet the urgency of the need.

Buyers must be aware of these issues and give thoughtful consideration to the procurement to ensure the need is met correctly. Although not all inclusive, questions a buyer should ask include:

- What types of supplies or services are being requested?
- What is the time frame for providing the supplies or services to meet the need?
- Will the item or service be required beyond this purchase? If so, how often?
- Is there a possibility other agencies have the same or similar need?
- What is the dollar value of the required supplies or services?
- Will it be necessary to write specifications?
- Can recycled content items or bio-based products be used to meet the need?

## 1.2 In-Source or Out-Source Decision

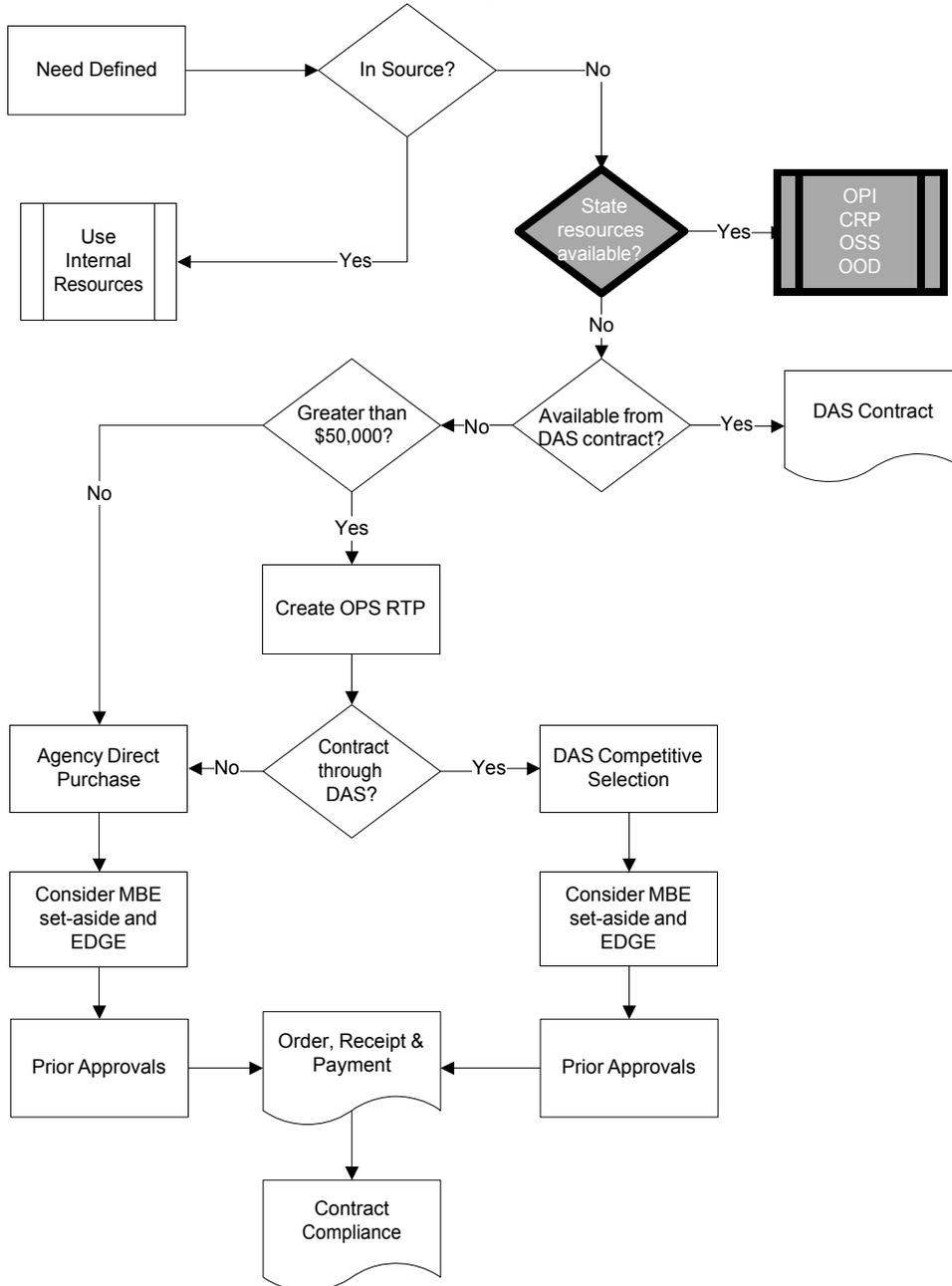
Once the need is defined, consideration should then be given as to who will supply the item or provide the service. Generally, most supplies, materials and equipment are purchased from vendors who are manufacturers or distributors of the particular item being sought. In some situations, services may be obtained through the use of agency internal staff and resources. The purchasing staff must be aware of the existing labor contract that addresses issues of subcontracting work inside or outside of the agency.

The purchasing staff and agency management should review the subcontracting requirements of the current OCSEA contract. If the union desires to offer a proposal to meet the service needs of an agency, care should be taken to perform an "apples to apples" comparison to insure fairness to all parties.

The purchasing staff and agency management should consider these, as well as any other relevant criteria, when making a decision to use internal resources or to outsource. If the decision is made to use internal resources, the purchasing staff may continue to be involved in any outside purchases necessary to accomplish the project. The decision to use internal resources or to outsource should be made **prior** to any actual procurement efforts being initiated with private businesses.

**2.0 Overview**

Before an agency may proceed with purchases of certain types of supplies or services, they must first consider availability from State resources. These sources of supply are defined by law and are described in this Chapter.



## 2.1 State Resources

The Ohio Revised Code (ORC) requires that certain state organizations receive first consideration on certain types of supplies and services. Agencies must first check whether these organizations have the **capability** of meeting their need, either through existing contracts, or new contracts that can be created to meet the need:

Department of Rehabilitation and Corrections (DRC)

- Ohio Penal Industries (OPI)
- Laboratory Services Division

Department of Administrative Services (DAS)

- Community Rehabilitation Programs (CRP), formerly the State Use Committee

Department of Mental Health and Addiction Services, Office of Support Services (OSS)

- Pharmacy Services Division

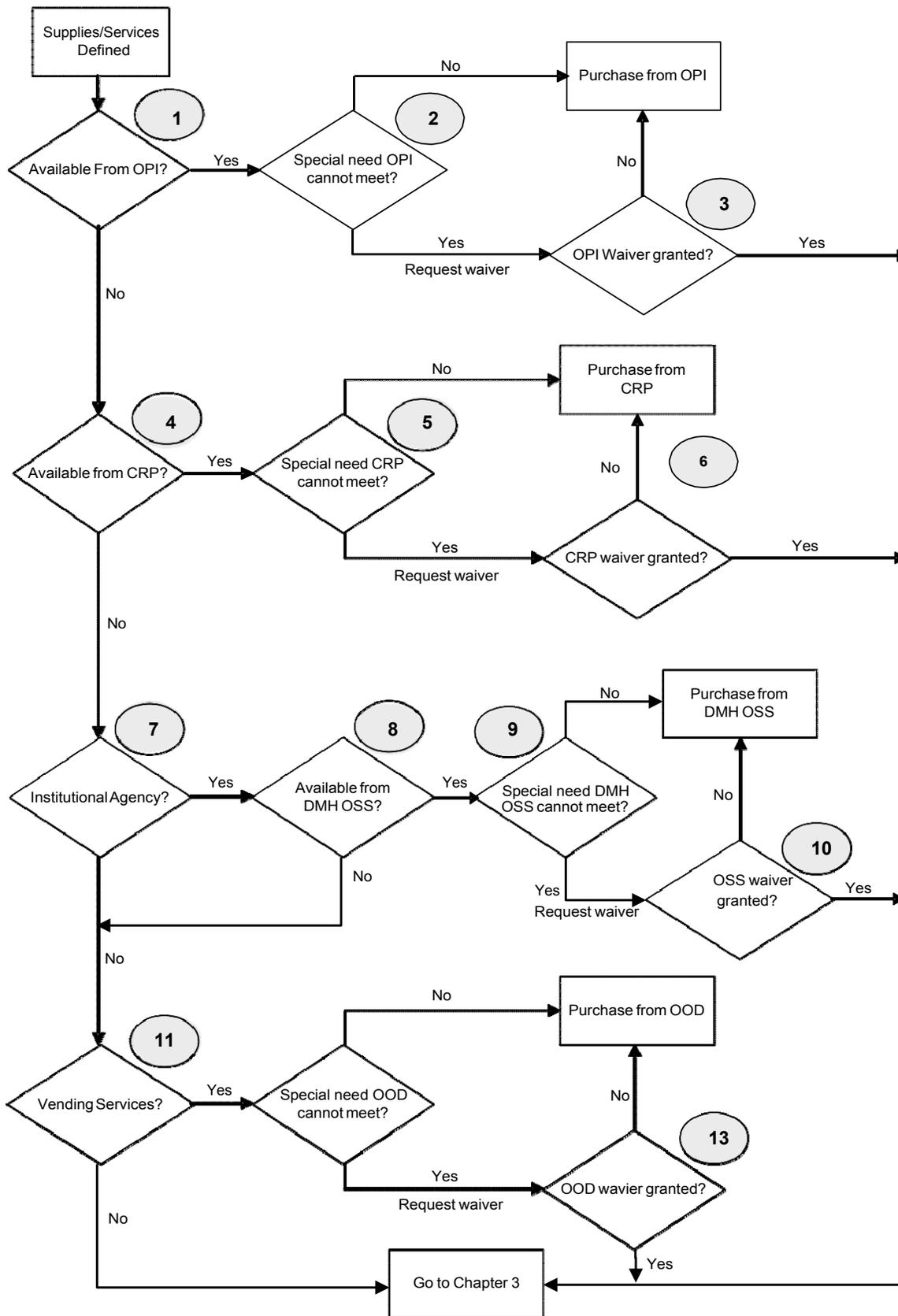
Opportunities for Ohioans with Disabilities (OOD)

- Bureau of Services for the Visually Impaired, Business Enterprise Program (BEP)

For simplicity, the process can be reduced to thirteen questions that are summarized below and in the corresponding flow chart.

No.	Questions	If yes ...	If no ...
1	Available from OPI?	Go to 2	Go to 4
2	Special need OPI cannot meet?	Request waiver, go to 3	Purchase from OPI
3	OPI waiver granted?	Go to Chapter 3	Purchase from OPI
4	Available from CRP?	Go to 5	Go to 7
5	Special need CRP cannot meet?	Request waiver, go to 6	Purchase from CRP
6	CRP waiver granted?	Go to Chapter 3	Purchase from CRP
7	Are you an institutional agency?	Go to 8	Go to 11
8	Available from DMH OSS?	Go to 9	Go to 11
9	Special need DMH OSS cannot meet?	Request waiver, go to 10	Purchase from DMH OSS
10	OSS waiver granted?	Go to Chapter 3	Purchase from DMH OSS
11	Are you procuring vending services?	Go to 12	Go to Chapter 3
12	Special need OOD cannot meet?	Request waiver, go to 13	Purchase from OOD
13	OOD waiver granted?	Go to Chapter 3	Purchase from OOD

If a waiver is granted in any of these cases, the next step is to check DAS sources, covered in Chapter 3.



## 2.2 Ohio Penal Industries (OPI) - Reference: ORC § 5147.07

OPI, a division of the Department of Rehabilitation and Correction, was created to teach life skills and provide work-training programs for inmates housed at the various prison facilities. OPI offers a variety of products and services, such as furniture, seating, office systems, signage, auto repair, moving services janitorial, custom design and many more product lines.

State agencies must give first consideration to products and services offered by OPI. State law requires that state agencies purchase through OPI if OPI can meet the state agency need. In the event of an emergency or a special need, OPI may grant a waiver to the agency to purchase items elsewhere. Complete catalogs of the products and services are available directly from OPI, or on-line at [www.opi.state.oh.us](http://www.opi.state.oh.us). Customers are welcomed and encouraged to visit the OPI showroom located at 1221 McKinley Ave. Columbus, Ohio 43222 between the hours of 8:00am and 4:00pm.

Agencies may purchase from OPI without dollar limitation or using the bid process provided that approved funds are available to support the purchase. Purchases from OPI are not applied to an agency's annual cumulative threshold for Controlling Board.

OPI items will be encumbered in OAKS. When entering the requisition select high level item descriptions from the OAKS catalog. Agencies will then forward their purchase order to OPI via one of the following methods:

- Mail to: Ohio Penal Industries (OPI) Design Center
- 1221 McKinley Avenue, Columbus, OH 43222
- Fax at 614-752-0303

Obtain approval to use the OPI website by emailing your request to [opi.sales@odrc.state.oh.us](mailto:opi.sales@odrc.state.oh.us).

OPI Waivers: In order to request a waiver to purchase items that are produced by OPI, but from another source, the agency's First Approver in the purchasing workflow, will add the ad hoc approver of GRP\_OPI. The requisition must include the following information:

- Identify the product to be purchased from another source, its price and the OPI equivalent or similar item.
- Include justification stating the reason for waiver, such as, a doctor's prescription, weight limit to match existing products previously purchased from another source, etc.

**IMPORTANT:** OPI will not approve waiver request for similarly produced items or for items that can be delivered in a shorter time frame than is required for OPI to deliver the item(s) or based solely on the price.

Upon receipt of the waiver request (requisition), OPI will review the request and approve or deny the requisition within five (5) business days.

### Questions & Answers

**Q: Are there any dollar limitations when buying from OPI?**

**A:** No, agencies may purchase without dollar limitation provided that sufficient funds are available. Purchases from OPI will not be applied to your cumulative annual threshold for Controlling Board.

**Q: What if an agency needs a product that is similar to that offered by OPI, but wants to buy from another source?**

**A:** The agency must purchase the product from OPI unless agency petitions and receives a waiver to procure such items elsewhere. (Payments on purchase orders not supported by a waiver could be denied.)

**Q: May an agency request that State Purchasing competitively bid an item that is similar to one offered by OPI?**

**A:** Yes, if the requisition has been approved by OPI.

**Q: What form is used to make a purchase from OPI?**

**A:** The agency will enter a requisition in OAKS after selecting the item from the OPI website, printed catalogs or consultation with a sales Rep. The resulting encumbrance will be issued to OPI using vendor code DRC01.

**For more information, contact:**

Ohio Penal Industries (OPI) Design Center  
1221 McKinley Avenue  
Columbus, OH 43222  
Telephone: (800) 237-3454  
Fax: (614) 752-0302  
www.opi.ohio.gov  
Inside Sales: [opi.sales@odrc.state.oh.us](mailto:opi.sales@odrc.state.oh.us)

**2.3 Community Rehabilitation Program** - Reference ORC § 125.60 – 125.6012

State law requires that agencies purchase through the Community Rehabilitation Programs (CRP) which are capable of meeting agency needs. In the event of an emergency or a special need, the agency may be granted a waiver to purchase items elsewhere.

Determine whether the supply/service is available for purchase from a CRP or agent by:

Searching the Procurement web site for [CRP contracts](#)

Contacting the Office of Procurement from CRPs (OPCRP)

Contacting a certified CRP

Searching OAKS by product/service description/category

CRP Waivers – Agencies must obtain approval from OPCRP if purchasing from another source items that are available from a CRP or its agent. Agencies are to submit a request to the OPCRP for review and approval prior to purchasing from an alternate source or beginning a competitive solicitation. Waiver requests should be submitted to OPCRP Office, 4200 Surface Road, Columbus, Ohio, 43228 or email [dasgdsd.opcrp@das.ohio.gov](mailto:dasgdsd.opcrp@das.ohio.gov)

**Questions and Answers**

**Q: Are there any dollar limitations when buying from CRP?**

**A:** No, agencies may purchase without dollar limitation provided that sufficient funds are available. Purchases from CRP will not be applied to your cumulative annual threshold for Controlling Board.

**Q: How do I buy services through CRP?**

**A:** If you are presently using a CRP vendor to perform a service, then you must continue using them unless a waiver is obtained to buy the services from another source. If you are not currently using a CRP vendor for the service, you must obtain a proposal from a capable CRP. If you determine a CRP is reasonably priced and within your budget you must proceed to negotiate an agreement with the CRP. Negotiated agreements become DAS contracts. Services are purchased using an OAKS purchase order.

**Q: How do I buy Community Rehabilitation Program products?**

**A:** All products may be purchased directly from a CRP vendor using a purchase order or a State of Ohio payment card.

**Q: How do I find Community Rehabilitation Program contracts on the web?**

**A:** To find specific products or services: (1) Go to [procure.ohio.gov](http://procure.ohio.gov) (2) From Quick Links, click on "Current Contracts Search"; (3) Under Popular Contract Searches you will find Procurement Programs Contracts, click the "CRP" link; (4) CRP Contracts Search Results page will open with your results..

**For more information, contact:**

Office of Procurement from Community Rehabilitation Programs  
4200 Surface Road  
Columbus, OH 43228-1395  
Telephone: (614) 387-0065, Fax: (614) 485-1056

**2.4 Department of Mental Health and Addiction Services, Office of Support Services (OSS) - Reference:**  
ORC § 5119.16

The Office of Support Services, a division of the Ohio Department of Mental Health and Addiction Services (OhioMHAS), as allowed by ORC 5119.16, provides various supplies and pharmaceutical services to agencies and organizations. The Departments of Mental Health & Addiction Services, Rehabilitation & Corrections, Youth Services, Health, and Developmental Disabilities, Community Mental Health Boards & Agencies, Ohio Free Clinics and Halfway Houses are among the customers who currently purchase from one or more of the three OSS Operations.

Ohio's Pharmacy Service Center (OPSC) provides bulk medications, medical supplies, laboratory products, and office supplies to its customers. Bulk pharmaceuticals purchased by licensed pharmacies are delivered by the OSS transportation division. Drug Information services, including responses to medication questions and the provision of literature search material, medication safety notices, and OhioMHAS peer reviewed quarterly newsletters are also provided as a service for OPSC clients. The drug information pharmacist is a major contributor/member to the Ohio Department of Rehabilitation and Corrections (ODRC), State Regional Psychiatric Hospitals, and Interdepartmental Pharmacy & Therapeutics committees.

Central Pharmacy Inpatient (CPI) provides comprehensive pharmaceutical services and patient labeled /contingency stock prescriptions to residents of Ohio facilities (adult/youth correctional facilities, community-based correctional facilities, jails, etc.). Delivery of medications from our Columbus location is provided Monday through Friday except state holidays by the OSS transportation division or an alternate carrier.

Central Pharmacy Outpatient (CPO) provides antipsychotic medications to patients of community mental health centers in all 88 Ohio counties. Central Pharmacy Outpatient also provides medications to those being released from ODRC facilities. Medications dispensed by CPO are in prescription bottles and patient labeled or in the manufacturer's original packing (liquids, inhalers, injections, etc.) with patient labeling.

All agencies are eligible to purchase through OSS according to ORC 5119.16. Services offered through each of the OSS operations and complete product catalogues are available upon request. For more information, visit the OSS website by going to <http://mha.ohio.gov>.

### **Questions and Answers**

**Q: What if an institutional agency needs a product that is similar to that offered by the DMH OSS, but wants to buy from another source?**

**A:** The agency must purchase the product from the DMH OSS unless agency petitions and receives a written waiver to procure such items elsewhere. Payments on purchase orders not accompanied by this waiver could be denied.

**Q: When can I expect to have my products delivered by OhioMHAS OSS?**

**A:** OSS maintains a fleet of trucks that make routine deliveries to agencies. Contact OSS for information as to when deliveries will be made to your agency.

**Q: What procedures does an agency follow when purchasing from OhioMHAS OSS?**

**A:** Contact OSS for a current price list and ordering instructions. Advise OSS of any special or emergency delivery needs.

**For more information, contact:**

OSS Medical Complex  
2150 W. Broad Street  
Columbus, OH 43223-1200  
Telephone: (614) 752-0116  
Fax: (614) 752-0102

<http://mha.ohio.gov>

**2.5 Opportunities for Ohioans with Disabilities (OOD) - Reference: ORC § 3304.28 – 3304.33**

The Opportunities for Ohioans with Disabilities (OOD) provides services to individuals with severe disabilities to achieve their goal of employment. As a result, these Ohioans enjoy independent and self-sufficient lives, contribute to their communities and enrich the state's workforce.

OOD provides vocational rehabilitation (VR) services to help people with disabilities to become employed and independent. Employment is OOD's highest priority.

OOD is comprised of three bureaus:

- Bureau of Vocational Rehabilitation (BVR)  
Provides vocational rehabilitation and other services
- Bureau of Services for the Visually Impaired (BSVI)  
Provides vocational & rehabilitation services Ohioans who are blind or who have visual impairments
- Bureau of Disability Determination  
Assists people with Social Security benefits

BSVI, through its Business Enterprise Program (BEP), assists people who are blind or have a visual impairment by creating employment in food service areas. BEP provides Ohioans with opportunities to operate cafeterias, snack bars, convenience stores and vending locations throughout the state. Whenever any state agency determines a need for vending or concession services in their facility, they must first contact OOD to determine if such services can be provided through the Business Enterprise Program. If OOD determines that the potential exists, provisions will be made to install and operate the vending facility within the agency. If OOD determines that it is not practicable to operate a vending facility within the agency, the agency will be granted a waiver to procure their needs from other sources. The Departments of Rehabilitation & Correction and Youth Services are exempt from this requirement.

**Questions and Answers**

**Q: If we want to obtain vending or concession services, do we have to contact OOD first?**

**A:** Yes, Ohio law requires that OOD be given first consideration for vending and concession services in state owned or leased buildings.

**Q: Who is responsible to provide utilities, hookups and equipment for the vending facility?**

**A:** The agency is responsible to provide all electrical, plumbing and other requirements necessary for the installation and operation of the facility. OOD will provide the equipment and an adequate initial stock of suitable articles to be vended.

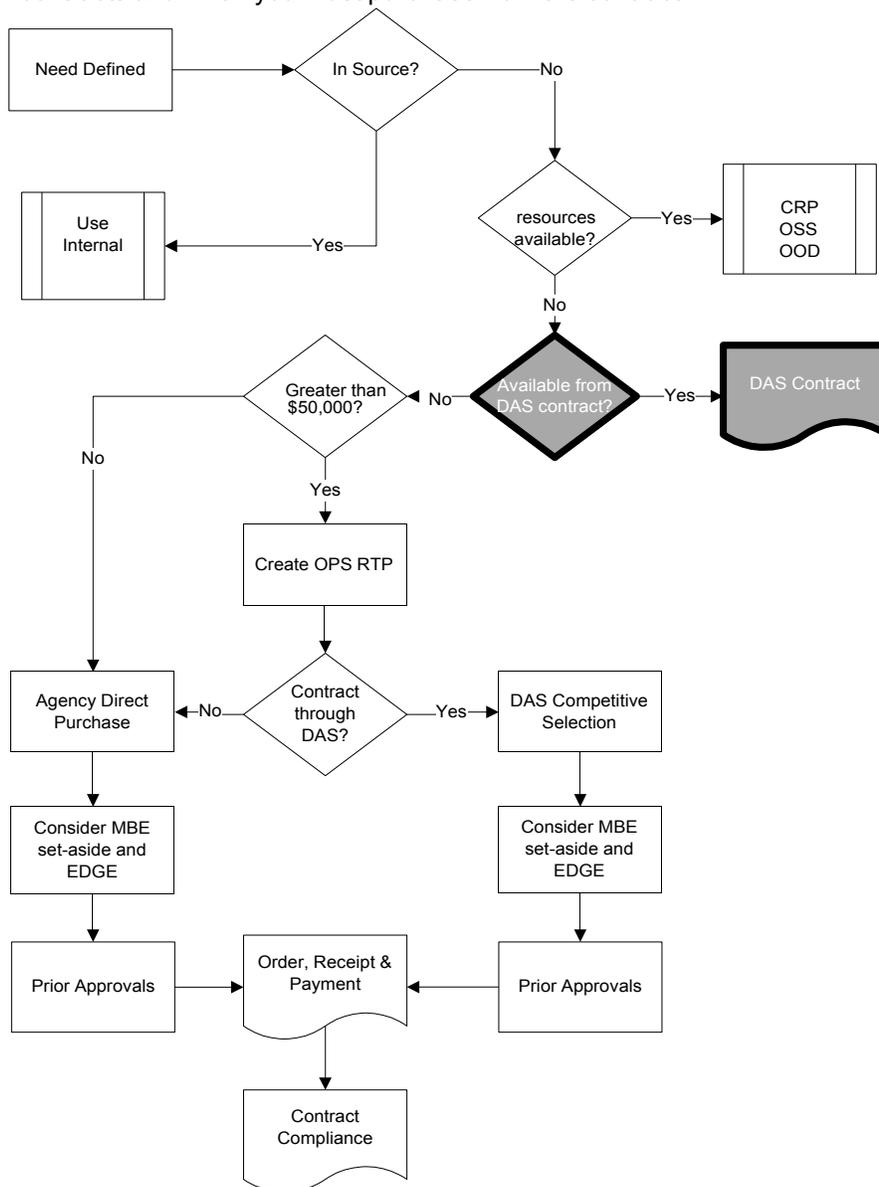
**Q: When do we contact OOD to discuss a vending or concession facility?**

**A:** Law requires that OOD be contacted prior to the acquisition, lease, rental or renovation of any property.

For more information, contact OOD at:  
Opportunities for Ohioans with Disabilities  
150 E. Campus View Blvd.  
Columbus, OH 43235-4604  
1-800-282-4536  
<http://ood.ohio.gov/>

### 3.0 Overview

You have now determined that the need is not available from any of the required state resources and have obtained necessary waivers to consider other methods of procurement. Unless your agency is exempt from DAS procurement, you must now consider making the purchase from existing DAS term contracts. This Chapter will discuss these term contracts and when you must purchase from the contract.



### 3.1 DAS Contracting Offices

The Ohio Revised Code (ORC) authorizes DAS to oversee and/or make purchases of supplies and services for use by most state agencies. Law does provide exemptions from DAS procurement authority for some organizations under certain conditions. These exempted agencies will be discussed later in this Chapter. For agencies not exempted, the ORC requires that DAS receive next consideration on various supplies and services.

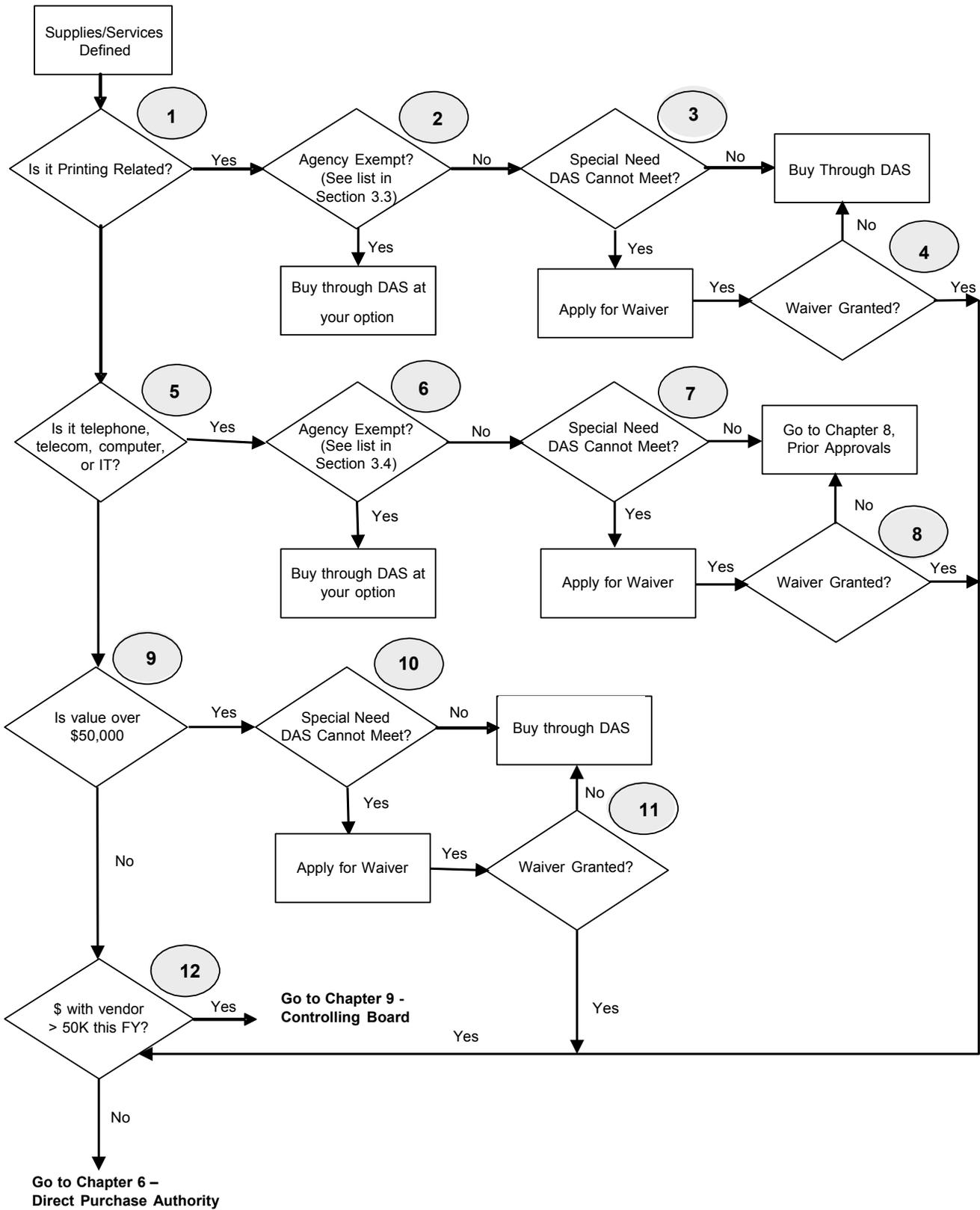
DAS is comprised of three major procurement divisions: State Printing & Mail Services, Office of Information Technology, and Office of Procurement Services (OPS). These divisions maintain contracts for a variety of supplies and services to include, but not limited to: printing and mailing services, telecommunications, computers and software, food, medical supplies, consulting services, janitorial and housekeeping services, vehicles, copiers, maintenance and many more product and service areas.

In fiscal year 2013, the state consolidated the Office of the State Architect and the Ohio School Facilities Commission into the Ohio Facilities Construction Commission (OFCC). Guidance for construction needs will be discussed in Chapter 11.

This Chapter will provide instruction in making purchases of printing, data and telecommunications and various types of supplies and services.

The determination of procurement authority can be reduced to twelve questions that are summarized below and in the corresponding flow chart. This chart should help determine **who** creates the contract.

No.	Questions	If yes ...	If no ...
1	Is it printing-related?	Go to 2	Go to 5
2	Is your agency exempt (see Section 3.3)?	Buy through DAS at your option	Go to 3
3	Special need DAS cannot meet?	Apply for waiver, go to 4	Buy through DAS
4	DAS waiver granted?	Go to 12	Buy through DAS
5	Is it telephone, telecom, computer or IT?	Go to 6	Go to 9
6	Is your agency exempt (see Section in 3.4)?	Buy through OIT at your option	Go to 7
7	Special need OIT cannot meet?	Apply for waiver, go to 8	Go to Chapter 8
8	OIT waiver granted?	Go to 12	Go to Chapter 8
9	Is the value over \$50,000 threshold?	Go to 10	Go to 12
10	Special need that DAS cannot meet?	Apply for waiver, go to 11	Buy through DAS
11	DAS waiver granted?	Go to 12	Buy through DAS
12	\$ with vendor >\$50/K this fiscal year?	Go to Cont. Bd. (Chapter 8)	Go to Chapter 6



### 3.2 Requirements Contracts

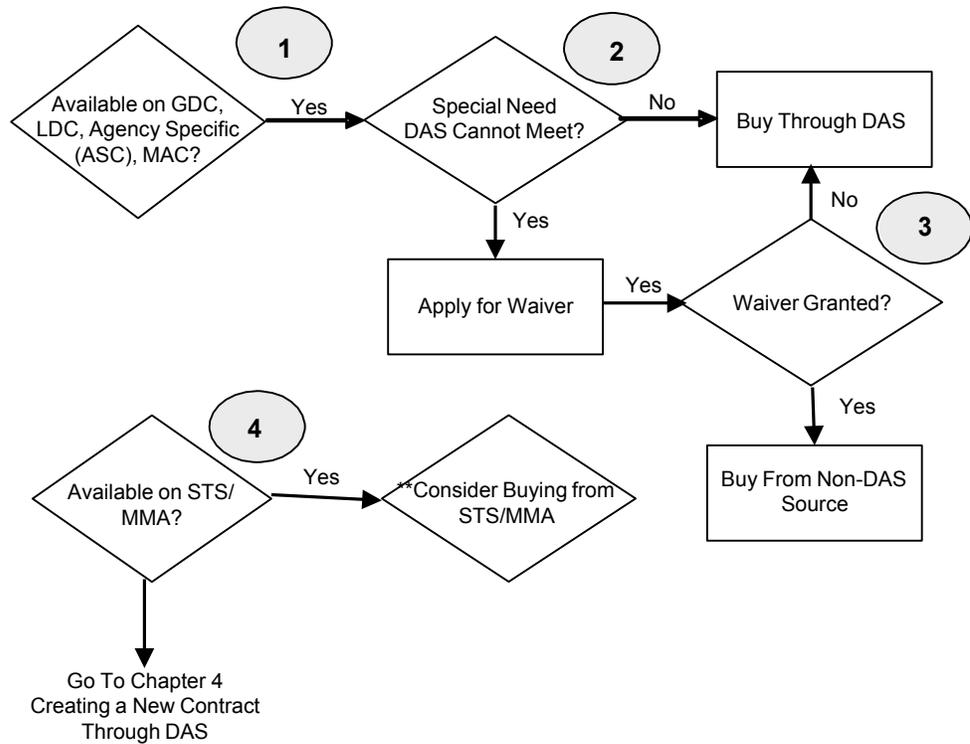
To assist agencies in meeting their needs, DAS maintains a number of requirements contracts for many types of supplies and services. Requirements contracts are term contracts that are effective for an extended period of time, usually one to three years. Agencies may purchase any dollar amount from a requirements contract without the need for any further competitive process, providing that approved funds are available to cover the purchase.

DAS maintains several categories of term contracts. Some term contracts are mandatory. Some give the agency the option of purchasing from the contract or using another method, such as direct purchase authority. The types of mandatory requirements contracts are listed in section 3.2.1. Other optional term contracts are listed in sections 3.2.2 and 3.2.3.

For simplicity, the process can be reduced to four questions that are summarized below and in the corresponding flow chart.

No.	Questions	If yes ...	If no ...
1	Available on GDC, LDC, Agency Specific, (ASC), MAC?	Buy through DAS contract*	Go to 24
2	Special need DAS contract cannot meet?	Apply for waiver, go to 3	Buy through DAS*
3	DAS waiver granted?	Buy from non-DAS source	Buy through DAS*
4	Available on STS or MMA?	Consider buying from STS or MMA**	Go to Chapter 4

**GDC  
LDC  
Agency  
Specific  
Contract (ASC)  
MAC**



\*Telecom, IT-related items and vehicles require pre-approval; vehicles will require central agency approval. See Chapter 8.

\*\*Telecom, IT-related items and copiers require pre-approval. See Chapter 8.

### 3.2.1 Mandatory Term Contracts

The following types of requirements contracts are awarded to a single contractor per specific item. These mandatory contracts have been awarded under the premise that all state agencies that purchase these supplies or services will purchase from the designated contractors. Failure to make purchases from these contracts may place the state in breach of contract. The types of contracts are distinguished by their availability to agencies.

#### ➤ **General Distribution Contracts (GDC's)**

- Contain popular items utilized by many agencies
- Available to all agencies
- Examples: vehicles, gasoline, clothing

Agencies may find GDC's on the State Procurement web site by following this path:

- [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
- From Quick Links click on "Current Contract Search"
- Under the General Criteria Section, you will find the "Contract Type" dropdown menu.
- Click on the right dropdown arrow to select "General Distribution Contracts (GDC)" from the list of available options.
- Click on the Search button.
- Current Contracts Search Results page will open with your results.

#### ➤ **Limited Distribution Contracts (LDC's)**

- Address specific needs of multiple named agencies
- Available to only named agencies
- Examples: elevator maintenance, laundry services

Agencies may find LDC's on the State Procurement web site by following this path:

- [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
- From Quick Links click on "Current Contract Search"
- Under the General Criteria Section, you will find the "Contract Type" dropdown menu.
- Click on the right dropdown arrow to select "Limited Distribution Contracts (LDC)" from the list of available options.
- Click on the Search button.
- Current Contracts Search Results page will open with your results.

#### ➤ **Agency Specific Contracts (ASC's)**

- Address specific needs of a given agency
- Available to a single agency
- Examples: training services, call center services, food services

Agencies may find contracts specific to their agency on the State Procurement web site by following this path:

- [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
- From Quick Links click on "Current Contract Search"
- Under the General Criteria Section, you will find the "Index Number" field. Enter the first three letters of your agency business unit (e.g. AGR, DAS, DPS).
- Click on the Search button.
- Current Contracts Search Results page will open with your results.

### 3.2.2 Optional Contracts

DAS maintains a number of optional supply and service contracts known as State Term Schedules (STS's) and Master Maintenance Agreements (MMA's). These schedules and agreements are price solicitations that include multiple suppliers for similar types of supplies or services. All agencies may purchase any dollar amount from a STS or MMA, provided that approved funds are available to cover the purchase.

### ➤ **State Term Schedule (STS)**

State Term Schedules are based upon most favored pricing for customers who are similarly situated as the state of Ohio. In some cases the STS pricing may be based upon the federal government's Supply Schedule Contract Program, administered by the General Services Administration (GSA).

When shopping from a STS, agencies are encouraged to compare the offerings of multiple manufacturers or their named distributors on similar items. Agencies are encouraged to request quotations and/or negotiate to obtain the most favorable pricing on these schedules. In particular, discounts may be obtained for major purchases exceeding the maximum order limitation (MOL). DAS will assist the agency in securing additional discounts for these purchases. Depending upon the size of the purchase, DAS may recommend issuance of a special bid to take advantage of potential lower pricing due to market conditions.

Agencies may find STS's on the State Procurement web site by following this path:

- [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
- From Quick Links click on "Current Contract Search"
- Under the General Criteria Section, you will find the "Contract Type" dropdown menu.
- Click on the right dropdown arrow to select "State Term Schedules (STS)" from the list of available options.
- Click on the Search button.
- Current Contracts Search Results page will open with your results.

### ➤ **Master Maintenance Agreements (MMA's)**

A Master Maintenance Agreement (MMA) is an optional contract available for maintenance and service of equipment that is no longer covered under a manufacturer's warranty. MMA's are available for computer hardware, software, copiers, vending machines, and other equipment. Services may include remedial maintenance calls and preventative maintenance inspections. MMA's are not to be used to furnish consumables, relocate equipment, or repair damage due to intentional abuse by the customer. Other limitations and exclusions apply.

Agencies may find MMA's on the State Procurement web site by following this path:

- [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
- From Quick Links click on "Current Contract Search"
- Under the General Criteria Section, you will find the "Contract Type" dropdown menu.
- Click on the right dropdown arrow to select "Master Maintenance Agreements (MMA)" from the list of available options.
- Click on the Search button.
- Current Contracts Search Results page will open with your results.

When using a STS or MMA, agencies should avoid directing significant amounts of business to a limited number of vendors or suppliers. As stated previously, agencies are encouraged to compare prices and use competition whenever possible.

### **3.2.3 Other Requirements Contracts**

#### ➤ **Multiple Award Contracts (MAC's)**

Multiple Award Contracts (MAC's) are contracts that include more than one supplier for same or comparable supplies or services. MAC's may be either mandatory or optional. Agencies should check the contract language to verify whether use of a particular MAC is mandatory or optional. Mandatory MAC's have been awarded under the premise that all state agencies that purchase these supplies or services, will purchase from one of the designated contractors, although the state offers no assurance of minimum quantities to any single MAC contractor.

The two types of MAC's are distinguished by their waiver procedures. Unless stated otherwise in the contract, MAC's are mandatory contracts.

#### **Mandatory Multiple Award Contract:**

- Lists multiple suppliers for similar types of supplies or services
- Agencies may purchase from any of the listed sources
- May be available to all agencies
- All exceptions require a waiver

**Optional Multiple Award Contract:**

- Lists multiple suppliers for similar types of supplies or services
- Agencies may purchase from any of the listed sources
- May be available to all agencies
- Contains some exceptions that do not require a waiver

**Optional MAC's do not require a waiver for the following exceptions:**

1. Urgent requirements: when the ordering agency requires delivery of the supplies or services prior to the times stated in the MAC, the agency shall require the contractor, by mail (if time permits) or telephone (confirmed in writing), to state the best delivery that can be met to satisfy the needs of the agency. If the contractor is unable to provide accelerated delivery, the agency may procure the required supplies or services from another source.
2. Small requirements: when the contract includes a minimum order limitation, agencies are not required to make the purchase from the contractor for needs below this limit. The contractor is not required to accept an order for less than the minimum order limitation from the agency. However, if the contractor accepts an order of less than the minimum order limitation, the contractor is obligated to perform according to all terms and conditions of the contract.
3. Geographic area: when the contract defines geographic areas of coverage, the agency shall place orders with contractors serving the geographical areas in which the agency is located. If the agency is located outside of the geographical area, the agency is not required to use the MAC.
4. Lower pricing: when an agency finds that identical supplies or services to those included in the MAC are available from another source at a price lower than that of the MAC, the agency may procure the supplies or services pursuant to their direct procurement authority. When comparing the supplies and services listed in the MAC with other sources, the agency shall consider warranties, transportation costs, delivery terms and any other related items to insure a fair cost comparison is being made to the items listed in the MAC.

When ordering from all MAC's, the agency should compare pricing from all listed contractors for the required supplies or services. MAC prices should be considered not-to-exceed figures, and agencies may negotiate and accept better prices than those listed on the MAC if available.

Agencies may find MACs on the State Procurement web site by following this path:

- [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
- From Quick Links click on "Current Contract Search"
- Under the General Criteria Section, you will find the "Contract Type" dropdown menu.
- Click on the right dropdown arrow to select "Multiple Award Contract (MAC)" from the list of available options.
- Click on the Search button.
- Current Contracts Search Results page will open with your results.

**3.3 DAS Office of State Printing and Mail Services - Reference: ORC §125.31 through 125.58, 125.68 through 125.76, 125.91 through 125.98, and 149.13**

The Office of State Printing and Mail Services processes or produces printing orders for the executive branch of state government. All state government organizations are required to forward their printing needs through State Printing except the following:

- General Assembly;
- Ohio Arts Council;
- Capitol Square Review and Advisory Board;
- Bureau of Workers' Compensation;
- State-supported institutions of higher education.

State Printing purchases paper and a wide variety of printed goods from term contracts and one-time bids. Delivery of products varies from same day to a few weeks for large or complex orders. State Printing also provides records management, reprographics management and invoice verification and payment services of procured printing jobs. Currently four (4) State Printing copy centers are located in Columbus at these locations:

- ❖ Rhodes Tower at 30 E. Broad Street, 29th Floor..... 614-644-8555
- ❖ William Green at 30 W. Spring Street, B-2 Level..... 614-995-2011
- ❖ Hilltop Copy Center at 1980 W. Broad Street..... 614-728-2983
- ❖ Lazarus at 50 W. Town Street, Suite FSL..... 614-644-6385

To place an order with State Printing:

**Step 1:** Prepare a Printing Request Order (PRO) (ADM-0515) and "Click to Submit" to State Printing, Include camera-ready copy, film (negatives), electronic media or a previous sample.

**Step 2:** Nothing is entered in OAKS for in-house jobs. Job is completed and delivered and agency billed by ISTV.

**Step 3:** State Printing enters a requisition in OAKS for commercial jobs using agency requestor name. Agency approves in OAKS.

Purchases of reprographic equipment require **approval** from State Printing. For more on approvals, see Chapter 8.

**For more information, contact:**

State Printing and Mail Services  
4200 Surface Road  
Columbus, OH 43228-1395  
Telephone: (614) 644-7550  
Fax: (614) 644-5799  
<http://das.ohio.gov/printing>

**3.4 Office of Information Technology, Investment and Governance Division - Reference: ORC § 125.01 through 125.11, 125.18, OAC § 123:5-1-01 through 123:5-1-10**

The Office of Information Technology (OIT) is authorized to make contracts for, operate, and superintend telephone, telecommunication, computer services, and some professional services for state agencies. The following organizations are exempted from this authority:

The list of agencies that are exempted from OIT in Chapter 125 of the ORC are as follows:

- Adjutant General
- BWC
- Courts or any Judicial Agency
- Capitol Square Review Advisory Board
- Elected Officials
- Emergency management Agency as provided in Section 125.023
- General Assembly or any legislative agency
- Industrial Commission
- Institutions administered by boards of trustees.
- Ohio Police and Fire pension fund
- Public Employees Retirement System
- School Employees Retirement System
- State Highway Patrol retirement System
- State Supported Institutions of Higher Education
- State Teachers Retirement System

The Office of Information Technology, Enterprise IT Contracts, issues contracts for computing and telecommunication products and services. Purchases of telecommunications equipment, data processing equipment or services, and software require **pre-approvals**. Should circumstances warrant an exception to the above DAS authority, agencies may apply for a waiver known as a **Release and Permit (R&P)**. For more on R&P's, see Chapter 8.

Legal Reference: ORC Chapter 125; OAC 123:5-1-08

### 3.5 DAS Office of State Purchasing

The DAS Office of State Purchasing serves as the centralized procurement authority for the purchase of supplies and services used by most state agencies. Procurement Services includes State Purchasing, Community Rehabilitation Program (CRP) and Cooperative Purchasing (Co-op).

In addition to exemption for offices of the statewide elected officials, the following organizations are exempted from this authority:

- Legislative branch;
- Judicial branch;
- Institutions administered by Boards of Trustees;
- Capitol Square Review and Advisory Board;
- Adjutant General for military supplies and services;
- Emergency Management Agency, under a declared emergency, or any state agency participating in recovery activities,

State agencies not listed above may be exempt from DAS authority if the amount of the purchase does not exceed the direct purchase threshold. The direct purchase threshold is \$50,000 for supplies and services purchased from a vendor within a fiscal year. For purchases below this threshold, agencies may create their own contract. For more on direct purchase authority, see Chapter 6.

Purchases of copiers, duplicators, and vehicles require central approvals. For more on approvals, see Chapter 8.

Should circumstances warrant an exception to the above DAS authority, agencies may apply for a waiver called a Release and Permit (R&P). For more on R&P's, see Chapter 8.

## Questions & Answers

**Q: How does an agency purchase printing from OPI?**

**A:** All orders for printing must be directed to State Printing with a Printing Request Order (ADM-0515). See Appendix 1 for a link to the form. If it is determined the printing should be purchased from OPI, State Printing notifies the agency and the agency enters the requisition in OAKS.

**Q: How long will it take to get my order?**

**A:** Copy center orders are usually delivered in three days or less. Commercial work usually takes two to six weeks for production depending on the complexity of the project. Some commercial work can be produced within a few days. However, the general rule is the shorter the production time, the higher the cost.

**Q: Can I get a waiver to "go direct" for printing needs?**

**A:** In rare circumstances, State Printing may grant a waiver for direct purchase. These circumstances usually involve emergency conditions, and are granted on a case-by-case basis.

**Q: Does State Printing do printing work on other media besides paper?**

**A:** Yes, State Printing contracts some promotional printing for items such as coffee cups, key chains, and tote bags. Contact your printing specialist for more information.

**Q: What are the limitations regarding purchasing copier equipment?**

**A:** State Printing's approval is required for all copier equipment. Copier purchases and maintenance costs should exhibit a cost savings from the copiers in the Cost Per Copy Program.

**Q: What are the copy guidelines on agency walk-up copiers?**

A: Agency walk-up copiers may not exceed 2500 impressions per job.

**Q: How does an agency make a purchase from a term contract?**

A: **Step 1.** Locate item on term contract.

**Step 2. Recommended that agency** contact the supplier to confirm availability of item(s); call DAS if not available.

**Step 3.** Enter a requisition in OAKS.

**Step 4.** Upon approval in OAKS, dispatch purchase order to supplier.

**Q: Does an agency have to use a Purchase Order for all contract purchases?**

A: Purchases from DAS competitively bid contracts (GDC's, LDC's, ASC's and MAC's) in the amount of \$2,500 or less, or purchases from a STS of \$2,500 or less, may be made using the payment card. Purchases of \$500 or less may be placed using a Debit Voucher, Payment Card or purchase order unless the contract states otherwise. Most other purchases above \$2,500 must be placed on a Purchase Order. Some agencies have a higher limit; check with your agency's business office to see if your agency's limit exceeds \$2,500.

**Q: Are agencies responsible for freight costs on contract items?**

A: Generally, all shipments are F.O.B. Destination with most having freight prepaid by the contractor. Some contracts and many small dollar orders may require that the agency pay freight.

**Q: The contract expires soon. May a Purchase Order still be submitted against the contract?**

A: Purchase orders must be received by the vendor prior to the expiration date of the contract. Unless the purchase order is for a quarterly purchase, delivery may not exceed thirty (30) days after expiration of the contract. Requisitions will be rejected by OAKS if entered after the expiration date.

**Q: May an agency place "confirming orders" with contract vendors?**

A: This is not recommended. If for any reason, the order should be denied and product has been received, the person who authorized the purchase may be personally liable to pay for the purchase.

**Q: A non-term contract item is being bought from the contract vendor, may it be added to the same Purchase Order?**

A: Non-term contract items may **not** be included on the same Purchase Order with term contract items. These must be purchased under your direct purchase authority.

**Q: An agency purchases the same non-term contract commodity/service routinely. What are its options?**

A: Agencies should contact DAS. If possible, DAS may bid the item and add it to a term contract, or establish a new contract if necessary.

**Q: Occasionally our agency receives contract surveys from State Purchasing. Is it necessary to respond to these and what is their purpose?**

A: Surveys are issued to customer agencies to determine usage and potential changes to the contract. This information is provided to bidders as part of the solicitation. These surveys may also be used to determine if an agency procures sufficient quantity to warrant placing items on the contract or to obtain updated requirements. Failure to respond may result in the agency being eliminated from the contract, inappropriate items being bid or failure to receive competitive pricing.

**Q: May an agency buy a contract item from a non-contract vendor?**

A: If an item is available from the term contract it must be purchased from the contract unless the item is listed on an optional use contract. If an agency fails to utilize the contract, the state could be determined to be in breach of contract and could be held liable to reimburse the contractor. Further, the agency person responsible for making the purchase could be held financially responsible to reimburse the state for the improper purchase

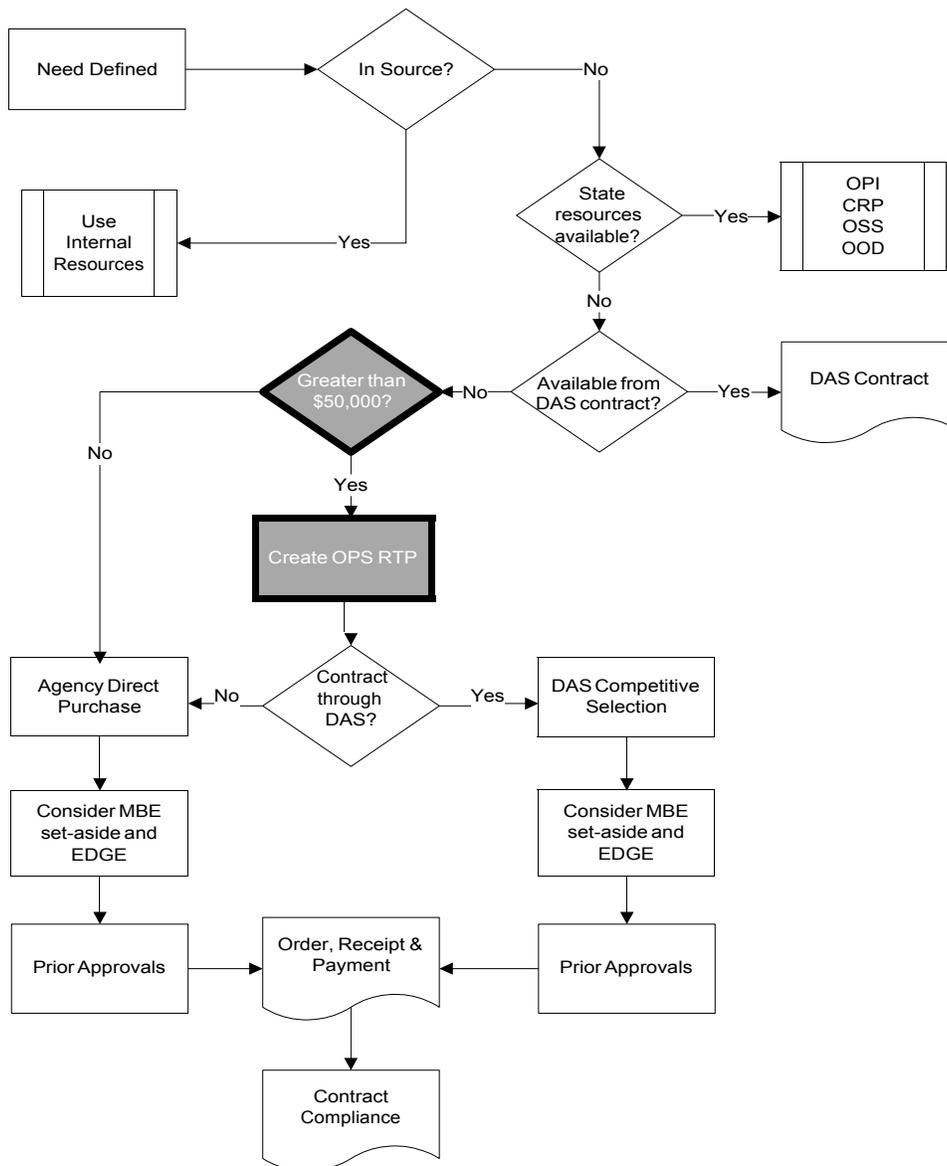
**Q: How does an agency obtain copies of term contracts?**

A: Agencies are encouraged to view and/or download contracts directly from the State Procurement website. The address is [procure.ohio.gov](http://procure.ohio.gov).

## 4.0 Overview

By now you have determined that no mandatory contract fits your specific need. Furthermore, either no optional contract meets your need, or you believe that a better value is available with a new contract. This chapter will address the questions that arise when creating a new contract, including:

- Who ...** is authorized to create the new contract?
- What ...** specifically is the product or service to be purchased?
- When ...** will the process be completed?
- Why ...** choose one procurement method over another?
- How ...** to begin a bid or request for proposal?



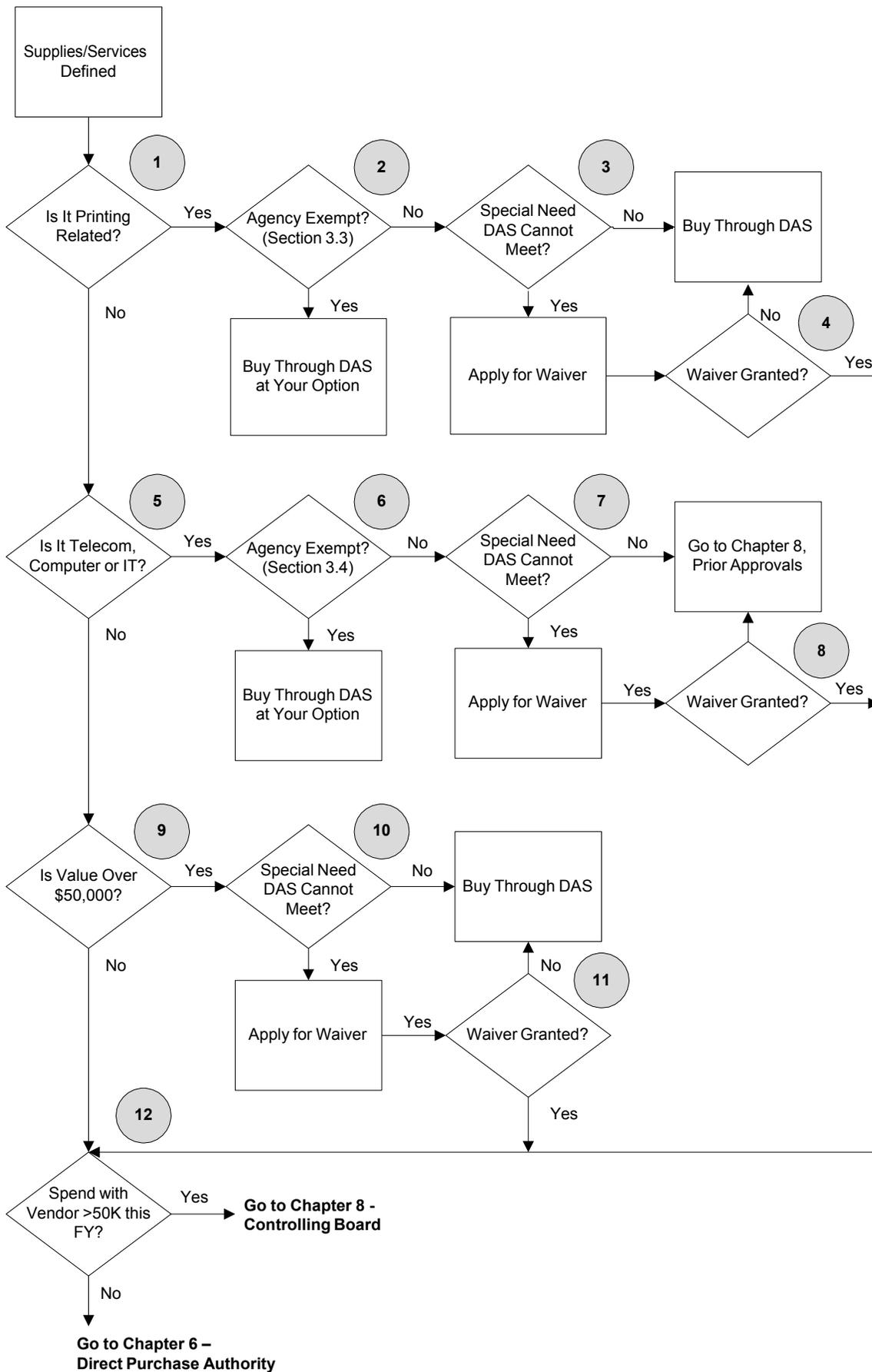
#### 4.1 Who is Authorized to Create a New Contract

When the value of the purchase exceeds \$50,000 for supplies or services, law requires that DAS review the request and make a determination as to whether or not DAS can make the purchase. If DAS determines that it is not practicable or advantageous for DAS to make the purchase, the agency will be granted a Release & Permit to make the purchase under their direct authority. The Release & Permit process is explained in detail in Chapter 8.

**It is best to involve DAS in the new procurement at the first stages of development. This will reduce the potential for unnecessary delays in drafting specifications and determining the best method to make the purchase.**

The determination of procurement authority can be reduced to twelve questions that are summarized below and in the corresponding flow chart. This chart should help determine **who** creates the contract.

No.	Questions	If yes ...	If no ...
1	Is it printing-related?	Go to 2	Go to 5
2	Is your agency exempt (see Section 3.3)?	Buy through DAS at your option	Go to 3
3	Special need DAS cannot meet?	Apply for waiver, go to 4	Buy through DAS
4	DAS waiver granted?	Go to 12	Buy through DAS
5	Is it telephone, telecom, computer or IT?	Go to 6	Go to 9
6	Is your agency exempt (see Section 3.4)?	Buy through OIT at your option	Go to 7
7	Special need OIT cannot meet?	Apply for waiver, go to 8	Go to Chapter 8
8	OIT waiver granted?	Go to 12	Go to Chapter 8
9	Is the value over \$50,000 threshold?	Go to 10	Go to 12
10	Special need that DAS cannot meet?	Apply for waiver, go to 11	Buy through DAS
11	DAS waiver granted?	Go to 12	Buy through DAS
12	\$ spent with vendor >\$50K this fiscal year?	Go to Cont. Bd. (Chapter 8)	Go to Chapter 6



## 4.2 What: Describing the Purchasing Need

It is now time to conduct research and develop specifications that will best describe the need and enable you to obtain the correct item at the correct price and at the correct time. The following procedures, although not all-inclusive, are offered to help guide you through the process.

The first consideration is to the type of specifications that will best describe the need. There are three basic types of specifications: **design, performance or combination**. **Design** specifications set the requirements for the item to be purchased by detailing the characteristics of the item. To fully describe the need, design specs may be very lengthy. Care must be taken to insure that required features have been adequately referenced. Should a feature be overlooked it may not be possible to do an objective evaluation of offers. Design specs could also be written so tightly that they may unfairly preclude other vendors from offering their supplies or services; i.e., patent infringements. A more widely used specification is the **performance specification**. These specs describe the capabilities of the supplies or services or performance requirements and deliverables. This provides more flexibility in considering other types of supplies or services. The third type of specifications is a **combination** of the first two. This type of spec provides a basic description of the need and includes performance requirements. Other types of specifications include brand name or equal, qualified products lists and samples.

Design specifications are more commonly used when purchasing supplies through an ITB process. RFPs typically utilize performance specifications. For more on specifications, see Chapter 6. Also, agencies may refer to [Ohio Administrative Code Section 123:5-1-10](#) for more detailed descriptions of these specifications.

## 4.3 When: Timetables

A frequent question is how long it takes to create a new contract. **When** it will be completed depends upon what procurement method is being used, among other factors.

DAS contracts are often created through either an Invitation to Bid (ITB) or a Request for Proposal (RFP) process. One-time ITBs are for a definite quantity, definite delivery procurement. Standard ITBs are used for bidding indefinite quantity term contracts such as GDCs, MACs, LDCs, and ASCs.

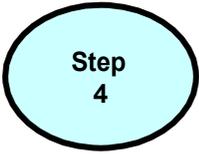
One variation of the ITB is the reverse auction. A reverse auction is similar to an ITB in that award goes to the lowest responsive and responsible bidder. However, a reverse auction determines the lowest price in a separate step, after bidders have been pre-qualified for responsiveness and responsibility. Because of pre-qualification, the reverse auction process takes slightly longer than that of an ITB.

The timetables for State Term Schedules (STs) and Master Maintenance Agreements (MMAs) vary widely, depending upon the amount of negotiation, complexity of the offering, the willingness of the vendor to accept the state's standard terms and conditions, and the competitiveness of pricing offered.

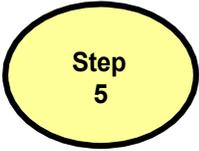
DAS ITBs, reverse auctions, and RFPs involve the following phases, with estimated lead times listed below:

Phase	DAS ITB	DAS Reverse Auction	DAS RFP
Determination of need	Agency-driven	Agency-driven	Agency-driven
Vendor and market research	15-30 days	15-30 days	15-30 days
Development of requirements	15-30 days	15-30 days	30-90 days
Notification/advertisement	15-30 days	15-30 days	15-90 days
Bidder or offeror conference (opt.)	1 day	1 day	1 day
Acceptance of bids/ proposals/qualifications	1 day	1 day	1 day
Evaluation	5-60 days	5-30 days	15-90 days
Auction preparation and event	n/a	15 days	n/a
Award	3-10 days	1-3 days	3-10 days
Mobilization	Contract-driven	Contract-driven	Contract-driven
Delivery	Contract-driven	Contract-driven	Contract-driven
Minimum total lead time	60 days	75 days	90 days

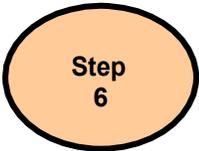




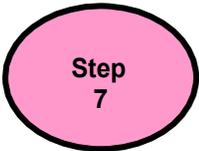
**CSP.** If DAS determines that the use of competitive sealed bidding is not possible or not advantageous, DAS may issue a Request for Proposal (RFP) to solicit Competitive Sealed Proposals (CSPs). The RFP is a third form of Competitive Selection that allows factors such as experience, performance, etc., to be scored directly and used to determine the awardee. Contracts are awarded to the vendor offering the best value to the state. Technology and professional services are areas where RFPs are frequently utilized.



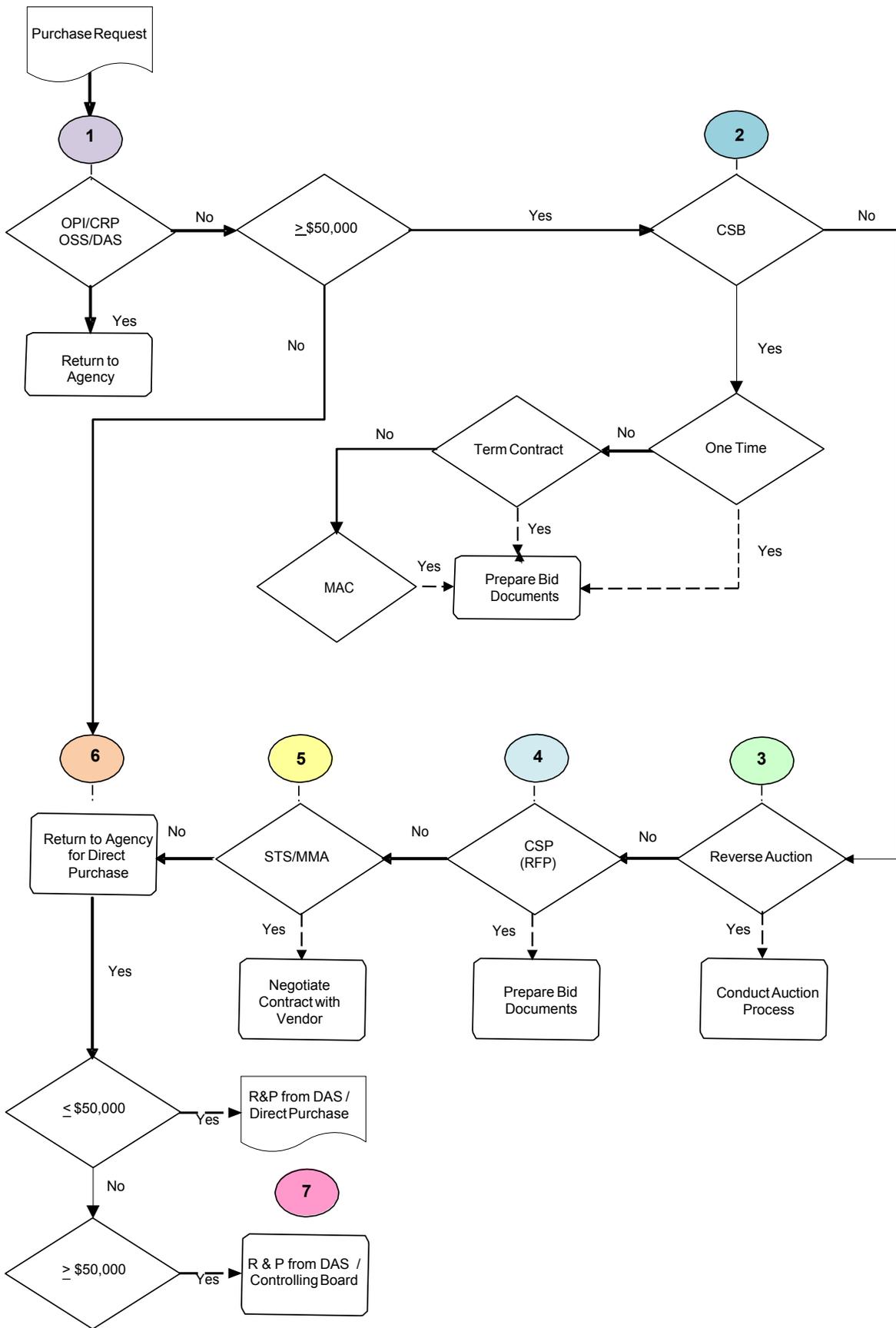
**STS/MMA.** The State Term Schedule (STS) and Master Maintenance Agreement (MMA) are utilized when DAS determines that use of the ITB, reverse auction or RFP is not in the best interest of the State. The STS and MMA are contracts negotiated directly with a manufacturer or service provider. Upon accepting the state's terms and conditions, companies may offer most favored customer pricing. Unlike the above listed contracts, STS and MMA contracts are not mandatory use contracts. Examples of STS contracts include computers, copiers, carpet, hardware items and heavy equipment. Examples of MMAs include maintenance for copiers and computer hardware.



**Direct Authority.** Agencies may make purchases of supplies or services up to \$50,000 per purchase. Requests above these limits must be forwarded to DAS. If DAS determines that it is not possible or not advantageous to make the purchase, the agency will be given a Release and Permit. The agency may then make the purchase under their direct authority. The agency is required to follow guidelines for competitive selection when they make direct purchases. See Chapter 6.

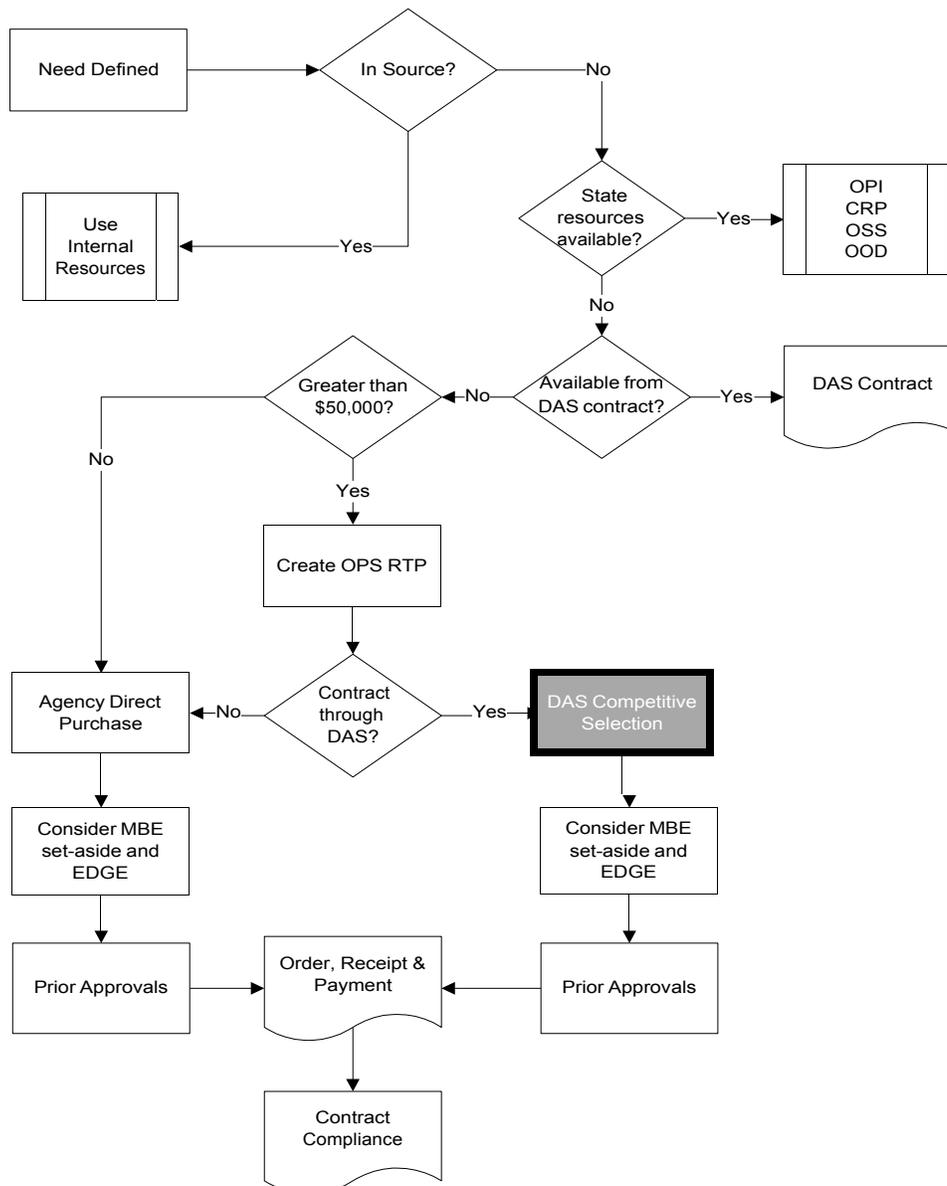


**Controlling Board.** When direct purchases exceed the cumulative annual threshold, agencies must seek approval from the state's Controlling Board to make any further purchases. The cumulative annual threshold means any agency purchases under Step 6 above with a particular vendor in one fiscal year. See Chapter 8, section 8.8.



**5.0 Overview**

Competitive Selection is the process DAS uses to make purchases on behalf of agencies. Two methods of bidding are considered within the definition of Competitive Selection; Competitive Sealed Bids and Competitive Sealed Proposals. This chapter provides an overview of the competitive selection processes used by DAS to create and award new contracts. The process differs depending upon the procurement method used. DAS follows the hierarchy of procurement methods shown in Section 4.4 of this handbook. When developing bidding documents, DAS will work closely with the agency from beginning to end. Staff will review specs with the agency to ensure their needs will be met. Once bids or proposals have been opened, staff will involve the agency in the evaluation and award process prior to finalizing the contract.



## 5.1 Requisitions

When requesting a One-Time Purchase Bid, the agency will enter a requisition in OAKS including all funding information, specifications, and selecting State Purchasing as the vendor. After the requisition receives all agency approvals it will route to State Purchasing as part of workflow.

Additional recommendations the agency should consider when preparing their requisition include:

- Agency contact person and phone number placed in the justification field.
- Estimated cost, most current.
- Ship to/Bill to address.
- Indicate if you want this as a minority business enterprise (MBE) set aside bid in the justification field.
- Proper category code.
- Complete specifications. Copies of catalog pages may be attached.
- Enter additional vendors—names, address, city, state, zip, contact person, e-mail address in the justification field.
- If assembly (construction) is required as part of the purchase, agency will need to provide prevailing wage schedules before the bid is issued.

DAS will review specifications and edit as necessary to remove restrictive requirements (agency will be advised of any changes). The specifications will be typed in bid format and notices will be e-mailed to registered bidders. Final determination of specifications will reside with DAS.

Requisitions may be delayed for a number of reasons. Following is a list of the most common reasons:

- Insufficient definition of need
- Failure to list contact person and phone number
- Overly-restrictive specifications: sole source, brand specific
- Failure to provide suggested manufacturer's name and model number

Requests for term contracts should be submitted using the Request to Purchase form (RTP) located at [procure.ohio.gov](http://procure.ohio.gov), select Forms then under Agency Forms select Request to Purchase, here is the direct link <http://apps.das.ohio.gov/requesttopurchase/requestform.aspx>. It is not necessary to reserve funds for a term contract.

## 5.2 The Bid Process

The competitive sealed bid process includes the following steps:

1. Create **Invitation to Bid (ITB)**.
2. Advertise bid opportunity.
3. Open bids.
4. Evaluate bids.
5. Award contract.

### 5.2.1 Creating the InvitationTo Bid

The ITB process begins with the agency completing the requisition or Request to Purchase form. The ITB is created in consultation with the user agency. For term contracts the agency may be requested to complete a Determination and Recommendation (D&R) form, DAS writes the ITB based upon this information. A standard ITB contains the following sections:

1. Instructions to Bidders. This section covers the time and location for submission of bids. It describes the process used in answering vendor questions, how to get DAS announcements regarding the ITB, and information about addenda to the ITB.
2. Contract Terms and Conditions. This section contains the general legal provisions that will govern the contract. Additions or deviations from these general provisions are contained in the Special Terms and Conditions section, discussed below.
3. General Overview. This section describes the nature of the supplies, equipment and services the state seeks under the ITB.

4. Certified Statements. By signing the bid form, bidders certify the information contained in their bid is accurate and complete, including several specific statements. For example, bidders must certify they qualify for an in-state preference, they have not submitted their bid in collusion with another bidder, and they have not been subject to government action within the last seven years.
5. Special Terms and Conditions. This section contains special and specific legal provisions that will govern the contract, based upon the specific scope of work. Other provisions are contained in the Contract Terms and Conditions section.
6. Specifications. This section gives a detailed description of what the selected vendor must provide the state under the contract.
7. Cost Summary. This is the section all vendors must use to clearly identify all costs the state will have to pay for the supplies, equipment and services the vendor will deliver.

In addition to the standard sections of the ITB described above, each ITB may have a number of attachments.

### 5.2.2 Advertising the Bid Opportunity

Once a particular supply or service need is fully defined and incorporated into an ITB, DAS advertises the bid opportunity to the vendor community in several ways.

DAS maintains a database of vendors registered for particular supplies or services. These vendors are differentiated by commodity codes. When the code for the bid opportunity matches the vendor's code, the system tags the vendor for notification. A courtesy notice of bid opportunities will be e-mailed to these vendors.

Bid opportunities are also posted on the following DAS web sites:

**State Purchasing:** [procure.ohio.gov](http://procure.ohio.gov)

**State Printing:** <http://apps.das.ohio.gov/aqs/viewJobLayout.aspx>

**Ohio Facilities Construction Commission Public Construction Bid Advertisement:**  
<http://ofcc.ohio.gov/Opportunities.aspx>

Bids may be advertised for any number of days determined by DAS.

During the advertisement period, prospective bidders may contact DAS for inquiries and clarifications through the State Purchasing web site. On occasion these inquiries may require the ITB to be modified. If so, State Purchasing will issue an **addendum** that details the changes. It is the responsibility of prospective bidders to keep current on any addenda and consider these changes in their bid submittal.

Some bids include a pre-bid conference or site visit. Such events will be specified in the ITB.

### 5.2.3 Opening the Bids

Sealed bid responses are opened at the time and day specified in the ITB. A representative from the Auditor of State certifies all bids have been opened. Paper bids are available for public inspection immediately, electronic bid results are generally posted within an hour after certification by the Auditor of State. Any bids that arrive after the opening date and time are considered late and are not opened or evaluated.

### 5.2.4 Evaluating the Bids

Bid responses are evaluated to determine compliance with all specifications and ability of the bidders to perform the contract. During the evaluation period, bidders are not allowed to initiate contact with the contract analyst. On occasion, the analyst may contact a bidder for clarification.

If potential awardees' price exceeds the agency estimate by more than ten percent, the agency is contacted for approval to award, rebid or cancel.

## 5.2.5 Awarding the Contract

Once the bids have been evaluated, a contract is awarded to lowest responsive and responsible bidder.

For all one-time purchases, a Purchase Order is used as the contract, and the requisition is updated with the awarded vendor and price in OAKS by DAS upon award. Once OAKS sources the requisition to a purchase order, the purchase order is dispatched to the vendor and the agency may review the purchase order in OAKS.

When delivery is completed and proper invoice received, agency issues a voucher to initiate payment to contractor.

The evaluation and award process for term contracts is the same as for one-time bids except all purchase orders are issued directly by the using agency. DAS will provide the contract agreement to the agency with a list of awarded supplies or services, the contractor(s), pricing and all terms and conditions of the purchase agreement.

### Questions & Answers

**Q: How long does the one-time bid process take?**

**A:** Agencies should allow a minimum of 30 calendar days for completion.

**Q: Why should the agency list additional vendors on the Requisition?**

**A:** These companies may have assisted you in preparing your specification, but may not be registered with DAS. Listing them on the Requisition or memo will assist in their receiving a copy of the bid notice.

**Q: What if the award will exceed my budgeted dollar amount?**

**A:** DAS will contact an agency if the award amount exceeds the estimated cost by more than ten percent. The agency will then have the option of awarding the contract, rebidding the purchase request, or canceling the request.

**Q: Will agencies be guaranteed of receiving a specified brand?**

**A:** State law mandates the Department of Administrative Services award to the lowest responsive and responsible bidder meeting or exceeding requirements as set forth in the bid. Specifying one brand, no equivalent, is considered sole source, which may not be able to be competitively bid. Under certain circumstances, DAS may consider a "brand specific" bid, provided a sufficient number of distributors are available. Such requests require approval of the administrator of the appropriate office of DAS. Sole source requests that cannot be bid and will exceed the annual cumulative dollar threshold will require Controlling Board approval.

## 5.3 The Request for Proposal (RFP) Process

Whenever the competitive sealed bid process is not possible or advantageous to the state, DAS is authorized to make purchases through competitive sealed proposals. In this process, award is made to the **offeror** whose proposal is determined to be most advantageous to the state, taking into consideration factors such as price and the evaluation criteria set forth in the RFP. The request for proposal process includes the following steps:

1. Create the **Request For Proposal (RFP)**.
2. Advertise proposal opportunity.
3. Open proposals.
4. Evaluate proposals.
5. Award contract.

### 5.3.1 Creating the RFP

The RFP is created in consultation with the user agency. Typically the process begins by the agency contacting and meeting with DAS. DAS writes the RFP based upon this information. A standard RFP contains the following sections:

1. Executive Summary. This section provides summary information about the RFP, such as purpose, background, objectives, overview of the project and key dates.

2. Structure of the RFP. This section provides information about the RFP structure, information provided in attachments and any additional material that may have a bearing on the project. The structure of the RFP depends on the project and will vary based on the project's requirements. The structural changes from one RFP to another usually are contained in the attachments to the RFP. For example, a project requiring delivery of custom-developed intellectual property will have a terms and conditions attachment heavily focused on ownership of that property. Similarly, if the people the vendor assigns to a project are critical to the project's success, the RFP will include personnel profile summary forms as attachments. Also, the nature of the project may affect the requirements for the proposal's contents. For example, if part of the project includes delivery of pre-existing items, such as software, the special provisions attachment may be modified to require inclusion of demonstration copies of the software in the proposals.
3. General Instructions. This section includes the date, time and location for submission of proposals. It describes the process for answering vendor questions, how to get DAS announcements regarding the RFP, and information about amendments to the RFP.
4. Evaluation of Proposals. This section tells vendors how the proposals will be evaluated. Generally, the evaluation is organized in the same order as the requirements for proposals, provided in an attachment to the RFP. Depending on the structure of the RFP and the evaluation process, points may be assigned to each section required in a proposal submitted in response to the RFP. Many times, points also are assigned for specific elements within each section of a proposal.
5. Contract Award. This section is an overview of the contract award process and the contents of the contract.

In addition to the usual five parts of the RFP described above, each RFP has a number of attachments. The following are the most common attachments included in Requests For Proposal:

- Work Requirements and Special Provisions Attachment. This attachment describes what the vendor must do to accomplish the work, or deliver the required supplies that may be unique to the particular project. This attachment also may cover the required qualifications of a vendor, such as the amount of experience the vendor must have providing the supplies, equipment and services described;
  - the qualifications and experience of personnel to be assigned to the project; and
  - amounts acceptable/required for subcontractor involvement.
- Detailed Scope of Work/Deliverables Attachment. This attachment describes the services to be performed or supplies to be purchased. If the state has developed specifications or drawings for the project, they may be included or incorporated here by reference. Other items addressed in this attachment may include:
  - specific tasks and sub-tasks to be accomplished;
  - parameters and restrictions on performance;
  - time for completion of work (if not otherwise specified);
  - supplies, equipment and services the contractor must provide; and
  - a list of state-furnished materials, such as state plans, reports and other resources.
- Requirements for Proposals Attachment. This attachment covers the proposal format, profiles, staffing plan, profile summaries and work plans that must be provided in the responses to the RFP. This section also provides a list of all elements to be evaluated and a description of the level of detail vendors must provide for each element in their responses.
- W-9 Form. The W-9 is a federal form that must be submitted to allow the state to track and report payments to the successful vendor.
- Cost Summary. This attachment is the form all vendors must use to clearly identify all costs the state will have to pay for the supplies, equipment and services the vendor will deliver.
- Terms and Conditions. This attachment contains the legal provisions that will govern the performance of the project by the selected vendor.
- Contract. This attachment is normally a one-page document for the vendor and the state to sign that incorporates by reference all the relevant documents for the project, such as the RFP document and the selected proposal. It does not contain any detailed terms and conditions, as many contracts do, because all those provisions are contained in the RFP

- Additional Attachments. Each RFP is unique and may have additional attachments unique to the types of supplies, equipment and services covered by the particular RFP.

### **5.3.2 Advertising the Proposal Opportunity**

Once a particular supply or service need is fully defined and incorporated into a RFP, DAS advertises the proposal opportunity to the vendor community in several ways.

DAS maintains a database of vendors registered for particular supplies or services. These vendors are differentiated by commodity codes. When the code for the bid opportunity matches the vendor's code, the system tags the vendor for notification. Courtesy notifications will be sent through e-mail to these vendors.

Proposal opportunities are always available in the "Selling to the State" section of the State Procurement web site.

RFP's may be advertised for any number of days determined by DAS.

During the advertisement period, prospective offerors may **not** contact the responsible DAS analyst directly. Rather, questions are addressed through the on-line inquiry process only. Answers to all inquiries are posted on the State Procurement web site at [procure.ohio.gov](http://procure.ohio.gov).

On occasion these inquiries may require the RFP to be modified. If so, Procurement Services will issue an RFP **amendment** that details the changes. It is the responsibility of prospective offerors to keep current on any amendments and consider these changes in their proposal submittal.

Some RFP's include a pre-proposal conference or site visit. Such events will be specified in the RFP.

### **5.3.3 Opening the Proposals**

Competitive sealed proposals are typically opened at 1:00 P.M. on the day specified in the RFP. Any proposals arriving after the opening date and time are considered late and are not opened or evaluated. The names of the offerors are recorded, but otherwise the contents of the proposals are not disclosed. In order to ensure a fair and impartial evaluation, proposals are not available for public inspection until after the award of the contract.

### **5.3.4 Evaluating the Proposals**

The evaluation team usually consists of members from both DAS and the client agency. The committee also may include outside consultants and other people with special expertise or with a particular interest in the outcome of the project, such as the client agency's own clients or constituents.

During the evaluation phase, offerors may not initiate any communication with the evaluation team. However, DAS may initiate discussions with offerors in order to further assess their responsiveness. Offerors may be required to provide a written clarification of specific items in its response. If products are required by the RFP, a product demonstration also may be considered. DAS also reserves the right to interview vendors to gather additional information. Evaluators may not reveal to offerors any information or tentative conclusions on the relative merits of proposals during this phase.

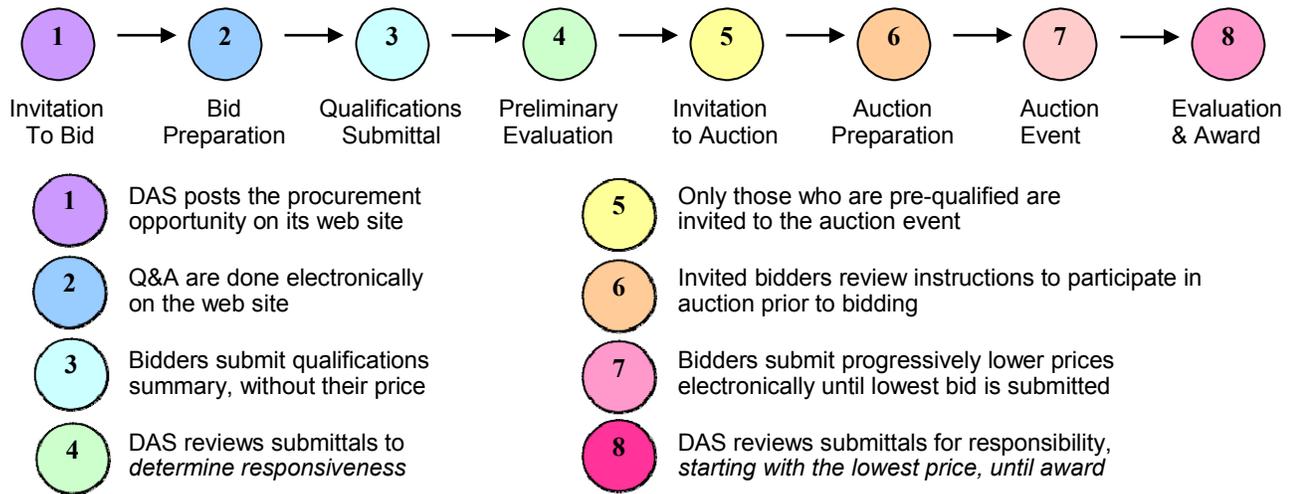
The evaluation team uses both the evaluation criteria and process defined in the RFP to recommend a vendor for award. Each evaluator reviews and scores the proposals on an individual basis. After all proposals have been scored, the evaluators meet to discuss the reasoning for their evaluations. A DAS analyst chairs the discussions and records the scores of each evaluator. In most evaluations, a consensus score is then determined, recorded, and used as the score for awarding the contract.

### **5.3.5 Awarding the Contract**

Once the evaluation committee recommends a proposal and the client agency approves the recommendation, DAS processes the contract and notifies all offerors of the outcome. The client agency then will receive approval to process a purchase order for the selected vendor. The selected vendor may begin work upon receipt of the purchase order.

## 5.4 The Reverse Auction Process

Reverse auction is a purchasing process in which offerors submit bids in competing to sell services or supplies in an open environment via the internet. The auction itself is an invitation-only, timed event that is open to bidders who have been pre-qualified. The reverse auction process includes the steps listed below:



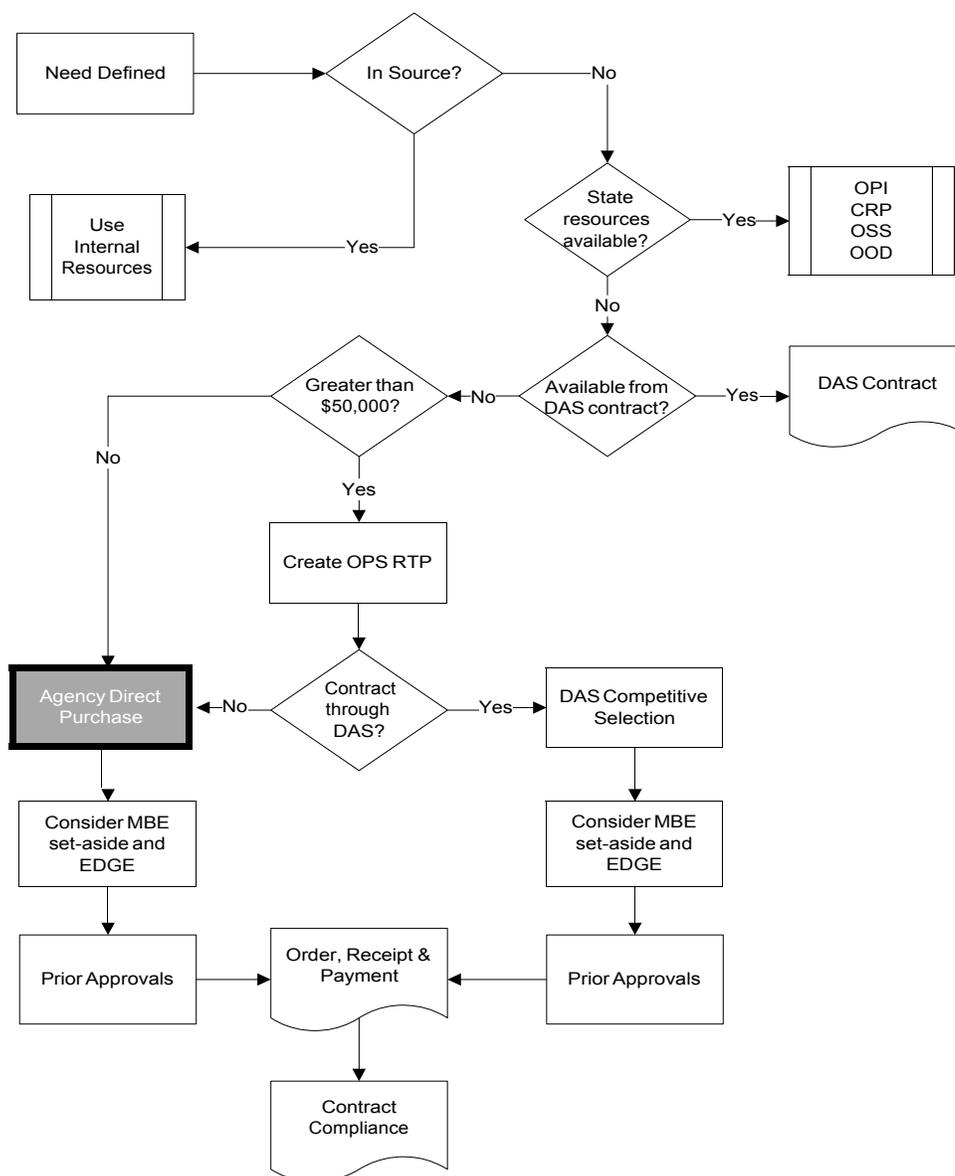
Reverse auction is a competitive selection process authorized under ORC 125.072, enacted in 2001. DAS may conduct reverse auctions at its discretion when it is determined to be advantageous to the state.

## 5.5 Expedited Purchases through DAS

In accordance with ORC 125.07 DAS may advertise bid opportunities for any number of days determined by DAS. Agencies may be able to use DAS for expedited purchases that require a quick turnaround. In the event that your agency requires an expedited purchase, contact DAS Office of Procurement Services.

**6.0 Overview**

You have determined that your need is not available from any state resources or from any DAS contracts and that the value of your need does not exceed \$50,000 for supplies or services. You are now ready to make the purchase under authority granted directly to the agency in the Ohio Revised Code. Once an agency has determined that it is operating within its authority to create a new contract, it may proceed using Direct Purchase Authority. Should there be any questions concerning authority, please refer to Chapter 4.



## 6.1 State Procurement Web Portal

In 2009 Executive Order 2008-12S was issued ordering state agencies that purchase supplies or services exceeding \$25,000 to post all opportunities on the State Procurement central web portal. It further directed State Agencies to post current contract opportunities exceeding \$25,000 on the State Procurement web portal within ninety (90) days of its establishment. The posting of contract awards was codified into law under ORC 125.112.

State agencies must request a Login name and password at the following web site to post opportunities and update contract information <https://www.procure.ohio.gov/proc/RequestAgencyUserAccount.asp>. Questions regarding the Procurement web portal should be directed to the procurement support team at 1-614-466-5090.

## 6.2 Ethics and the Purchase Requisition

Prior to either making the purchase directly, the agency must prepare specifications that clearly describe the need. Clear and concise specifications are critical to success of the purchase. If written incorrectly, the need will not be met and the agency will have spent time and money needlessly.

One common pitfall is permitting a local and/or favorite vendor to have a key role in writing the specification. The vendor's description may very clearly outline their product, but may also exclude other vendors from offering their items to the agency. This creates an unfair advantage, is contrary to Ohio laws for competitive procurement and could lead to allegations of favoritism. The agency should seek information from multiple sources and then prepare a specification that provides all interested bidders with an opportunity to supply the need.

Ethical conduct means that all potential vendors are given a fair and equal opportunity to offer their supplies and services to the agency. Any action on the part of the agency, indicating that a particular vendor is being treated differently than others, gives rise to unethical conduct by the agency. Innocent lunches, small gifts, tickets to sporting events all could lead to accusations of impropriety toward the agency and possible violation of Ohio's ethics laws.

Proper ethical conduct is a crucial element of a successful purchasing program. Anything less is not acceptable to the purchasing professional. In Ohio, all employees involved with any aspect of the procurement process, to include their spouses, are subject to the ethics laws found in Ohio Revised Code. Employees should read and fully understand the requirements of these laws and how their conduct in the procurement processes could affect their professional and personal lives.

**Remember:** **PERCEIVED** unethical conduct can have the same impact as actual violations. As a purchasing professional you hold the trust of the public you serve. Don't place yourself, your agency and the state into a position of jeopardizing that trust.

The Ohio Ethics Law contains provisions restricting conflicts of interest that involve nepotism, post-employment, representation, influence-peddling, confidentiality, and supplemental compensation. Among other restrictions, the law provides that each public official and employee is prohibited from:

- Authorizing, or using his position to secure authorization of, a contract, for himself, a family member, or a business associate;
- Receiving any benefit from a contract entered into by his public entity;
- Hiring or securing any contract benefits for her spouse, parents, grandparents, children, grandchildren, or siblings, or any relatives living with her;
- Soliciting or accepting substantial and improper things of value, including gifts, or travel, meals, and lodging;
- Participating in matters where something of value will result for the public official or employee himself, his family, his business associates, or others with whom the public servant has a close tie that could impair his objectivity.

The Ohio Ethics Commission provides free advice and assistance to public officials and employees in Ohio. For any questions, please contact:

Ohio Ethics Commission  
30 West Spring Street, L3  
Columbus, OH 43215  
Telephone: (614) 466-7090  
Fax: (614) 466-8368  
<http://www.ethics.ohio.gov/>

## Questions & Answers

**Q: Why is it important to contact more than one company?**

**A:** This ensures competition. Laws for competitive bidding do not permit writing specifications that are directed to one manufacturer. Contacting multiple distributors for one manufacturer is not considered as competition. True competition is between two or more manufacturers.

**Q: Why can't I accept an invitation to a sporting event from my neighbor who also sells products to my agency through my procurement office?**

**A:** One who is involved in making purchases for his agency cannot accept anything of value from a supplier, whether it be a relative, a friend or business associate. Doing this is in violation of Ohio's ethics laws and carries stringent penalties.

**Q: What if the invitation is offered to my spouse who isn't involved in my work?**

**A:** Ohio's ethics law applies to the agency employees and their spouses as well.

**Q: Is it true that I can accept anything under \$75?**

**A:** The law prohibits a public employee from accepting "anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties." While the code refers to \$75 it is possible that an item of lesser value could create an improper influence. It is best to contact the Ethics Commission.

### 6.3 Specifications and the Purchasing Request

Once you have determined which type of specification to write (Chapter 4), you may proceed with creating the specification. The following is a sample checklist of topics that may be used to prepare specifications. It should be noted that this list is not all-inclusive.

- What is it that you want your supplies or services to do?
- What special features, etc. do you need?
- "Conformance" to published standards: USDA, SNELL, ANEL, UL, ASTM, SAE, etc.
- Manufacturer's product number. If a manufacturer's number has been used, the manufacturer should be shown in the specification. Do not use the supplier's catalog numbers, which may differ between suppliers for the same item.
- Name - indicate actual name of item (for example "pump" or "electric motor").
- Model number (if repair parts, indicate model number being repaired).
- Size or dimensions (if size is critical indicate such and that no exception to size is possible).
- Color - indicate shade of color or color number.
- Type of material - weight, gauge, thickness, finishes, etc.
- Quality of material - type of cloth and material blend, specification, and grade of lumber, type of metal/plastic.
- Quantity per package.
- Chemical analysis - by volume, weight or percent.
- Electrical - motor-phase cycle, voltage, current or horsepower.
- Accessories - required or optional.
- Warranty - standard factory or other, length of time, limited/unlimited.
- Assembled or knocked down (K.D.).
- Site visitation - (example: carpeting); contact person.
- Samples for evaluation - are samples necessary.
- Packing - standard or special.
- Delivery - realistic (confirm desired delivery with suggested sources).
- Inside delivery and installation.
- Building code compliance.
- Space limitations.
- Country of origin for item, foreign or domestic (see section 6.7).
- Features.
- Functions to be performed.
- Level of performance or production capacity.

## 6.4 Agency Direct Purchase Process

Agencies should consider the following when exercising their Direct Purchase Authority:

- To be used for items not available from term contract or other state sources (see Chapters 2 & 3);
- The need does not require pre-approval from DAS (see Chapters 3 & 8);
- Purchases for supplies, materials, equipment and services cannot exceed \$50,000 per purchase without DAS review and approval (Release and Permit, see Chapter 8);
- Agencies may not split purchases of similar goods or services to circumvent competitive bidding.
- Agencies should consider the Minority Business Enterprise set aside and EDGE programs (see Chapter 7).

Agencies should follow the guidelines of the most current version of the DAS Directive, summarized below (see Appendix 1):

- 1) Soliciting a minimum of three price quotes from different manufacturers is recommended.
- 2) If purchase is over \$500, the contract must be in writing and signed.
- 3) Award to lowest responsive and responsible vendor. Must provide reason for not awarding to low vendor.
- 4) Consider application of the domestic source end product and the in-state preference (Buy American & Buy Ohio) in accordance with ORC 125.09, 125.11 and OAC 123:5-1-06.
- 5) Award approximately 15% of contracts to certified Minority Business Enterprises (MBE's) under set asides; award 5% of contracts to certified Encouraging Diversity, Growth & Equity (EDGE) participants.
- 6) The vendor must be able to meet the requirements of Contributions Disclosure [ORC 3517.13(I) and (J) - Non-Competitive].
- 7) Direct purchases cannot exceed \$50,000 (\$75,000 for real estate leases) per department per vendor, per fiscal year without approval of the Controlling Board [OBM requirement ORC 127.16(B)(1) and (2)].

## 6.5 Terms and Conditions

Terms and conditions are a part of every contract issued by DAS and serve to protect the interests of both the State and the vendor. Agencies should consider adopting all or part of the DAS terms and conditions for inclusion in their direct purchases. The DAS terms and conditions used by State Purchasing for all ITB's are located on the State Procurement web site under Help and Reference Materials, State Procurement Reference Materials, Instructions to Bidders and Contract Terms and Conditions at <http://procure.ohio.gov/proc/help.asp>.

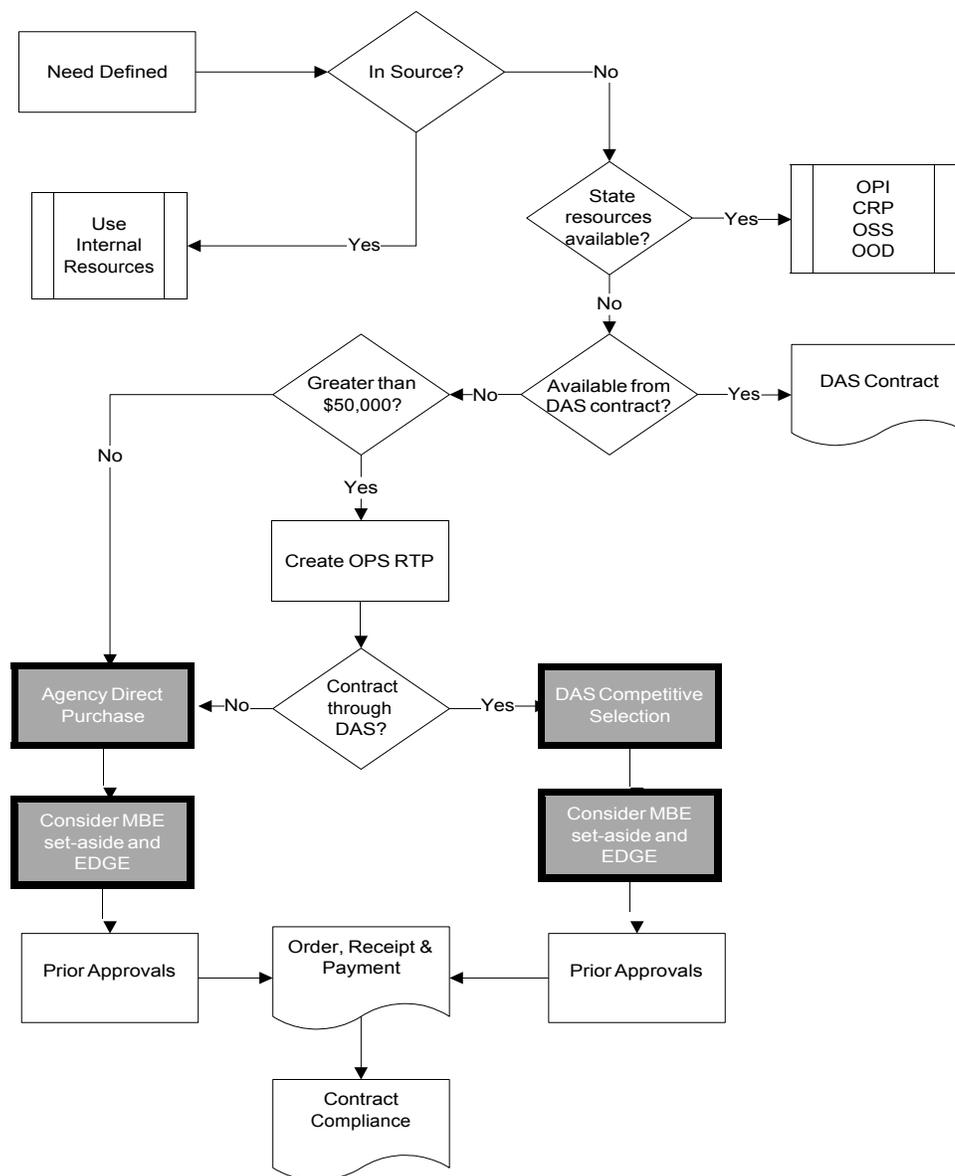
## 6.6 Membership Fees

Fees for memberships in various organizations must be encumbered on a Purchase Order if above \$1,000.

1. The agency must determine if the membership includes services as defined in Chapter 125.01 of the Ohio Revised Code.
2. Controlling Board approval is not required as long as services are not part of the membership. If services are included in fee, such must be obtained through direct procurement authority with Controlling Board approval.

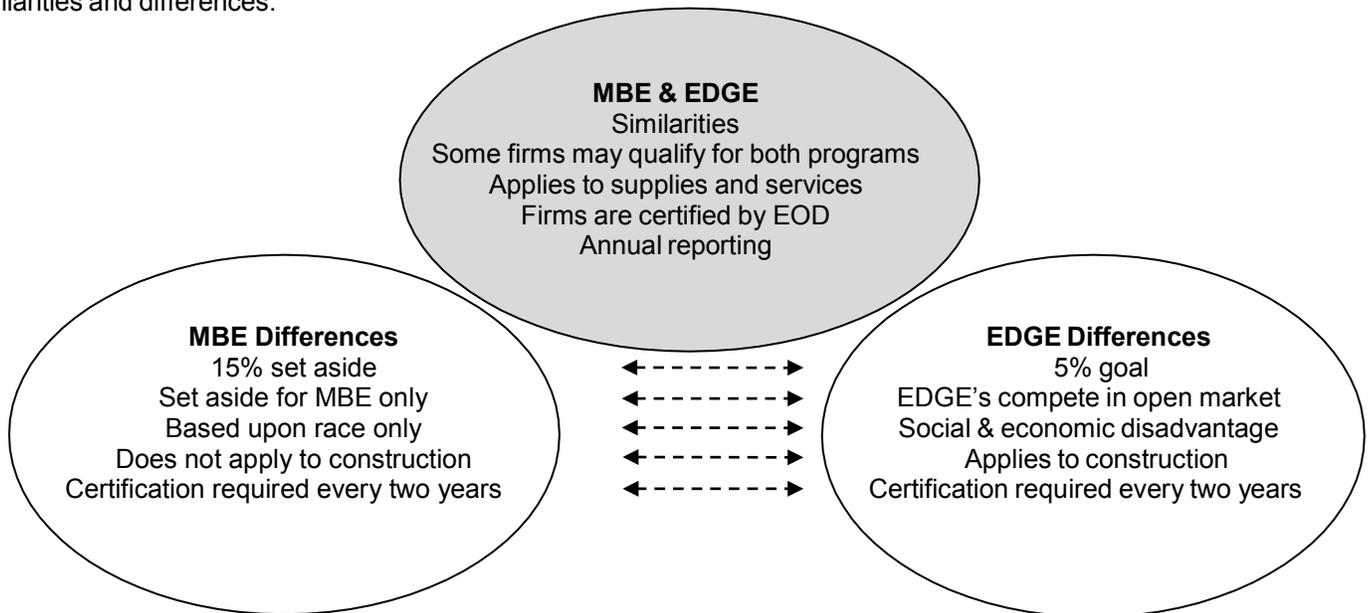
**7.0 Overview**

Whether the purchase will be made through DAS or made under the agency's direct purchase authority, consideration must be given to minority set aside and small business programs established by law. This Chapter will explain both programs and walk you through the each process.



## 7.1 Minority and Small Business Preferences

The Minority Business Enterprise (MBE) and Encouraging Diversity, Growth and Equity (EDGE) Programs allow government entities to consider certain social and economic factors in awarding contracts. The programs have both similarities and differences.



An overview of each program follows.

### 7.1.1 MBE Set Aside Overview

A Minority Business Enterprise (MBE) is an individual, partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens who are residents of Ohio, **and** who are members of one of the following economically disadvantaged groups:

- Blacks,
- American Indians,
- Hispanics, and
- Asians

**and** who are certified by the Ohio Department of Administrative Services, Equal Opportunity Division.

A “set aside” is defined as a purchase selected for restricted competition among Ohio certified MBE’s only.

State agencies are required to select a number of purchases, the aggregate value of which equals approximately 15% of the total goods and services purchased for the current fiscal year, for set aside competition. In order to reach the 15% goal, agencies may purchase from set aside contracts awarded by DAS and/or agencies may set aside their own procurements under direct purchase authority. In the case of procurements set aside if no bid is submitted by a certified MBE, the purchase shall be made according to usual procedures. The agency shall set aside additional purchases for which only certified MBE’s may compete, as are necessary to replace those purchases previously set aside but were not awarded. Agencies are encouraged to track their progress quarterly to identify replacement opportunities, as needed.

The DAS Equal Opportunity Division (EOD) administers and monitors the MBE program for state government. For more information, please contact EOD at 614-466-8380, or visit the web site at:

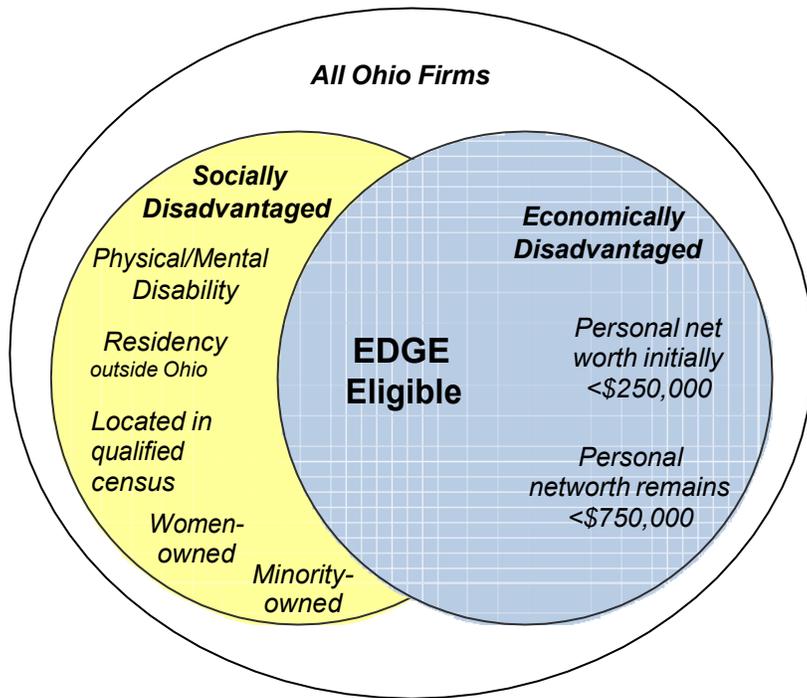
<http://das.ohio.gov/Divisions/EqualOpportunity.aspx>.

### 7.1.2 EDGE Overview

EDGE is a program designed to assist certified socially and economically disadvantaged businesses in Ohio. The legal authority for the program is ORC 123.152 and Executive Order 2008-13S.

EDGE establishes goals for state agencies, state universities, boards and commissions in awarding contracts. The program applies to procurements of supplies and services, professional services, information technology services, and construction, architecture and engineering.

An EDGE participant must be a small socially and economically disadvantaged business enterprise owned and controlled by U.S. citizens who are Ohio residents. A business enterprise may qualify if the owner meets the criteria for both social and economic disadvantage:



Socially Disadvantaged

Those individuals who have at least one objective distinguishing feature that has significantly inhibited their business success, such as:

- race
- ethnic origin
- gender
- physical/mental disability
- long-term residency in an environment isolated from mainstream Ohio society
- located in a qualified census tract, or
- other objective relevant reason(s).

Economically disadvantaged

- personal net worth of each owner must not exceed \$250,000 at program entry, **and**
- personal net worth of each owner must not exceed \$750,000 during program participation.

The principle behind EDGE is matching contractor **availability** with **utilization**. **Availability** means that a vendor is ready, willing, and able to perform the specified work. An example of an available vendor is one that bids on a state contract and has not been disqualified during the bid process. **Utilization** means that the state has contracted with the vendor to perform the specified work. By tracking both availability and utilization of EDGE participants, the state can determine whether these participants are obtaining a proportionate share of state contracts, and whether disparities exist.

To the extent that any agency of the State is authorized to make purchases, the agency shall establish procurement goals based on a percentage level of participation tied to some measure of percentage of contractor availability and eligible expenditures.

All of the following are possible ways that agencies can help meet their 5% goal:

- Purchasing from an EDGE vendor on a DAS contract;
- Awarding an open market contract to an EDGE vendor with no preferences;
- For purchases under the direct agency authority threshold, soliciting bids exclusively from EDGE vendors;
- Using an EDGE preference within a Request for Proposal (RFP) issued by the agency;

EDGE is **not** a set aside program. Agencies are not required to set aside certain contracts for EDGE participants only. Regardless of the procurement process used, any state business activity with an EDGE counts as utilization.

**7.2 Achieving Program Goals through DAS contracts**

When making a purchase through competitive selection, DAS is required to set aside a number of such purchases for MBE participation only, the aggregate value of which equals approximately 15% of the estimated total value of all purchases to be made through competitive selection in the current fiscal year. The DAS Offices of State Purchasing, State Printing, and Enterprise IT Contracting are each responsible for selecting their respective contracts for set aside, in cooperation with EOD.

DAS will also make available contracts awarded to EDGE's. Purchases from these contracts count toward EDGE goals.

**7.2.1 Selecting Term Contracts for MBE Set Aside**

Each year DAS selects certain term contracts to be set aside for MBE's only. *This section is currently under review.*

### **7.2.2 Selecting One-time Bids for Set Aside**

Agencies may request DAS to set aside a one-time contract that will be awarded on their behalf. Additionally, DAS may decide that the particular purchase is a candidate for set aside. *This section is currently under review.*

### **7.2.3 Searching for DAS Contracts to Meet MBE Set Aside and EDGE Goals**

DAS awards contracts to MBE contractors in multiple ways and identifies them as:

#### **MBE**

##### *Minority Business Enterprise Contract*

This represents a contract resulting from a competitive procurement opportunity open to certified MBE vendors only, and awarded to a certified MBE vendor(s). Page one of the awarded contract indicates it is a Minority Business Enterprise Contract.

#### **MBEP**

##### *Minority Business Enterprise Participation Contract*

This represents a negotiated State Term Schedule that includes a certified MBE contract holder or dealer.

#### **MBE3**

##### *Minority Business Enterprise "3" Contract*

This represents negotiated State Term Schedules where there are three or more MBE schedule holders or dealers available within a particular State Term Schedule (STS) category. If the procurement is conducted by the agency as a sheltered solicitation exclusively for competition among the certified MBE STS holders or dealers listed on the schedules, it is considered as MBE set aside. If an MBE STS schedule holder or dealer is selected without this sheltered competition, or if an MBE is selected through open market competition, those purchases will continue to be considered as MBE participation.

#### **PMBE**

##### *Partial Set Aside MBE Award*

This represents a contract resulting from a competitive procurement opportunity in which a portion of the supplies/services were open to certified MBE vendors only, and awarded to a certified MBE vendor(s).

Agencies are encouraged to purchase supplies and services from MBE and EDGE vendors on DAS contracts. Using the State Procurement web site, agencies can find contracts with MBE vendors by taking the following paths:

- Agencies can find contracts awarded as MBE set-aside by taking the following path:
  - [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
  - From Quick Links click on "Current Contract Search"
  - Under "Contract Type," use right down arrow to select "Set Aside (MBE) Contracts"
  - On "Current Contracts Search" page, further refine your search, or click on "Search" to view all contracts.
  
- Agencies can find contracts that qualify for MBE3 by taking the following path:
  - [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
  - From Quick Links click on "Current Contract Search"
  - Under "Contract Type," use right down arrow to select "Minority Business Enterprise Competition (MBE3) Contracts"
  - On "Current Contracts Search" page, further refine your search, or click on "Search" to view all contracts.
  
- Agencies can find contracts that qualify for MBE Participation by taking the following path:
  - [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
  - From Quick Links click on "Current Contract Search"
  - Under "Contract Type," use right down arrow to select "Minority Business Enterprise Competition (MBE3) Contracts"
  - On "Current Contracts Search" page, further refine your search, or click on "Search" to view all contracts.

➤ Agencies can find contracts with EDGE contractors by taking the following path:

- [procure.ohio.gov](http://procure.ohio.gov) (State Procurement home page)
- Select “Current Contracts”
- Under “Search by Contract Type,” use right down arrow to select “EDGE”
- On “Search for EDGE Contracts” page, further refine your search, or click on “Search” to view all contracts.

### **7.3 Achieving Program Goals through Agency Direct Authority**

Agencies may choose to achieve MBE and EDGE goals through purchases made under their direct authority. Following are guidelines for both programs.

#### **7.3.1 MBE Set Aside compliance through Agency Direct Authority**

In order to reach their 15% set aside requirement, agencies may choose to set aside some contracts that are created under their direct purchase authority. Agencies should consider the following do’s and don’ts in determining set asides:

- Don’t arbitrarily set aside 15% of every contract.
- Don’t arbitrarily select one entire contract category for set aside, i.e., all of the contracts for the purchase of shoes.
- Do consider contract incumbency or longevity, i.e., who has had the contract for the last 2 years.
- Do look for opportunities to encourage minority-owned business growth. Review past years procurement activity and question whether a set aside opportunity has ever been provided by your agency in that contract category.
- Do consider adverse impact on both minority owned and non-minority owned businesses. In contract categories where set aside opportunity has never before been offered lies the potential for adverse impact to non-minorities who have held the contracts long term and to minorities who are seeking to “break into” heretofore inaccessible markets.
- Do consider compliance with industry standards.
- Do consider, where appropriate, creating smaller contracts or multiple contracts.
- Do consider currently certified MBE’s from the EOD web site in your procurement decisions.
- Do monitor MBE set-aside compliance quarterly and adjust your projections and selections as necessary.
- Do check the [EOD web site](#) for latest current listing of certified MBE’s
- Do check the [DAS Procurement web site](#), on the left hand navigation bar under MBE/EDGE Contracting, for a list of DAS contracts planned for set aside for the current fiscal year.

#### **7.3.2 EDGE compliance through Agency Direct Authority**

Agencies may also choose to include EDGE goals in purchases made under agency direct authority. Some of the allowable methods to increase EDGE participation include:

- Solicit direct quotations from a large number of EDGE vendors;
- Include a point preference for using an EDGE vendor or an EDGE subcontractor in agency-issued Requests for Proposal.
- Require an EDGE subcontracting goal in construction or service contracts.
- Purchase from an agency-issued MBE set aside contract if the MBE is also EDGE certified.

Agencies may obtain a current listing of EDGE vendors at

<http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification.aspx>.

Choice of compliance method has an impact on reporting requirements as explained in the subsequent sections:

### **7.4 EDGE Waivers**

In the event that a particular contract requires an EDGE subcontracting goal, responding vendors may request relief from the EDGE requirement if no EDGE vendors are available.

EDGE waivers are reviewed and processed by the agency awarding the contract according to standard guidelines. The standard documentation for processing an EDGE waiver is the responding vendor’s good faith effort log, which is to be included with the vendor’s bid or proposal. The good faith effort log demonstrates that the contractor has performed due diligence in attempting to secure EDGE participation for the contract. The contractor should record any contact with EDGE

vendors on the log. The agency will review the documentation and render a waiver decision. The agency may request the assistance of the DAS EOD office to determine good faith.

## 7.5 Reporting

Agencies are required to submit to EOD a combined MBE/EDGE Projection Plan. EOD will provide agencies with quarterly and annual reports relative to expenditures with both programs.

### 7.5.1 MBE Reporting

Agencies are required to report MBE expenditures to EOD on a quarterly and annual basis.

One point often confused is the distinction between *MBE set aside* and *MBE participation*. In a set aside bid, competition is restricted exclusively to certified MBEs. Should an agency award a contract to a certified MBE through an open market solicitation, resulting purchases with that certified MBE are reported to EOD as MBE participation, not as set aside.

When verified by the agency, any MBE participation spending may be included in a separate section of EOD's statewide report but cannot be part of the report's statutory set aside achievement section, since competition was not limited to certified MBE firms. Any spending with Ohio minority-owned firms may become a part of the report's appendix, and reported as good faith efforts. For more information on MBE reporting, please refer to the EOD web site at <http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification.aspx>.

## Questions & Answers

### **Q: Must agencies identify three (3) MBE's before a contract can be set aside?**

**A:** Yes and No...

Yes. To claim MBE set side credit for purchases made from State Term Schedules, agencies are required to solicit quotes from **at least three** vendors identified as MBE3 within a particular category of STS contracts.

No. To claim MBE set aside credit for purchases, it is recommended that at least two certified MBE's be identified, hence, a competition is established even if the opportunity results in only one response. A single response from a bidder would not invalidate the set aside contract for want of competition.

If only one MBE is available, the purchase would be considered single source, and would require Controlling Board approval (see Chapter 8).

### **Q: Should "availability" be a factor?**

**A:** Yes. There are at least three types of "availability." First, available can pertain to those potential contracts to be set aside for MBE competition only. Second, available can pertain to those MBE's identified as having registered in the trade, goods or services being solicited by the agency (as discussed in the preceding question). Third, available can pertain to those MBE's who respond to the bid solicitation and are subsequently determined to be responsive and responsible bidders by the agency.

As with every contract, the letting agency will determine this last type of availability. This latter type of availability or capability evaluation is separate and apart from the availability or MBE trade registration analysis done by the agency when determining which purchases to set aside for MBE competition.

### **Q: Is there a difference between "certified" and "registered"?**

**A:** Yes. The Equal Opportunity Division certifies that applications to Ohio's MBE program have met the five basic requirements for participation: ownership, control, ethnicity, Ohio residency, and United States citizenship. Vendors may also become certified in the EDGE program.

At any time, vendors may register on the State Procurement web site to be notified of bid opportunities. Registration gives the vendor an electronic notice of an opportunity, regardless of certification status.

### **Q: Does the Equal Opportunity Division certify MBE's in particular areas of business?**

**A:** Yes. Certificates issued to MBE's specify that the holder of the certificate is a supplier of architecture and engineering, goods/services, construction, IT services or professional services.

**Q: Who will evaluate the qualifications of the MBE bidders?**

**A:** OAC 123:2-15-01, Rule (B)(11) states, in part: "Any applicant desiring to bid on a contract awarded by any agency other than the department of administrative services must meet any pre-qualification requirements of that agency." Practically speaking, the bid specifications and the evaluation of capability process that agencies utilize for determining the ability of any open market bidder to perform on the contract will suffice for determining the qualifications of MBE vendors as well.

**Q: From what source will agencies obtain registration lists of certified MBE's?**

**A:** The EOD web site at <http://eodreporting.oit.ohio.gov/searchEODReporting.aspx> contains an updated list of certified MBE's. Agencies may download and print the listing, or search the list using various criteria.

**Q: How will future EDGE procurement goals be set?**

**A:** The initial baseline procurement goal will be 5 percent. After a year of program operation the initial agency goal will be reviewed by the Ohio Department of Administrative Services (DAS) with the agency and adjusted accordingly based on EDGE-contractor availability and eligible agency procurements.

**Q: What is the difference between the EDGE program and the MBE program?**

**A:** Both programs assist underutilized businesses in obtaining state government contracts. Underutilized businesses may be eligible for certification with the MBE and EDGE program. MBE certification is limited to members of four statutorily designated racial groups. MBE procurement involves sheltered market or set-aside contracts let by virtually all state agencies. EDGE certification is open to any Ohio-based small business that has been certified as socially and economically disadvantaged. EDGE procurement is limited to direct discretionary cabinet-level agency purchases and does not involve bidding credits, sheltered markets or set-aside contracts.

**Q: How will EDGE goals and MBE set aside requirements be reconciled?**

**A:** Underutilized businesses may be eligible for certification with both the MBE and EDGE programs. A business has an opportunity to obtain contracts through actively participating in both programs. When projecting MBE and EDGE procurements, agencies may realize that it is possible for the procurement to be made from a vendor under either program. Should this occur, the 15 percent MBE set aside requirement should be met first.

**Q: How will the EDGE program be monitored?**

**A:** The state EEO coordinator and agency EEO officers will be primarily responsible for program monitoring and accountability. Agency EEO officers or other designated personnel will be trained and given an enhanced role and responsibility for individual agency compliance. In addition to monitoring agency compliance and submitting reports to DAS, EEO officers will receive complaints, investigate disputes and review agency waivers. DAS will be responsible for overall program oversight and annual reports to the governor.

**Q: How will EDGE disputes be resolved?**

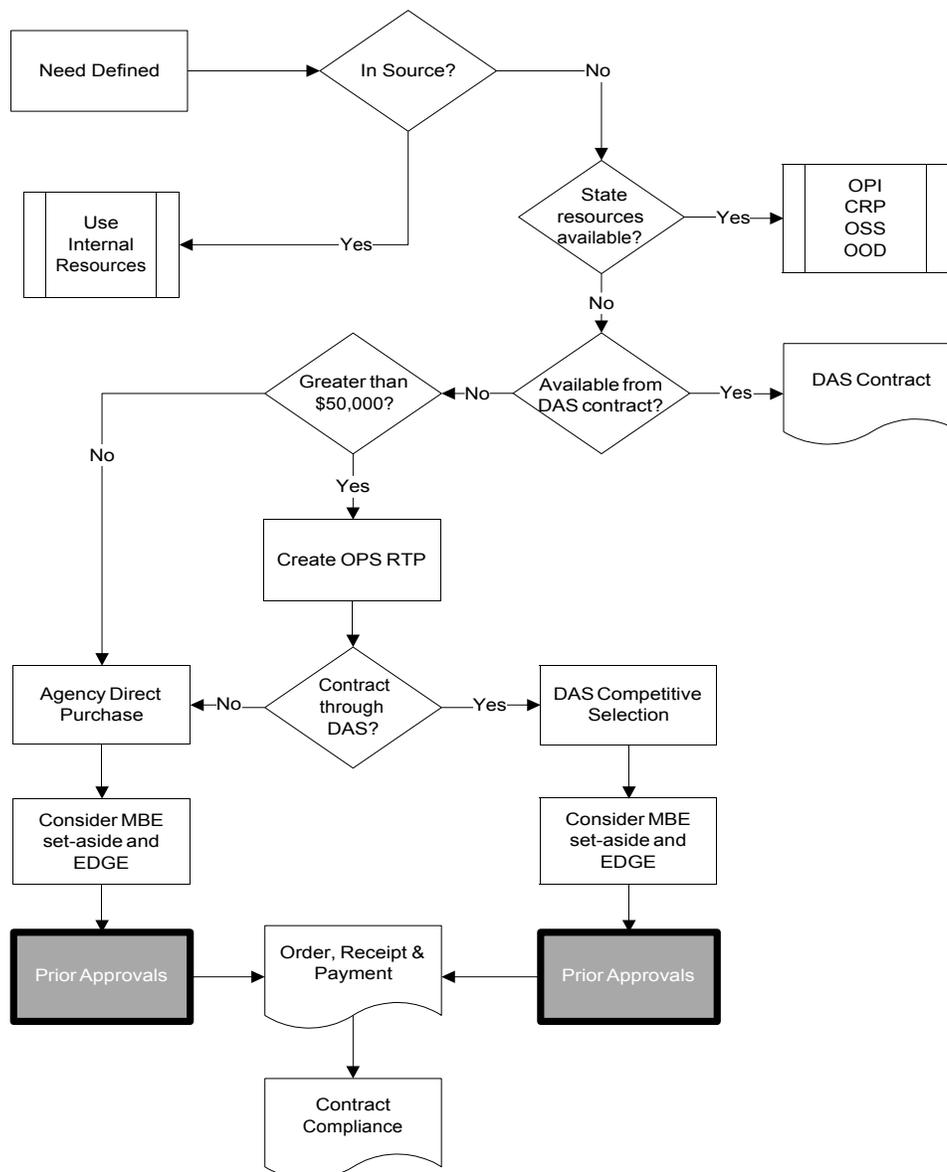
**A:** When possible disputes involving agencies and certified vendors will be mediated through the alternative dispute resolution process. Vendors or agencies that experience problems with utilization or compliance may file a complaint with DAS or the contracting agency EEO officer. Once received, the complaint or dispute will be reviewed, investigated and resolved or referred to alternative dispute resolution when appropriate. However, certification disputes must be appealed to the DAS Equal Opportunity Division, the division responsible for certification.

**Q: How will EDGE waivers be granted?**

**A:** The contract-letting entity will be responsible for granting waivers. Contractors documenting a good faith effort to comply with the established participation goal, may request a waiver if they are unable to comply. The waiver process and necessary documentation to warrant the granting of a waiver will be uniform throughout the state and subject to review by the agency EEO officer and state EEO coordinator.

## 8.0 Overview

The Ohio Revised Code places a responsibility upon DAS to superintend purchases of certain types of supplies and services; i.e. computers, software, telecommunications, copiers, and vehicles. DAS is also responsible to make purchases of supplies and services above dollar limits described in Chapter 6 unless DAS determines that it is not practical or advantageous to make the purchase on behalf of the agency. This chapter will explain the procedures an agency must follow when seeking prior approvals and when DAS issues a release to allow the agency to make the purchase under their direct authority.



## 8.1 Types of Prior Approvals

Certain purchases require review and approval from designated agencies before completing the purchase. The need for prior approval may be triggered by the type of equipment or service, amount of purchase, or deviation from normal procedures. Types of prior approvals include copier approvals, release and permits, and Controlling Board approvals.

A **pre-approval** is required prior to any purchase of:

- telecommunication services or equipment;
- facsimile;
- copier and duplicator;
- information technology (IT) solutions;
- data processing (DP) equipment/services;
- software;
- vehicles.

Agencies attach approval requests and supporting documentation to their requisition in OAKS, the document will workflow to the appropriate office for review and approval based on the account.

A release and permit is required when an agency anticipates that it will exceed its direct purchase authority threshold and/or cumulative annual threshold. Procedures for requesting a release and permit are included in section 8.7.

Controlling Board approval is required for a broad range of exceptions to standard procurement procedures. A brief overview is included in section 8.9.

## 8.2 Telecommunication Products

Office of Information Technology – Telecommunications Services

30 East Broad Street, 39th Floor

Columbus, OH 43215

(614) 644-6446

<http://das.ohio.gov/Divisions/InformationTechnology/TelecommunicationsServices/tabid/123/Default.aspx>

Telecommunications and Network Contract Management Services procures voice, data, and video services for state and local government and assists DAS in superintending service providers' contracted services under ORC 125.04.

### [Ordering TSR](#)

Technology Service Request (TSR) -The TSR system is a menu driven, web-based application that allows agencies to request telecommunications services. The system initiates email notification of pending orders to on-line service providers. The service providers supply feedback on-line that facilitates collaboration among vendors.

### [User Instructions](#)

## 8.3 Enterprise IT Contracting

30 East Broad Street, 39<sup>th</sup> Floor

Columbus, OH 43215

(614) 466-6860

<http://das.ohio.gov/Divisions/InformationTechnology.aspx>

Agencies are required to submit to Enterprise IT Contracting requests, providing justification, for purchase of IT when the total cost exceeds \$25,000.

Agencies are assigned blanket pre-approval numbers for purchases totaling under \$25,000. Agencies should follow standard purchasing procedures when procuring computer equipment with the total cost under \$25,000.

If the request is approved, a pre-approval number will be assigned and entered into OAKS. Agencies will receive written notification from Enterprise IT Contracting of this pre-approval and any necessary information required to prepare a purchase order.

Purchases of \$25,000 or more must use one of the following methods to procure:

- Purchase from a term contract or term schedule.
- Use competitive bid or competitive selection through DAS.
- Approve through the State Controlling Board.

#### **For questions on placing an order or checking the status of a request ...**

DAS/Enterprise IT Contracting  
30 East Broad Street, 39th Floor  
Columbus, OH 43215  
(614) 466-6920

#### **8.4 Office Copying Machines**

State Purchasing  
4200 Surface Road  
Columbus, OH 43228-1395  
(614) 466-2418  
<http://procure.ohio.gov>

If an agency has a need to acquire an office-copying machine, there are four procurement options:

1. Outright purchase;
2. Lease, not to exceed 60 months;
3. Lease To Purchase (LTOP), including an option to purchase after a period not more than 60 months;
4. Cost-Per-Copy Program.
5. If an agency chooses to participate in the cost-per-copy program, they select the machine that best meets their needs as to monthly volume and complete a Memorandum of Understanding (MOU) and forward to State Printing. The current CPC contract brochure can be found on State Printing's website:  
<http://das.ohio.gov/printing>, select the cost-per-copy link and click on the cost-per-copy brochure link.

For other options, the agency will solicit proposals from State Term Schedule (STS) contractors, selecting one proposal that best meets the agency's needs. The proposal should include prices for all three options: purchase, rental, and LTOP. The agency will forward the proposal to State Printing along with the appropriate Request for Approval from Procurement's website for approval. In situations where a rental or LTOP is involved, the agency will also forward an Exhibit A signed by the STS contractor.

State Printing will review the documentation for accuracy and conformance to the STS procedures and review the request for comparison with the cost-per-copy program. State Printing will contact the agency to discuss the cost-per-copy program and cost differences with the other three options. When using one of the first three options, the agency receives the approval and a requisition can be entered into OAKS. The PO is faxed and/or mailed to the contractor. If the Cost-Per-Copy option is selected, a cost per copy Memorandum of Understanding (MOU) would be sent to State Printing.

The agency shall receive and inspect the copier to ensure the equipment conforms to what was ordered and is operational. When receiving and installation are complete, the agency will then sign Exhibit B, which is the document that confirms the receipt of the lease or rental copier equipment.

#### **8.5 Vehicles**

Fleet Management  
4200 Surface Road  
Columbus, OH 43228-1395  
(614) 466-6607  
800-686-1521  
<http://das.ohio.gov/Divisions/GeneralServices/FleetManagement.aspx>

Following are procedures for the purchase and lease of vehicles, automobiles, or trucks. To define terms, a **lease** is considered to be three months or more of aggregate usage from a commercial renting/leasing company and must be submitted to the Office of Fleet Management (OFM) for a pre-approval number: A **rental** is for less than three months and need not be submitted to OFM.

### **8.5.1 Motor vehicles purchased from state term contracts.**

1. Agency requestor will enter a completed requisition into OAKS attaching all necessary documentation (vehicle lease/purchase justification form(s), written justifications, etc.). The completed requisition will be routed to OFM for approval.
2. If the requested purchase is approved, OFM will enter the information into OAKS.
3. If the requested purchase has been disapproved, OFM will request additional information and return the requisition to the agency through OAKS.

### **8.5.2 Motor vehicles purchased from non-contract vendors (\$50,000 in aggregate to be competitively bid).**

1. Agency requestor will enter a completed requisition into OAKS along with all necessary documentation (vehicle purchase justification form(s), written justifications, etc.)
2. If the requested purchase is approved, OFM will update the information in OAKS and send notification to State Procurement.
3. State Procurement will issue an Invitation to Bid (ITB). After State Procurement awards the ITB, OFM will be notified via OAKS. State Purchasing will enter the ORDER into OAKS with the required codes and approvals.
4. If the requested purchase has been disapproved, OFM will notify the agency and request additional information.

### **8.5.3 Motor vehicles leased from commercial leasing companies (under \$50,000 in aggregate).**

1. Agency requestor enters a completed requisition in OAKS along with all necessary documentation (vehicle lease purchase justification form(s), written justifications, including a copy of the unsigned lease agreement, etc.).
2. If the requested lease is approved, OFM will update information in OAKS and send notification to the agency.
3. If the requested lease has been disapproved, OFM will notify the agency and request additional information.

### **8.5.4 Motor vehicles leased from commercial leasing companies (\$50,000 in aggregate to be competitively bid).**

1. Agency requestor enters completed requisition into OAKS and routes to OFM with all necessary documentation (vehicle lease purchase justification form(s), written justifications, including a copy of the unsigned lease agreement, etc.).
2. If the requested lease is approved, OFM will update in OAKS and route to State Procurement.
3. State Procurement will issue the ITB. After the ITB is awarded, State Procurement will notify OFM and enter the ORDER into OAKS with the required codes and approvals.
4. If the requested lease has been disapproved, OFM will notify the agency and request additional information.

## **8.6 Release and Permit**

Referring to the diagram at the beginning of Chapter 4, when an agency's direct purchase amount exceeds \$50,000, the agency is required to forward their request to DAS to make the purchase under competitive selection. If DAS determines that it is not possible or advantageous for it to make the purchase, permission will be given to the agency to make the purchase under its direct purchase authority.

The waiver that authorizes the agency to seek Controlling Board approval or to make purchases that DAS cannot make is the **Release and Permit**. DAS' authority to grant a Release and Permit is contained in Ohio Revised Code Sections 125.05 & 125.06 and Ohio Administrative Code Section 123:5-1-03. To submit a request for a Release and Permit use the Request to Purchase form at the following web site <http://apps.das.ohio.gov/requesttopurchase/requestform.aspx>

Factors DAS will consider in granting a Release and Permit include:

- The demonstrated ability of the agency in terms of procurement and specialized knowledge pertinent to the procurement.
- The past experience of the agency in exercising similar authority.
- The degree of economy and efficiency to be achieved if authority is delegated.
- The availability of resources in DAS to make the purchase.
- The ability of DAS to complete the purchase under Competitive Selection.
- An emergency condition exists.

The agency should not proceed with the purchase until DAS has granted the Release and Permit. Whenever DAS grants a Release and Permit, the agency must make the purchase pursuant to Competitive Selection requirements or with Controlling Board approval. A copy of the approved Release and Permit, to include supportive documentation, will be retained by DAS.

If the request is approved, a release and permit number will be assigned to the using agency. Using agencies must enter the given release and permit number field when entering their requisition in OAKS.

DAS may also grant special Blanket Release and Permits for certain personal services that cannot be bid by DAS. DAS will issue the Blanket Release and Permit prior to the beginning of the fiscal year(s) to which they apply. See Section 8.8.

**Special Note:** Agencies are cautioned against investing significant time in obtaining quotes and/or finalizing any contractual agreement with a vendor under the assumption that DAS will automatically grant the release & permit. Agencies should also guard against submitting a request for the release & permit citing an expedited need for DAS to grant the release & permit (i.e. trying to meet a Controlling Board deadline for submission). Law requires that DAS review each request to determine if such can be purchased through competitive selection. If DAS determines that formal bidding is possible, the request will be denied. The agency should contact DAS when the agency first determines that a need exists. If DAS determines, at that time, that it cannot procure the need through competitive selection, the agency will be granted the release & permit and may then proceed with using their direct authority to complete the purchase.

### Questions & Answers

**Q: When should a Release and Permit be requested?**

**A:** The Agency should submit a request for Release and Permit by using the following web site <http://apps.das.ohio.gov/requesttopurchase/requestform.aspx>. DAS will review the purchase request and make a determination if such can be purchased through competitive selection or if a Release and Permit should be granted to the agency. Agencies should not contact suppliers prior to DAS review. If it is determined that the purchase can be purchased through competitive selection, the request will be denied and the agency will have invested time and effort needlessly.

**Q: What if the purchase has been made and we now discover that a Release and Permit is necessary?**

**A:** Law requires DAS to determine that it is not possible or advantageous to make the purchase through Competitive Selection. If determined that DAS could have made the purchase through Competitive Selection, the purchase could be considered invalid. This may require the agency to return the item and/or may leave the person authorizing the purchase personally responsible to pay for the purchase. The only exception would involve an emergency condition.

**Q: When would a purchase be considered an emergency purchase?**

**A:** The Revised Code defines that an emergency exists when there is an immediate need for supplies or services that cannot be met through normal procurement methods and lack of which would create a serious threat to the health or safety of a person or to the functioning of state government. The failure to properly plan is not considered to fall within the definition of an emergency situation. With few exceptions, only true emergency requests will be considered for a release and permit.

**Q: How long does it take to obtain a Release and Permit?**

**A:** With the exception of an emergency, the process generally takes a minimum of ten (10) business days from the date the request is received. Agencies should be mindful to include all relative information to support the request as failure to do so will result in return of the request and will delay receipt of the Release and Permit. Depending upon the purchase, some requests may require additional time for review.

**Q: How do I make a request for a Release and Permit?**

**A:** Complete the web based Request to Purchase form at <http://apps.das.ohio.gov/requesttopurchase/requestform.aspx>. Attach all detailed information and complete all areas of the form, as requested. When the review is completed, you will receive an e-mail noting the final determination of your request.

**Q: Why does a Release and Permit have to be obtained for Controlling Board Requests?**

**A:** The Controlling Board requires that all requests to be placed on the agenda requesting a waiver of competitive selection be accompanied by a Release and Permit from DAS, if so required by DAS. If not attached, the request will not be placed on the Controlling Board agenda. It is important to involve DAS early into your purchase as the Controlling Board Request must include the Release and Permit or you will be delayed in obtaining Controlling Board approval.

**Q: I need to make a purchase involving a repair to our public building. How do I obtain a Release and Permit?**

**A:** The Office of State Purchasing is not authorized by law to make purchases related to the construction, re-construction, alterations, or similar repairs to a public building (see Chapter 11). Agencies should contact the Ohio Facilities Construction Commission (OFCC) at (614) 466-6290.

## **8.7 Blanket Release and Permit**

Certain types of purchases may exceed the agency direct purchase authority thresholds, but are not required to be purchased through DAS. DAS issues a **blanket release and permit** to cover these types of purchases.

At the beginning of each biennium, DAS determines that it is not possible or advantageous for it to make purchases of certain types of personal services and other specialized items. These items are described in the Expense Account as published by OBM, State Accounting. This blanket release and permit does not waive the necessity for any additional reviews or approvals as required by law or other DAS policies.

The following procedures have been established to enable agencies to process requisition in OAKS.

The blanket release and permit number is comprised of the agency's three digit alphanumeric OAKS code, followed by a hyphen and 08/09. For example:

- DAS-08/09 (Department of Administrative Services)
- OBM-08/09 (Office of Budget and Management)

Agencies may view the actual blanket R&P on the State Procurement website ([procure.ohio.gov](http://procure.ohio.gov)) ; click on "What's New" and then on "Announcements".

The blanket release and permit should be used on all requisitions utilizing these expense accounts. If Controlling Board approval is required, due to exceeding the annual dollar threshold, the agency must make a written notation on the Controlling Board request of the expense accounts utilized and the Release and Permit number assigned. Controlling Board staff will verify this information prior to scheduling any request. No further release and permits will be required from DAS.

For expense accounts not listed, release and permit approvals are necessary from DAS. Telecommunication charges and utility payments and services are to be acquired in accordance with Section 9.30, Ohio Revised Code. Release and permits are not necessary for these services.

## **8.8 Controlling Board**

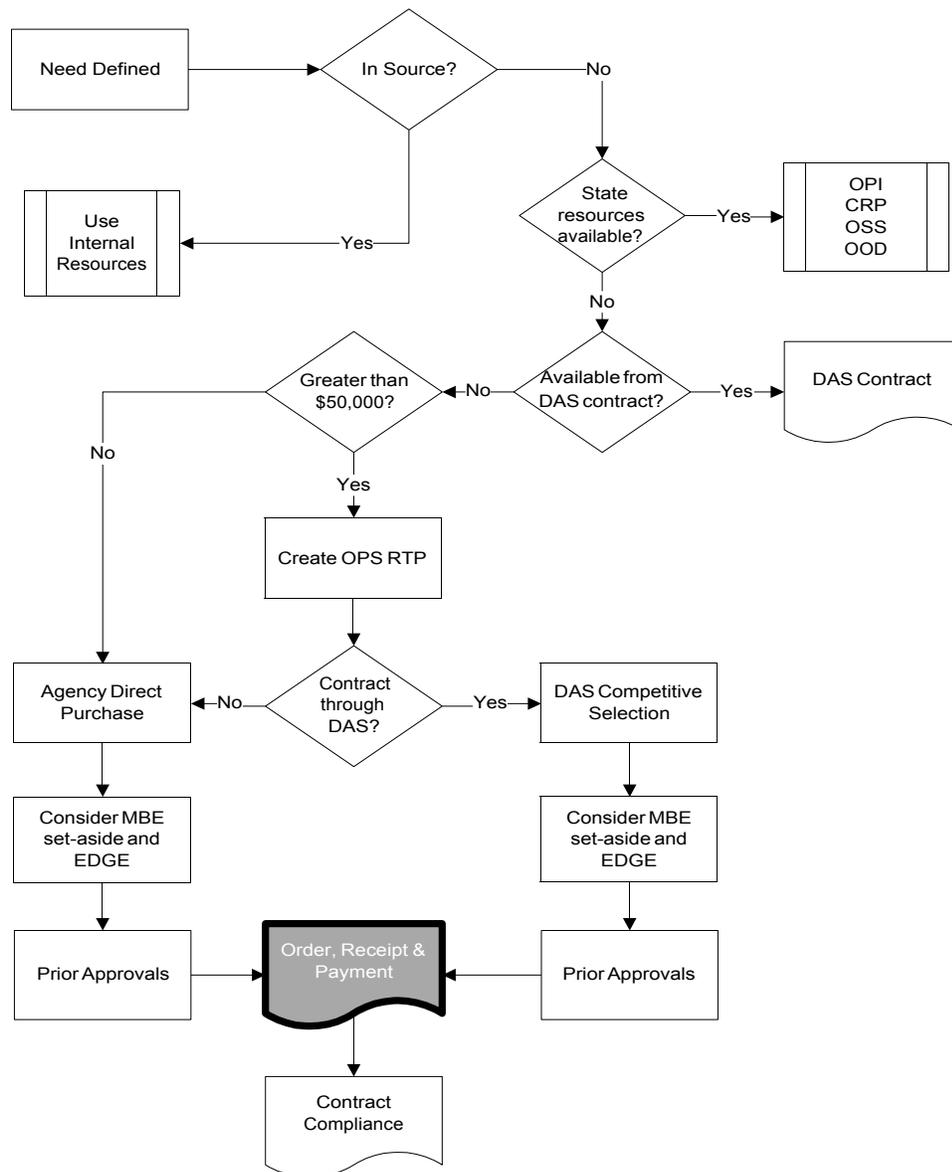
The State Controlling Board is a legislative body comprised seven members: the Director of the Office of Budget and Management or an employee of the Office of Budget and Management designated by the Director, the Chairs of the Senate and House Finance Committees, a majority member appointed from both the Senate and the House, and a minority member appointed from both the Senate and the House. The Controlling Board provides oversight to ensure that funds appropriated by the legislature are used appropriately, consistent with the original legislative intent.

The Controlling Board has the authority to waive competitive selection. Agencies must seek Controlling Board approval when the cumulative amount to be spent with a single vendor will exceed \$50,000 per fiscal year and purchase does not follow competitive selection. For these purchases, the agency must obtain a release & permit from DAS.

For more on Controlling Board procedures, please consult the Controlling Board web site, at the following location: <http://obm.ohio.gov/sectionpages/ControllingBoard/default.aspx>

**9.0 Overview**

Once the determination has been made as to what supplies and services are to be ordered and from whom it is time to obtain the supplies and services. This Chapter will assist the agency on selecting the proper forms for placing orders, how to receive items ordered and process invoices for payment to the vendor.



## 9.1 Office of Budget and Management Manuals

The Office of Budget and Management (OBM) publishes many documents that agencies will find helpful for ordering, receipt, and payment for goods and services. Among the documents referenced in this chapter are the [State of Ohio Financials Process Manual](#), and the [Payment Card Manual](#). Agencies are encouraged to visit the OBM web site at <http://www.obm.ohio.gov/> for more information.

In addition to OBM's online manuals, OAKS offers free courses in various aspects of the Ohio Administrative Knowledge System (OAKS). Visit the myOhio web site at <https://myohio.oaks.ohio.gov> select Career Resources.

## 9.2 Making Purchases from a DAS Term Contracts, State Term Schedules, Master Maintenance Agreements or Multiple Award Contracts

Use the following guidelines when goods or services are purchased from a DAS Term Contract, State Term Schedule, Master Maintenance Agreement or Multiple Award Contract:

- Prepare a requisition in OAKS and dispatch to the vendor.
- Cost is less than \$2500 – a payment card transaction may be used; an encumbering document is not required when using a payment card. When using a payment card, it is recommended you follow the procedures set in place by your agency's business office. If internal procedures permit, you may contact the vendor directly and place a phone order.

## 9.3 Purchases from Other Sources

If the supplies or services are not being purchased from a Term Contract, State Term Schedule, Master Maintenance Agreement or Multiple Award Contract, use the following guideline:

- Cost is less than \$500 – contact the vendor directly and place an order with or without a payment card. Again, internal agency procedures may require an encumbering document, so check with your business office for instructions.
- Cost is above \$500 - prepare an encumbering document and send a copy to the vendor, which in turn generates the order, unless the purchase qualifies as a non-purchase order voucher (see list below). Also, if the purchase is under \$2,500, you may use a payment card to order the goods/services in accordance with your agency procedures.

## 9.4 Receipt of Supplies and Services

Once supplies and/or services have been provided, the ordering office will receive a delivery receipt for those supplies or services. The delivery receipt should be dated and kept until an invoice is received. The received invoice should be compared to the delivery receipt and encumbering document, if applicable, to determine if the invoice is proper. A proper invoice must match the encumbering document in all respects (item description, quantity, delivery information, unit costs, etc.).

Agencies are responsible for ensuring prompt payments to vendors conducting business with the State of Ohio. An agency's responsibility to make prompt payment begins with receipt of a proper invoice, as defined by Ohio Administrative Code 126-3-01(A)(4-5). If the invoice is improper, the vendor should be contacted immediately, both verbally and in writing, in order to correct the discrepancies. Ohio Administrative Code 126-3-01(B)(4)(b) details the action to take upon receiving a defective or improper invoice.

## 9.5 Payment Methods for Supplies and Services

The most common methods of payment for goods and services are:

- Voucher (non-Purchase Order and Purchase Order)
- Payment Card
- Electronic Data Interchange (EDI)
- Interstate Transfer Voucher (ISTV)

A brief description of each payment type follows.

## **9.5.1 Voucher**

### **9.5.1.1 Purchase Order (PO) Voucher**

A PO voucher is used for reimbursement when a purchase order is required. These vouchers will pull invoice lines from the PO for procurement of contract and non-contract goods and services. Contract goods and services include those purchased through General Distribution Contracts, Multiple Award Contracts, Limited Distribution Contracts, State Term Schedules, Master Maintenance Agreements, Bids, Request for Proposals, Controlling Board approved purchases and purchases through the Community Rehabilitation Program.

### **9.5.1.2 Non Purchase Order (PO) Voucher**

A non-PO voucher is used when a disbursement does not require or reference a PO and the total amount vouchered is \$500.00 or less.

## **9.5.2 Payment Card (P-card)**

The payment card is a method for both the ordering and payment of certain goods and services, regardless of whether the purchase is from a DAS contract or not. It is designed primarily for small purchases of tangible materials, equipment, supplies and approved services. Use of the card is meant to simplify and streamline the acquisition process and lower overall transaction costs.

All cardholders have limits defined by their agency (within OBM guidelines) and enforced at the point of purchase by payment card control features. Limitations are established for spending amounts per transaction, monthly spending limits and number of transactions made per day. Controls limiting usage with certain merchant categories of vendors are also placed on the payment card (e.g. merchants classified by Visa as gas stations are prohibited). Limits for most users are \$2,500 per purchase.

The Payment Card Program does not affect procurement regulations or an agency's internal regulations for purchasing. All purchases made with federal moneys must meet requirements set forth by the federal grantor.

The Statewide Payment Card Administrator of the Ohio Office of Budget and Management (OBM) manages the statewide program. Each participating agency has a Payment Card Administrator to manage its card program. The executive staff of each agency determines the level of participation in the program and the number of cards issued. All payment cards issued shall have the written approval of OBM.

OBM maintains the [Payment Card Manual](#) on the OBM website.

## **9.5.3 Electronic Data Interchange (EDI)**

EDI is an electronic invoicing and payment method established with the vendor prior to the ordering process. EDI invoicing and payments are only for vendors who have been pre-approved through the Office of Budget and Management. In OAKS the ordering process is not done through EDI. When making a purchase for the State using EDI, employees must follow the procedures set forth in the [State of Ohio Financials Processing Manual](#). If the amount of payment is greater than \$500, an encumbering document is required. If the payment is less than \$500, the EDI payment can be processed as a non-Purchase Order Voucher through OAKS.

The Office of Budget and Management web site provides additional EDI information - FAQs, new account form, agency primary contacts, a list of EDI vendor contacts, and instructions for accessing AEP account information. Agencies are encouraged to visit the following address for more information:

<http://obm.ohio.gov/SectionPages/ElectronicCommerce/default.aspx>

## **9.5.4 Interstate Transfer Voucher (ISTV)**

Interdepartmental purchases will follow OAKS Requisition to Purchase Order workflow. The difference between state agency suppliers and commercial suppliers is the vendor identification. The State of Ohio uses five alpha-numeric characters for agencies and the ten-numeric for non-agency.

Procedures for entering purchase orders are in the State of Ohio Financials Process Manual, Section: eProcurement > Creating Requisitions.

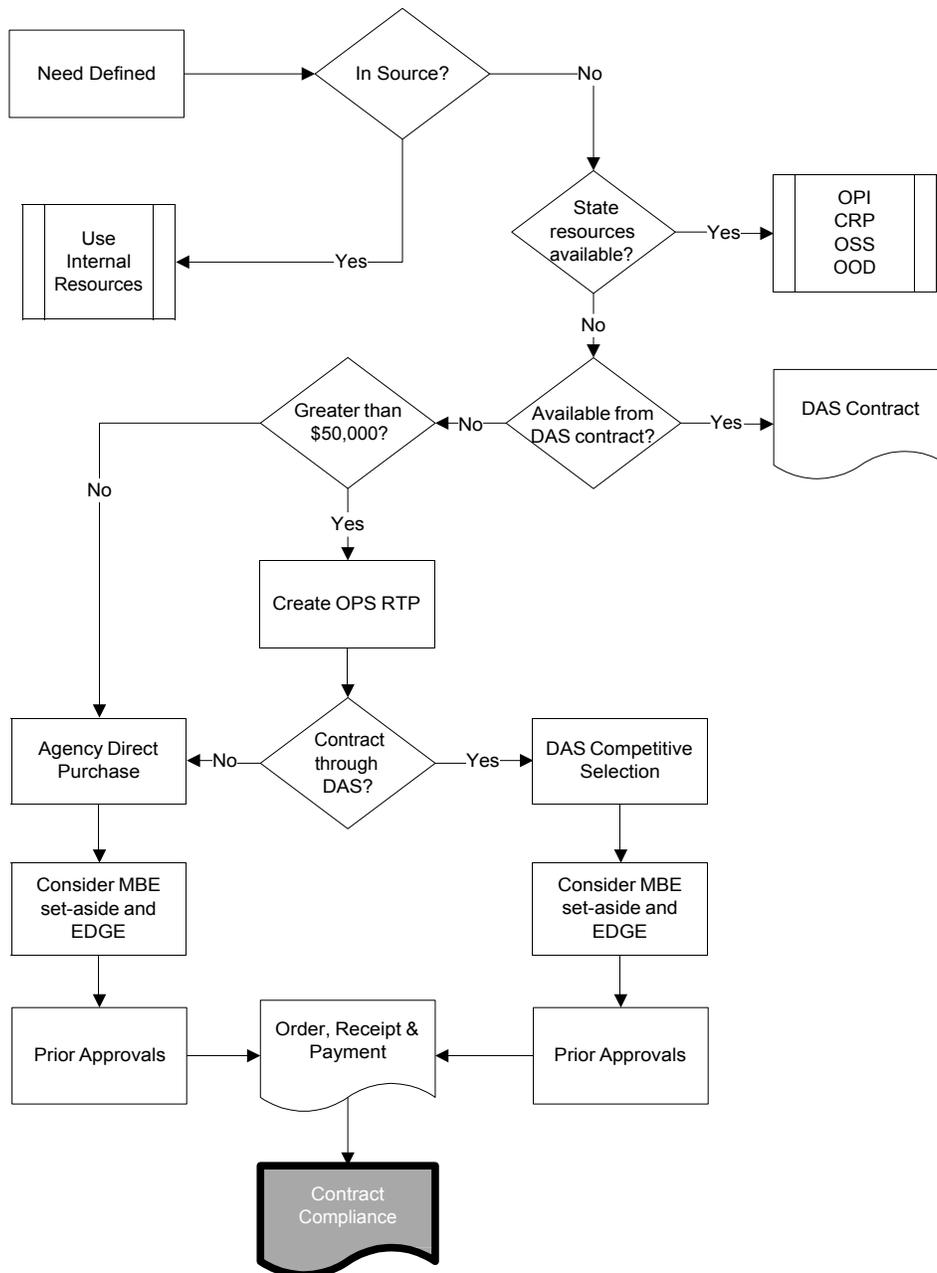
The State of Ohio Financials Process Manual is located at <http://fin.help4u.obm.ohio.gov/>

### 9.5.5 The Printing Request Order – PRO,

- The Printing Request Order is used when requesting printing services from the Office of State Printing. To place an order, complete a [Printing Request Order](http://www.das.ohio.gov/Divisions/GeneralServices/StatePrintingandMailServices.aspx) using form ADM0515. It can be downloaded from State Printing and Mail Services web site at <http://www.das.ohio.gov/Divisions/GeneralServices/StatePrintingandMailServices.aspx>.

### 10.0 Overview

The contract has been awarded to the vendor, orders issued and the agency is expecting the vendor to deliver in accordance with the terms, conditions and specifications of the contract. There are times, however, when vendors deliver the incorrect supplies or services or may fail to meet delivery schedules of the agency. In this Chapter, you will learn about procedures and forms to be used to alert DAS to such situations and remedies available to the State to resolve non-compliance issues.



## 10.1 Contractor Performance

A contract is awarded with the expectation both the contractor and the State of Ohio have entered into the agreement in good faith, and both parties will perform their respective duties and obligations in accordance with the contract specifications, terms and conditions and at the quoted price. Occasionally, situations arise when the contractor does not perform and the agency may suffer damages as a result. Typical non-performance issues include, but are not limited to:

- Missing a scheduled delivery date and time.
- Providing items not a part of the contract.
- Providing inferior merchandise.
- Unauthorized substitutions.
- Alteration of the contract pricing.
- Damaged shipments.
- Unauthorized use of sub-contractors.
- Unauthorized assignment of the contract to another contractor.
- Inadequate staffing levels.
- Unqualified workers.
- Late or failed delivery.
- Late worker arrivals or no-shows.

The state has several remedies available to resolve non-performance issues with the contractor. The agency should refer to the contract terms and conditions to view these remedies. DAS, however, may not exercise these remedies until/unless the contractor has been provided with an opportunity to cure the deficiency. When a default occurs, the agency should first review the contract to confirm the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the agency must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue. If the agency's efforts fail to resolve the issues, the agency should then notify DAS. The mechanism to notify DAS is the Complaint to Vendor (CTV) form.

## 10.2 Vendor Performance Survey

As indicated in Section 10.1, the agency should contact the vendor and attempt to resolve the issue prior to filing a Complaint to Vendor. This initial effort will generally result in improved relations between the vendor and the agency and will not bring DAS into the situation when not merited. Although the issue has been resolved to the satisfaction of the agency, DAS would still like to be notified of the situation. Agencies can notify DAS by completing the Vendor Performance Survey form. This form can be completed online and forwarded to the Office of Procurement Services (OPS) electronically. OPS will review the issue(s) and retain this form in the vendor's file. If OPS sees a pattern building of non-compliance issues with the vendor, OPS will contact the vendor to discuss the situation and attempt to resolve prior to formal CTV's being filed. If the vendor continues to not meet the requirements of the contract, OPS will take more formal corrective action up to and including cancellation of the contract and debarment of the vendor. The Vendor Performance Survey form may also be used to notify OPS of positive performance by the vendor which will be noted in the vendor's file.

When evaluating a vendor for a responsible determination, OPS will review the vendor's file and consider all surveys and CTV's filed by the agency. If OPS determines the vendor is not responsive, the vendor will be disqualified and the award denied. Thus is it very important for the agency to complete these forms in a timely manner.

The Vendor Performance Survey form may also be used to notify OPS of positive performance by the vendor which also will be noted in the vendor's file.

The survey is available on the State Procurement Web site [procure.ohio.gov](http://www.procure.ohio.gov) under "Forms", or at the following address: <http://www.procure.ohio.gov/pdf/CTV/vsurveyform.doc>

### 10.3 The Complaint to Vendor (CTV)

The Complaint to Vendor (CTV) is used by agencies to formally notify DAS of non-performance by a contractor under a DAS contract or Community Rehabilitation Program Contract (CRP). The CTV should only be used after all attempts to resolve the issue have failed. DAS uses all legal remedies to resolve the compliance issues on behalf of the agency. The CTV may be used by DAS in evaluation of the contractor on future awards. If DAS determines past performance of the contractor is unacceptable, DAS may disqualify the contractor and deny future awards. It is, therefore, very important the agency provide complete and accurate details of non-performance issues.

Note: Resolutions to complaints vary even though the problem may be the same for several agencies. Factors such as force majeure, agency budgets, quality of product substitution if needed, ambiguity in the contract itself and acceptance of the agency must be considered.

#### 10.3.1 Completing a Complaint to Vendor Form

The Complaint to Vendor form is available on the State Procurement Web site [procure.ohio.gov](http://procure.ohio.gov) under "Forms", or at the following address: <http://apps.das.ohio.gov/c2vendor/>

### 10.4 Complaint to Vendor Procedures

DAS procedures are as follows, agencies may wish to use these as models for their own contract compliance.

#### First:

- Contact agency and vendor regarding complaint.
- Work to find an acceptable resolution to both parties.
- Once acceptable resolution determined, send confirmation letter to vendor indicating such and time frame for resolution.
- Follow up with agency 1-2 days after scheduled resolution date to verify completion.
- If resolved, close CTV.

#### If not resolved:

- Notify vendor of failure to resolve complaint within established time frame.
- If vendor requests an extension, discuss with the agency to see if one is acceptable. If it is, notify the vendor and warn them another failure may result in default and cancellation of the contract.
- Send a second letter to the vendor regarding extension approval, terms for completing the deadline and possible consequences for failure.
- Contact the agency one to two days after agreed upon completion date.
- If resolved, close the CTV.

#### If vendor still fails to comply:

- Discuss next steps with agency.
- Send a letter notifying the vendor of decision either to set new plan to cure or default and subsequent cancellation.
- If applicable issue a release and permit to the agency allowing procurement of the item elsewhere.
- Send a letter to the vendor assessing a penalty if applicable.

### 10.5 Sample Letters

Appendix 1 provides the following sample letters relating to contract compliance:

- CTV Confirmation Letter
- Second Chance Letter
- Cancellation Letter
- Unable to Contact Letter
- Pricing/Substitution Letter

## **10.6 Suspension and Debarment**

The Director of Administrative Services may suspend or debar a vendor from consideration for contract awards upon a finding based upon a reasonable belief that the vendor has done any of the following:

1. Abused the selection process by repeatedly withdrawing bids or proposals before purchase orders or contracts are issued or failing to accept orders based upon firm bids; or
2. Failed to substantially perform a contract according to its terms, conditions, and specifications within specified time limits; or
3. Failed to cooperate in monitoring contract performance by refusing to provide information or documents required in a contract, failed to respond to complaints to the vendor, or accumulated repeated justified complaints regarding performance of a contract; or
4. Attempted to influence a public employee to breach ethical conduct standards or to influence a contract award; or
5. Colluded to restrain competition by any means; or
6. Been convicted of a criminal offense related to the application for or performance of any public or private contract, including, but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and any other offense that directly reflects on the vendor's business integrity; or
7. Been convicted under state or federal antitrust laws; or
8. Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract; or
9. Violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director; or
10. Through the default of a contract or through other means had a determination of unresolved finding for recovery by the Auditor of State under Section 9.24 of the Revised Code; or
11. Acted in such a manner as to be debarred from participating in a contract with governmental agency.

### **10.6.1 Procedures for Debarment**

- A. Investigation and referral. State agencies and Cooperative Purchasing members may notify the OPS, in writing, of vendor performance issues by any of the following means:
  1. E-mail via the internet or similar means
  2. Vendor performance survey
  3. Complaint to Vendor
  4. Letter
  5. Other

After the documentation has been reviewed and verified, and if the Administrator reasonably believes that grounds for debarment exist, the Administrator will prepare a written report to the Director setting forth such findings, including recommendation for debarment of the vendor.

- B. Notice of debarment. When the Director reasonably believes that grounds for debarment exist, the Director will send the vendor, and any specifically named affiliate, officer, employee, or other individual or entity associated with the vendor, a notice of the proposed debarment. The notice must include at least the following:
  1. Reasons for the proposed action;
  2. The law or rule directly involved;
  3. Statement that the vendor may request a hearing within thirty (30) days of the time of mailing the notice;

4. A statement that the vendor may be represented by his attorney or by such other representative as is permitted to practice before the agency;
5. A statement that the vendor may present his position, arguments, or contentions in writing;
6. A statement that the vendor may present evidence at the hearing and examine witnesses appearing before and against him;
7. Any other information the Director deems relative to the proposed debarment.

The notice will be given by registered mail, return receipt requested. A copy of the notice will be mailed to attorneys or other representatives of record representing the vendor. Whenever a notice sent by registered mail is returned due to failure of delivery, the Director will make personal delivery of the notice by an employee or cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known residence or business of the vendor is located. When notice is given by a publication, a copy of the newspaper, with the first publication of notice marked, will be mailed to the last known address and the notice will be deemed received as of the date of the last publication.

- C. Request for hearing, notice of hearing, right to appeal. Whenever the vendor requests a hearing, the Director will immediately set the date, time and place for the hearing and immediately notify the vendor. The date set for the hearing will be within fifteen (15) days, but not earlier than seven (7) days after the vendor has requested a hearing, unless otherwise agreed between the Director and the vendor. If requested by the vendor in writing, the Director may designate the place of the hearing to be in the county seat of the county in which the vendor resides or maintains its principal place of business in Ohio or at a place within fifty miles of the vendor's residence or principal place of business. If the vendor is not a resident of and has no place of business in the state of Ohio, the Director will hold the hearing in Franklin County, Ohio. The failure of the Director to give notice for any hearing as required by Sections 119.01 to 119.13 of the Revised Code will invalidate any order entered pursuant to the hearing.

A vendor adversely affected by the order of the Director may be appealed in accordance with Chapter 119 of the Revised Code.

#### **10.6.2 Period of Debarment**

The Director will determine the length of the debarment period commensurate with the seriousness of the cause for such debarment up to, and including, permanent debarment. The Director, at his discretion, may rescind the debarment at any time if it is deemed to be in the best interest of the state of Ohio. After ninety days of the initial effective date of the debarment, a vendor can apply for reinstatement, in writing, to the Director, citing actions taken to remedy the reason for debarment or steps taken to prevent a recurrence of the situation that caused the debarment. The Director may extend the period of the debarment if the Director that the extension is necessary to protect the interests of the state of Ohio.

#### **10.6.3 Effect of Debarment**

During the period covered by the debarment any vendor, and any specifically named affiliate, officer, employee, or other individual or entity associated with the vendor who has been debarred by the Director shall be ineligible to do any of the following:

1. Be included on any vendor lists;
2. Receive and submit bids or proposals issued by the state for the procurement of supplies and services;
3. Be awarded a contract for supplies or services; and
4. Participate in any business activities with any state department, board, commission, or institution.

#### **10.6.4 Posting of Debarment Decision**

Notice of any debarment decision will be posted on the State Procurement website.

## Questions & Answers

**Q: *Why should an agency file a Complaint to Vendor?***

**A:** Knowledge of vendor complaints enables DAS to provide better products and services to state agencies. Complaint to Vendor files are the primary source DAS uses to protect agencies against poor vendor performance. CTV files also assist the buying staff when awarding future contracts.

**Q: *When is it necessary to file a Complaint to Vendor Form?***

**A:** When the vendor does not perform according to the purchase order or contract, agencies should first attempt to resolve the problem directly with the vendor. If, after a contact has been made, a delivery date has been agreed upon, and the time frame has been exceeded or other issues can't be resolved, issue a CTV. It is important to settle contract disputes quickly. Issue a CTV and contact procurement managers or analysts in an emergency.

**Q: *Where can I find the Complaint to Vendor form?***

**A:** On line at the State Procurement web site. [procure.ohio.gov](http://procure.ohio.gov), on the navigation menu select Forms, then select Vendor Performance.

**Q: *May we continue to do business with a vendor who has been debarred?***

**A:** No. A vendor debarred by the federal government or the state of Ohio is not eligible to participate in any business transactions during the period of debarment.

**Q: *Does the DAS offer assistance for direct purchases and/or contracts approved by the Controlling Board?***

**A:** No, DAS is only responsible and may assist agencies for purchases and/or awards completed by its procurement offices. Problems arising from direct procurement shall be handled directly by the ordering agency or its central office.

**Q: *What if vendor fails to meet delivery date and agency needs items immediately?***

**A:** Contact DAS procurement managers or analysts. Agency should attempt to resolve problem with vendor by initiating contact with the vendor. If the agency is unable to resolve the situation, then submit a Complaint to Vendor Form (CTV). Upon receipt of the CTV it will be reviewed by OPS staff, and logged in for processing. OPS will contact the vendor for response to the CTV and then work with the agency and the vendor for an adequate resolution.

## 11.0 Overview

In fiscal year 2012, the passage of construction reform language provided state agencies and other public owners with multiple options on how to administer construction and renovation projects. In fiscal year 2013, the state consolidated the Office of the State Architect and the Ohio School Facilities Commission into the Ohio Facilities Construction Commission (OFCC). These two changes revolutionized vertical construction for public buildings.

The new landscape does not change the fact that agencies are faced with a myriad of decisions that must be made prior to entering into a contract with a provider. For example:

- Is this construction, repair or maintenance?
- Do we need to hire an architect?
- Do we need permits and related approvals?
- Do we have to pay prevailing wages?
- Do we have to send this to DAS or may we do it ourselves?

As the agency reviews its needs for construction, repair or maintenance, it may be difficult to answer these questions. The following guidelines have been prepared to assist the agency in determining if the need is construction, repair or maintenance and, depending on the answer to that question, if they should forward their request to the OFCC, contact DAS Procurement Services, or if they may self-perform it under their delegated authority. It is also recommended that the agency seek advice of internal counsel when making any final determination as to whether or not the project is construction, repair or maintenance.

### 11.1 Authority to Make Purchases

In most instances, if the answer to the question is “construction” or “renovation,” then the agency should contact the OFCC. If the answer is “repair” or “maintenance,” then the agency will be working with the Department of Administrative Services - Office of Procurement Services (DAS-OPS). Procedures for the purchases of professional design services, construction, repairs and maintenance are set forth in the Ohio Revised Code, the Ohio Administrative Code and in DAS policies and procedures. Ohio law requires that certain of these purchases be forwarded to DAS to make the purchase on behalf of the agency. While most facility maintenance products and services and some types of facility repair purchases can be forwarded to the DAS-OPS, most construction work of any type on state-owned and state-occupied facilities must be processed with additional review and often, with a more detailed process.

The governmental entity may use STS Contractors as a pre-qualified list. The entity (and the construction general contractor, etc.) must comply with OFCC bidding requirements. The entity and general contractor are responsible to ascertain that all life safety code, building code and fire safety code requirements have been met or exceeded. Further the entity is also responsible for any front end documentations required for the project and outside the scope of the STS or MAC. At the request of DAS, a completed project requirements checklist will be submitted to DAS to ensure that the utilization of a STS or MAC vendor will comply with all life safety code, building code and fire safety code requirements.

#### 11.1.1 Construction / Major Repairs to Buildings & Structures

Most state-owned buildings and other facilities are occupied by state employees or can be accessed by the general public. As such, the building manager needs to treat all design services and construction activities with proper attention to life safety codes, building codes and fire safety codes. Those projects must receive plan approval from the Ohio Department of Commerce (ODOC), Industrial Compliance Division (ICD) or a local authority approved by ODOC.

The Ohio Revised Code empowers OFCC to contract for and have general supervision over the construction of any projects, improvements, or public buildings constructed for a state agency, to include the design, specifications, inspection, etc. of such construction projects. When a state agency wants to construct a new building or structure, or needs to make an alteration to an existing building or structure, it may contact the OFCC for initial guidance and recommendations.

Certain agencies may be granted authority to administer projects having total project value of up to \$1.5 million. This local administration authority is created through the Capital Bill legislative process. Most agencies are required to obtain prior written approval from the OFCC before commencing work on the project. The agencies shown below may administer projects of smaller, specific value without prior written approval from OFCC:

- The Capitol Square Review and Advisory Board
- The Opportunities for Ohioans with Disabilities
- The Bureau of Workers' Compensation
- The Department of Public Safety
- The Department of Job and Family Services
- The Department of Mental Health
- The Department of Mental Retardation and Developmental Disabilities
- The Department of Rehabilitation and Correction
- Buildings of educational and benevolent institutions under the management and control of boards of trustees
- Department of Youth Services
- The Ohio Department of Natural Resources

### **11.1.2 Maintenance & Minor Repair Services**

Unless otherwise set forth in the Revised Code, all purchases of maintenance and minor repair services (including necessary parts and labor) that exceed \$50,000 must be forwarded to DAS, OPS. Purchases under \$50,000 may be made directly by the agency under their delegated authority. If the agency is to provide labor to perform the maintenance or minor repair, the agency may purchase required parts and supplies up to \$50,000. Purchases that exceed these dollar limits must be forwarded to DAS, OPS. If OPS determines that it is not practical or advantageous to make the purchase, the agency will be granted a Release & Permit to make the purchase under their delegated authority.

### **11.2 Design Services**

When a project will require design services (architectural and engineering) that are estimated to be greater than \$25,000, the agency must refer their project to OFCC for review and approval. OFCC may permit the agency to contract for these services under their local administration authority or may elect to contract for these services on behalf of the agency. In either case, all contracts for A&E services, above \$25,000, must be established in accordance with Ohio Revised Code Section 153.691 and Ohio Administrative Rule 153:1-1-06. Generally, costs for A&E services should range between 8%-10% for new construction and 8%-12% for renovation projects.

### **11.3 Prevailing Wages**

For construction and some repair work, agencies must give consideration to the requirements for payment of prevailing wage (ORC 4115.03 to 4115.16) by the contractor. When OPS establishes a contract for construction or repair, on behalf of the agency, the agency must maintain the copies of the contractor's payroll records to ensure such wages are paid.

The below modification to section 11.4 utilizes ORC 3313.46 language to provide another option for other state funded building repairs (i.e. schools) where life safety codes, building codes and fire safety codes are critical as well.

### **11.4 Construction and Major Repair Purchases**

Contracts for construction and major repair services are established pursuant to Chapters 123 and 153 of the Ohio Revised Code. Projects that may be considered as construction include, but are not limited to:

- Erection or construction of a new building or structure
- Installation of heating, cooling or ventilating systems (all HVAC should not be considered herein)

- Installation of equipment that becomes a permanent part of the building or structure (storage systems, refrigerators, etc.) may not be included under this provision. Owner also has the right to purchase the item from a DAS contract and then hire the installation of some items.
- Renovation, alteration or addition to an existing building where modifications or alterations are made to the support structure.

When the cost of new construction is estimated to be more than \$200,000, or any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting is estimated to be more than \$15,000, such work shall be designed by a properly licensed architect or engineer whose contract shall be approved by the Ohio Attorney General (refer to section 11.2) unless other information is sufficient to inform DAS of the state agency project requirements. Examples of such information could be project proposals from approved STS vendors that carry professional stamps/licenses indicating proper attention and review has been given to life safety codes, building codes and fires safety codes. When purchases exceed the \$50,000 threshold such proposals must receive plan approval from the Ohio Department of Commerce (ODOC), Industrial Compliance Division (ICD) or a local authority approved by ODOC prior to Agency submitting for DAS project approval.

While the Maximum Order Limit (MOL) has been re-established at \$50,000, this is intended to be a “checkpoint” and is not intended limit a STS project to a maximum of \$50,000. The MOL is designated to reflect discounts pertinent to the current vendor pricing schedule. STS Projects above \$50,000 are acceptable and should be submitted to DAS for additional review as additional STS vendor schedule discounts may be available.

<b>TYPICAL CONSTRUCTION PROJECTS</b>	
<b>Description</b>	<b>Permits/Inspections / Approvals</b>
Design	Designed by Architect/Engineer
Structural Foundation	Dept. of Commerce
Structural Framing	Dept. of Commerce
Building Envelope	Dept. of Commerce
Interior Walls and Partitions	Dept. of Commerce
Entrance/Exit Doors	Dept. of Commerce
Fire Doors and Shutters	Dept. of Commerce
Interior Doors & Wall Openings	Dept. of Commerce
Warehouse Doorways	Dept. of Commerce
Food Service Equipment	Depts. of Commerce & Health
Floor Covering	Dept. of Commerce
Electrical	Dept. of Commerce
Plumbing	Depts. Of Commerce & Health
HVAC	Dept. of Commerce
Sewer	Depts. of Commerce & Health
Utility Connections	Depts. of Commerce, Public Utilities Commission & Local Utility
Roofing	Dept. of Commerce
Driveways	Architect & Engineer Recommended
Parking Garage	Dept. of Commerce
Parking Areas	Architect & Engineer Recommended
Elevators / Escalators	Dept. of Commerce
Fire Security Systems	Dept. of Commerce
General Alarm Systems	Dept. of Commerce
Perimeter Security Systems	Dept. of Commerce
Fire Sprinkler Systems	Dept. of Commerce

## 11.5 Trades

The various trades (i.e. electrical, plumbing, carpentry, etc.) are generally a part of a construction project. If the Trades portion of the project is estimated to be greater than \$20,000, separate contracts will have to be awarded to each trade.

## 11.6 Minor Repair Purchases

The agency may determine the need for a “minor” repair of the existing building or structure. If the repair requires an alteration to the support structure, HVAC systems or impacts life/health/safety issues, the repair may not be “minor”. A repair may be considered “minor” when it:

- Does not remove any wall, partition or portion thereof
- Does not remove or cut any structural beam or load bearing support
- Does not remove or change any means of egress
- Does not rearrange parts of a structure affecting the egress requirements
- Does not, replace or relocate any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electrical wiring or mechanical or other work affecting public health or safety

While some of these items may appear to be “minor” or simple, in an institutional or public building, a higher standard of care is necessary and required to ensure the protection of the occupants and visitors within the building. As such, many of the “minor repairs” must be reviewed by properly licensed professionals and reviewed and approved by life safety and health code officials. There are times, however, when it is not necessary to follow the requirements of Chapters 123 and 153 of the Ohio Revised Code for purchases of minor repairs. Agencies may make such purchases under their delegated authority or may forward their request to OPS to make the purchase on their behalf. The agency should be aware of any potential that the minor repairs could impact life/health/safety codes which would require permits and approvals from state or other sources. The following chart depicts examples of minor repairs and required approvals.

MINOR REPAIRS	
Description	Inspections / Approvals
Remove/Replace/Modify Interior Non-Support Wall	Review w/Dept. of Commerce
Remove/Replace/Modify Exterior Wall Covering	Review w/Dept. of Commerce
Remove/Replace/Modify Existing Roof, Gutters (minor repairs/small areas)	Review w/Dept. of Commerce
Remove/Replace/Modify Windows	Dept. of Commerce
Remove/Replace/Modify Doors	Dept. of Commerce
Remove/Replace/Modify Flooring	Dept. of Commerce
Remove/Replace/Modify HVAC to Existing Ductwork	Review w/Dept. of Commerce
Remove/Replace/Modify Food Service Equipment	Dept. of Health
Exterior / Interior Painting	Not Applicable
Remove/Replace/Modify Electrical	Dept. of Commerce
Remove/Replace/Modify Fire Security System to Existing Utilities	Dept. of Commerce
Remove/Replace/Modify General Alarm System to Existing Utilities	Dept. of Commerce
Remove/Replace/Modify Perimeter Security System to Existing Utilities	Dept. of Commerce
Remove/Replace/Modify Parking Area(s)	Architect/Engineer Recommended
Remove/Replace Personnel Transport Systems in Existing Areas	Dept. of Commerce
Remove/Replace/Modify Fire Sprinkler Systems	Dept. of Commerce

## 11.7 Maintenance

Maintenance, by definition, means the care and work put into property to keep it operating and productive; general repair and upkeep. Maintenance may involve the mere cleaning and making minor adjustments to a piece of equipment or it may require major adjustments and/or replacement of parts to keep the equipment in a safe operating condition. Agencies must be aware that some maintenance may require permits and approvals from state or other sources to meet health/life/safety codes. The following chart depicts typical examples of maintenance projects and required permits and/or approvals:

TYPICAL MAINTENANCE PROJECTS	
Description	Inspections / Approvals
Service Elevators/Escalators	Dept. of Commerce
Clean/Service Fire Security System	Dept. of Commerce
Clean/Service General Alarm Systems	Dept. of Commerce
Service Perimeter Security Systems	Dept. of Commerce
Service HVAC Systems	Not Applicable
Service Food Service Equipment	Review w/Dept. of Health
Service Plumbing	Dept. of Health
Topcoat Asphalt Parking Areas	Not Applicable
Exterior Painting	Not Applicable
Interior Painting	Not Applicable
Janitorial/Housekeeping Services	Not Applicable
Service Lighting Fixtures (Bulbs/Ballasts)	Not Applicable

## 11.8 Quick Reference

The following information lists various types of projects and suggestions as to the appropriate category of the need. Refer to charts for necessary permits, inspections and approvals. This list is not all inclusive. If any questions arise, consult with DAS and/or in-house counsel.

- HVAC (Heating, Ventilation & Air Conditioning) - Replacement of equipment, no ductwork or wiring – Repair
- Windows -Replacement of glass, re-glazing, cleaning – Maintenance
- Doors - Replace existing door, no alteration to frame – Repair
- Parking Areas - Remove/replace existing concrete/blacktop – Repair
- Floor Coverings & Window Treatments - Remove/replace existing – Repair
- Fire Alarm/Suppression Systems - Remove/replace/modify existing – Repair
- Security Systems (Video, Fencing, etc.) - Remove/replace Existing – Repair

## 11.9 Laws for Construction, Repairs & Maintenance

**Public Buildings:** Ohio Revised Code Sections 123.01 – 123.031; Ohio Building Code Sections 4101.01 – 4101.08

**Construction & Major Repair:** Ohio Revised Code Sections 153.01 – 153.60

**Maintenance & Minor Repair Services:** Ohio Revised Code Sections 125.01 – 125.111 & 125.17 & 125.19; Ohio Administrative Code Sections 123:5-1-01 – 123:5-1-10

## 11.10 Important Web sites

Office of Procurement Services  
Ohio Facilities Construction Commission  
Ohio Department of Commerce “Industrial Compliance”  
Ohio Department of Health

[ohio.gov/procure](http://ohio.gov/procure)  
[ofcc.ohio.gov/](http://ofcc.ohio.gov/)  
[com.ohio.gov/](http://com.ohio.gov/)  
[odh.ohio.gov](http://odh.ohio.gov)

## **12.0 Emergency Purchases**

Every day, state agencies are faced with situations that may require expedited purchases of supplies or services. These situations may prevent the agency from following standard procurement policies and procedures established by DAS or by their individual agency. To address such situations, DAS developed this chapter to define what an emergency is and offer guidance as to how the agency may obtain required supplies or services while complying with competitive processes required by law.

### **12.1 Emergency Defined**

The dictionary defines “emergency” as an unexpected or sudden occurrence of a serious and urgent nature that demands immediate action.

Such situations could be as simple as an interruption in utility services or as severe as when a weather event causes damage or destruction to an agency’s facility. In any case, an emergency can create a situation with the ability to jeopardize the health, welfare and safety of the agency or the general public.

Ohio Administrative Code Section 123:5-1-01(G) defines an “emergency condition”, in part, as a situation which creates a threat to public health, welfare, safety, which may arise by reason of epidemics, riots, equipment failure or such other reasons as may be proclaimed by the Governor.

### **12.2 Making a Purchase under an Emergency Condition**

As discussed in previous chapters, law requires purchases be made through some form of competitive process. These procedures work well for most needs, however, what does an agency do if an emergency situation arises and time is crucial to prevent further damage or injury? For example, a boiler breaks down in the middle of the night or on a holiday weekend. The Ohio Revised Code permits an agency to waive certain requirements of the process to make these purchases quickly. Requirements such as seeking multiple quotes or obtaining release and permits may be waived under certain emergency conditions. Agencies should note accurate files of all transactions must be maintained to support the emergency purchase.

#### **12.2.1 Purchases under the Dollar Thresholds**

As discussed in previous chapters, the Ohio Revised Code establishes dollar limitations for making purchases of supplies and services. If the value of supplies or services is \$50,000 or less, the agency may use its direct purchase authority. Generally, agencies will require their staff to contact three or more known suppliers, seek quotes and award the contract to the lowest priced vendor. This process could delay your ability to locate required items to resolve the emergency condition in a timely manner. Agencies should re-visit their individual policies and procedures and establish a process to expedite obtaining quotes and still provide sufficient supportive information to document the purchase activity.

#### **12.2.2 Purchases above the Dollar Thresholds**

When the purchase will exceed the dollar limits described in section 12.2.1 above, Ohio Revised Code requires the agency contact DAS to make the purchase. DAS does have the capability to expedite the bidding process. However, this still may not enable the agency to resolve the emergency condition quickly. In addition, it may not be possible to wait until the next regular business day to contact DAS. The Ohio Administrative Code (123:5-1-04) does permit the agency to proceed with obtaining quotes and making the purchase prior to contacting DAS when the situation warrants.

The agency is then required to contact DAS and advise them of the emergency condition and what purchase was necessary to resolve the situation, by the next regular business day. DAS will then extend a Release & Permit to the

agency. If the amount of the purchase exceeds the cumulative annual threshold established by OBM, the agency must notify the Controlling Board and may be required to obtain its approval as well. The agency is required to maintain a record of each emergency procurement setting forth the basis for the emergency and the name of the contractor used to supply the items or provide the service to resolve the emergency. Purchase of supplies and services shall be restricted to only those supplies and services necessary to resolve the emergency.

### **12.3 Catastrophic Emergency Events**

Catastrophic events are situations which have a devastating impact upon one or more agencies located in a particular region or multiple regions within the state of Ohio. Natural events such as floods, earthquakes and tornados or man-made events such a terrorism, chemical or biological dispersions can cause severe damage to facilities and jeopardize the health and welfare of employees, clients of the state and the general public. While these events are happening, time for locating supplies and services is crucial. Any delay in contacting suppliers and procuring items can result in life-threatening issues for those impacted by the event. Procedures have been established to enable agencies to waive normal bidding processes and make necessary purchases and repairs immediately.

#### **12.3.1 Emergency Declaration**

Section 125.023 of the Ohio Revised Code permits DAS to suspend the purchasing and contracting requirements for purchase of supplies, services and construction. This provision of law becomes effective only when the appropriate statement is included in a Governor's Proclamation of emergency for areas of the state impacted by a disaster. Agencies may use the most expedient means available to procure supplies, services or construction, during the pendency of the Governor's Proclamation of emergency. Agencies should, however, attempt to use competitive processes when possible and are required to maintain accurate records of all procurements made under this authority.

#### **12.3.2 Ohio Emergency Management Agency (OEMA)**

The Ohio Emergency Management Agency is responsible for coordinating responses to natural and man-made catastrophic events within the state of Ohio. OEMA maintains a staff of well-trained experts experienced in handling all types of situations. They conduct training exercises for all levels of government to test skills of those who will be responding to the emergency events. OEMA has authored a statewide emergency response plan patterned after federal guidelines. The state's plan is available for review on OEMA's web site at <http://ema.ohio.gov/>.

In the event of a disaster, and upon issuance of a Governor's proclamation of emergency, OEMA will coordinate response and recovery efforts to resolve the issues associated with the event. When efforts to resolve the situations at the local levels have been exhausted, OEMA will activate state agencies (i.e. DAS) to assist in these efforts. DAS operates State Emergency Operations Plan, Emergency Support Function No. 7 - Resource Support. When called upon, DAS, in conjunction with other agencies identified in ESF No. 7, will locate vendors for requested supplies, services and equipment and make arrangements to transport to pre-arranged staging locations and/or to the impacted areas. All requests for assistance are routed through the state Emergency Operations Center using a pre-defined process established by OEMA. In the event the resources of the state are exhausted and the applicable criteria are met, the Governor may request assistance under the Stafford Act, administered by the Federal Emergency Management Agency (FEMA). Any services, supplies, and equipment provided by FEMA, ESF No. 7 may make arrangements to transport and coordinate deliveries to and from pre-arranged staging locations or impact areas. If state or federal disaster assistance becomes available, some state agency costs may be eligible for reimbursement, pursuant to the applicable law and regulations.

## Questions & Answers

- Q: We forgot to order toner for our copier and we can't make copies and I have a major report to copy for the boss. Can we use emergency authority to buy more?**
- A:** No. An emergency exists when the safety or welfare of individuals are at risk. Failure to monitor inventories is not reason to support an emergency.
- Q: If I have a valid emergency and I am trying to locate supplies quickly, is it necessary to get a minimum of three quotes?**
- A:** When a valid emergency exists, it is always important to try to resolve the situation as quickly as possible to prevent further harm to the facility or residents of the facility. This does not mean, however, one can disregard the safeguards in place to protect the state from paying too much for a product, sacrifice quality or to remove opportunities for vendors to compete. Good judgment should be exercised by purchasers to guard against this. Always remember, you may have to defend your actions to others.
- Q: I work in an institution, it's the fourth of July weekend, temperatures are above ninety degrees and our air conditioning just stopped working. May I use emergency authority to have it serviced?**
- A:** This would fit within the definition of an emergency condition as the heat could cause medical issues for residents of the institution. If the dollar value will exceed your direct purchase limit (\$50,000) you may proceed with the purchase without prior approval from DAS. It will be your responsibility to notify DAS on the next business day.
- Q: Our agency was severely damaged by a tornado. I contacted suppliers to correct the damage. My capital and equipment funds are limited. Can I expect to receive assistance to help pay for repairs?**
- A:** There is no guarantee funding assistance will be available. If your facility is damaged, you should first take steps to evacuate and then secure the area. Before any work commences, you should file a damage report with OEMA and then contact DAS, Office of Risk Management to ascertain if the property is insured.  
**Once funding issues are resolved, contact the Ohio Facilities Construction Commission to determine the most advantageous method to complete repairs.**

## Helpful Contacts

### [Ohio Penal Industries OPI](#)

1221 McKinley Avenue  
Columbus, OH 43222  
Telephone: 800 237-3454  
Fax: 614 752-0303

### [Office of Procurement from Community Rehabilitation Programs](#)

4200 Surface Rd.  
Columbus, Ohio 43228-1395  
Telephone: 614 752-9772  
Fax: 614 485-1056  
e-mail: [DASGSD.OPCRP@das.state.oh.us](mailto:DASGSD.OPCRP@das.state.oh.us)

### [Medical Complex Central Pharmacy, Pharmacy Service Center](#)

2150 W. Broad Street  
Columbus, OH 43223-1200  
Telephone: 614 752-0116  
Fax: 614 752-0102

### [Office of State Printing & Mail](#)

4200 Surface Road  
Columbus, Ohio 43228  
Phone: 614-644-6355  
Fax: 614-644-5799

### [Office of Procurement Services](#)

4200 Surface Road  
Columbus, Ohio 43228  
Phone: 614-466-5090  
Fax: 614-485-1056

[procure.ohio.gov](http://procure.ohio.gov)

[Procurement Contacts http://procure.ohio.gov/proc/viewContacts.asp?divID=2&divCode=GSD](http://procure.ohio.gov/proc/viewContacts.asp?divID=2&divCode=GSD)

Comments or questions: <http://procure.ohio.gov/proc/submitCommentsQuestions.asp>

## **Ohio Facilities Construction Commission**

William Green Building  
30 West Spring Street, L3  
Columbus, Ohio 43215-2256  
Phone: 614.466.4761  
Fax: 614.485.1055  
[info@ofcc.ohio.gov](mailto:info@ofcc.ohio.gov)

## **Laws, Rules, and Directives**

Included in this appendix are links to the Ohio Revised Code and Ohio Administrative Code.

- <http://codes.ohio.gov/orc>
- <http://codes.ohio.gov/oac>.

Links to the following two DAS Directives are included in this Appendix:

- [DAS Directive No. GS-D-10, Public Printing](#)
- [DAS Directive No. GS-D-12, Procurement Procedures for Supplies, Services and Information Technology](#)

## **Forms**

[Cost Per Copy Program](#)  
[Department Head Authorization for Encumbering Documents](#)  
[Master Leasing Agreement](#)  
[Natural Gas Enrollment Form](#)  
[Printing Order Form # ADM-0515](#)  
[Request to Purchase](#)  
[Vendor Performance \(CTV and Performance Survey\)](#)  
[W-9 - Request for Taxpayer Identification Number and Certification](#)

# CTV CONFIRMATION LETTER

(Date)

(Mr./Mrs.)  
(company name)  
(Address)  
(CITY, STATE ZIP)

Subject: P. O. No.: (Insert #) Bid/Contract No.: (Insert #) Index No.: (Insert #) Description

Dear Mr./Ms.:

As you are aware, the Office of Procurement Services is in receipt of a Complaint to Vendor (CTV) from the (agency name) regarding (non-delivery/wrong items/etc.) of the above order. According to (person) of the (agency) (define problem and indicate contract terms and spec's which apply).

Pursuant to (company's staff person's name) (date) conversation with (name) of our office, the above situation must be resolved by (date). (Company) is advised that the original terms and conditions of the contract still apply to this order. Should you fail to explain remedy by this date, you may be found in non-compliance of the contract. This will result in cancellation of the order as well as possibly requiring the Office of Procurement Services to cancel the contract. Should this occur (company name) will be responsible for any additional costs the agency incurs in procuring the (item/s) from another supplier or the re-bidding and/or re-award of this contract.

Should you have any questions regarding the above information, please contact (person) at (phone number).

Sincerely,

Name  
Title

(INITIALS)/(typist initials)

c: (Name), Procurement Manager  
(Name), Purchasing Standards Analyst  
(Name), Agency contact person  
CTV File

## SECOND CHANCE LETTER

(DATE)

(Mr./Ms.)  
(Company name)  
(address)  
(city, state zip)

SUBJECT: P.O. No.: (insert #) Bid/Contract No.: (insert #) (insert #)

Dear :

We have received notification from (person name) of the (agency name) regarding (company name)'s failure to meet the (date) deadline given to (company name) in our letter dated (date of first letter). As indicated in our letter, should (company name) fail to resolve the problem by the above date, (company name) would be found in non-compliance of the contract and cancellation would take place.

We have spoken with (person name) of the (agency name) regarding (company name)'s request for an extension until (date) to complete this order. The agency has agreed to this request, however, should (company name) not meet this new date, the contract will be cancelled immediately. During this period (company name) must comply with the original terms and conditions of this contract. If cancellation would occur the agency would be permitted to procure the item from another source, forwarding any additional costs incurred to (company name) for reimbursement. (company name) will be ineligible to receive future awards until full reimbursement has been received.

Should you have any questions regarding the above information, please contact (person) at (phone number).

Sincerely,

Name  
Title

(INITIALS)/(typist initials)

c: (Name), Procurement Manager  
(Name), Purchasing Standards Analyst  
(Name), Agency contact person  
CTV File

# CANCELLATION LETTER

(Date)

(Mr./Mrs.)  
(company name)  
(address)  
(city, state zip)

Subject: P. O. No.: (Insert #) Bid/Contract No.: (Insert #) Index No.: (Insert #)

Dear

Due to (company name)'s continued failure to (problem) the above order in a timely manner, we are forced to cancel the contract, effective immediately. (Name) spoke with (company's staff name) on (dates) and informed (company name) should (company name) fail to meet the agreed upon completion date, no further extensions would be provided and immediate cancellation would take place.

Per (agency contact), the above order(s) were not completed as agreed upon and the agency can no longer continue to await resolution by (company name). Therefore, the above contract was cancelled and the agency given the approval to procure the item from another supplier. In doing so they have incurred an additional cost of (\$ amount). Please remit payment for this amount to the Treasurer, State of Ohio, at the above address. Until full reimbursement has been received, (company name) will be ineligible to receive future awards.

Also, (company name) will be placed on probation for a period of (time frame) during which (company name) will be ineligible to receive any awards. Should (company name) be found non-compliant on any other contracts, we will take further action.

Should you have any questions regarding the above information, please contact (person) at (phone number).

Sincerely,

, Director  
Department of Administrative Services

(INITIALS)/(typist initials)

c: (Name), Procurement Manager  
(Name), Purchasing Standards Analyst  
(Name), Agency contact person  
CTV File

## UNABLE TO CONTACT LETTER

Date:

(address)  
(city, state zip)

SUBJECT: P.O. No.: (insert #) Bid/Contract No: (insert #) (insert #)

Dear name:

The Office of The Office of Procurement Services is in receipt of a Complaint to Vendor (CTV) from the (agency name) regarding (non-delivery/wrong item/etc.) of the above order. According to (person) of the (agency), numerous unsuccessful attempts have been made to reach (company name) on (dates). Our office has also attempted to reach (company name) to no avail on (dates).

This award is based upon (company name) performing as a responsive/responsible vendor. Our inability to make contact with (company name) is a neglect of (company name)'s contractual responsibilities and a breach of the contract. Therefore, (company name) will have five (5) days upon receipt of this letter to fulfill this order. During this period (company name) must comply with the original terms and conditions of the contract. Should (company name) fail to fulfill this order as requested, the contract will be cancelled immediately. We will attempt to either re-award and may assess (company name) the cost difference incurred by the agency, should this be applicable.

This letter will be placed in our vendor files and may be used in evaluation of future potential awards to (company name)

Should you have any questions regarding the above information, please contact (person or me ) at (phone number).

Sincerely,

Name  
Title

(INITIALS)/(typist initials)

c: (Name), Procurement Manager  
(Name), Purchasing Standards Analyst  
(Name), Agency contact person  
File  
CTV file

## PRICING/SUBSTITUTION

(date)

(name)

(address)

(state, zip)

SUBJECT:                    Contract No.: (insert #)      Index No.: (insert #)

Dear Mr./Ms.:

The Office of The Office of Procurement Services is in receipt of a Complaint to Vendor (CTV) from the (agency) regarding non-fulfillment of the above purchase order. During (company name) (date) conversation with (person) of the Office of Procurement Services, (company name) indicated (company name) inability to fulfill this order due to (price increase, discontinuation of item). In order to avoid being found in default of the contract, (company name) need to submit written notification to the analyst of this contract requesting the item be (canceled, substituted, price increased). Upon receipt, (company name) request will be reviewed. Should the request be granted, an addendum will be issued and effective 30 days after notification to our office.

(company name) will be responsible for fulfilling this order as well as all outstanding orders issued prior to the addendum's effective date. Should (company name) fail to complete these orders, (company name) will be found in non-compliance of the contract and the agency(s) will be permitted to procure the items from another supplier. Any additional costs incurred in doing so will be forwarded to (company name) for reimbursement. (company name) will be ineligible to receive future awards until full reimbursement has been received.

Should you have any questions regarding the above information, please contact (person) at (phone number).

Sincerely,

Name

Title

(INITIALS)/(typist initials)

c:            (Name), Procurement Manager  
              (Name), Purchasing Standards Analyst  
              (Name), Agency contact person  
              CTV File

## **Terms and Conditions, Policies and Procedures, Miscellaneous**

Terms and Conditions

[Standard Terms and Conditions for Invitations to Bid](#)  
[Standard Terms & Conditions for Reverse Auction](#)

Rev. 10/2013  
Rev. 10/2013

## Commonly used terms ...

### A

Addendum – 1) Written or graphic instruction issued prior to the opening of bids which clarifies, amends or interprets the contract documents (GSD); 2) Written change to a contract.

Affirmative Action – A proactive program undertaken by employers to assure equal opportunity in employment with the goal of achieving a work force that accurately reflects the composition of the community.

Agency – Any state department, office, institution, board or commission.

Amendment – 1) Written change to a contract (GSD); 1) Written or graphic instruction issued prior to the opening of bids which clarifies, amends or interprets the contract documents.

Appropriation – Legislative authorization to expend public funds for a specific purpose.

### B

Bidder – Person or firm who submits a response resulting from a Competitive Sealed Bid.

Bid Response – All documents, whether attached or incorporated by reference, supplied by the bidder in response to a Competitive Sealed Bid.

Bio Based – A product determined by the United States secretary of agriculture to be a commercial or industrial product, other than food or feed, that is composed, in whole or significant part, of biological products, renewable domestic agricultural materials, or forestry material, or is an intermediate ingredient or feedstock.

Bond – Note or other form of evidence of obligation issued in temporary or definitive form, including a note issued in anticipation of the issuance of a bond and renewal note.

BuyOhio – Refers to in-state preference law that entitles Ohio bidders and border state bidders to receive a 5% price preference. Intent of program is to foster business for Ohio products and services.

### C

Certified Agent – A non-profit entity certified by the Office of Procurement from Community Rehabilitation Programs, to act as the business agent for a Community Rehabilitation Program doing business with the State of Ohio in the set-aside program established for the benefit of people with Work-limiting Disabilities.

Certified CRP – A Community Rehabilitation Program certified by the Office of Procurement from Community Rehabilitation Programs to participate in the set-aside program.

Certified EDGE – Encouraging Diversity, Growth and Equity business certified by the DAS Equal Opportunity Division.

Certified MBE – Minority Business Enterprise certified by the DAS Equal Opportunity Division.

Competition – The effort of two or more parties acting independently to secure the business of a third party by offering the most favorable terms (including price).

Competitive Sealed Bid (CSB) – A competitive selection process normally used for commodity-oriented, price-sensitive purchases. A CSB specifies terms and conditions and solicits sealed bids from vendors based on the criteria. A contract is awarded to the bidder whose bid meets or exceeds specifications at lowest cost to the state.

Competitive Sealed Proposal (CSP) – A competitive selection process ordinarily used for more complex projects demanding higher creativity or skill levels. A CSP specifies project terms, conditions and criteria and awards the contract to the vendor whose proposal provides greatest value to the state and meets or exceeds performance criteria and expectations (see RFP).

Controlling Board – Provides legislative oversight for certain capital and operating expenditures, and has approval authority over various other state fiscal activities.

Cooperative Purchasing – The combining of requirements of two or more public procurement units in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.

## D

Department of Administrative Services (DAS) – The administrative organization with legal authority to provide oversight and leadership for most state procurement activities.

Direct Authority – The authority by which state agencies are permitted to procure on their own.

Direct Purchase Process – The process whereby agencies may purchase supplies or services under their own authority without using a state contract, though still using competitive bidding and sound evaluation practices and procedures (see Direct Authority).

## E

EDGE – A race and gender neutral program to Encourage Diversity, Growth and Equity in procurement.

Expiration Date – The last day on which a contract may be used.

## F

Free on Board (F.O.B.) Destination – Title changes hands from vendor to purchaser at the destination of the shipment; vendor owns goods in transit and files any claims. Payment of freight charges is determined by contract terms.

Force Majeure – Acts beyond the control of the party in question; acts of God or disruptive conditions for which a vendor or carrier cannot be held responsible.

## G

General Distribution Contract (GDC) – A mandatory, competitively bid contract that is available to all state agencies.

Group Purchasing Contract (GPC) - Any multi-state, national consortium, or other state's contract where the state of Ohio is a participating entity.

## I

Index Number – A short contract designator, often represented by three characters followed by three numbers.

Invitation to Bid (ITB) – A process used to solicit Competitive Sealed Bids (CSB's) from vendors and generally used for commodity purchases. Also refers to all documents used for soliciting Competitive Sealed Bids (see Competitive Sealed Bids).

## J

Joint Venture – A partnership or cooperative agreement between two or more persons restricted to a single effort.

## L

Life Cycle Cost – The total cost of ownership, including acquiring, operating, maintaining, supporting, and (if applicable) disposing of an item.

Limited Distribution Contract (LDC) – A mandatory, competitively bid contract that is available to a limited number of state agencies.

Liquidated Damages – A specific sum stated in the contract to be paid by the party who is in default, or who breaches the contract, to the other party in settlement for damages.

## M

Master Maintenance Agreement (MMA) – An optional contract for maintenance and service of equipment that is no longer covered under a manufacturer's warranty.

Material Safety Data Sheets (MSDS) – Documentation concerning a hazardous chemical that identifies the chemical, the common names of the ingredients, the physical and chemical characteristics, the hazards of the chemical and the emergency and first aid procedures to be considered when working with that chemical.

Minority Business Enterprise (MBE) – An individual, partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, residents of Ohio who are members of one of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Asians.

Multiple Award Contract (MAC) – A contract that is awarded to more than one vendor for same or comparable supplies or services.

## O

Offeror – Person or firm who submits a proposal in response to a Request for Proposal.

OPCRP – The Office of Procurement from Community Rehabilitation Programs, located in the Department of Administrative Services, General Services Division. Formerly known as the State Use Program.

Open Market Competition – Purchases open to any business for unrestricted competition, both minority and non-minority.

## P

Payment Card Purchases – Purchases of supplies or services with made with a state of Ohio payment card.

Pre-Bid Conference – Meeting held with prospective bidders prior to solicitation of bids, to clarify any ambiguities, answer bidder questions, and ensure all bidders have a common basis of understanding regarding the supplies or services required.

Pre-Proposal Conference – Meeting held with prospective offerors prior to solicitation of proposals, to clarify any ambiguities, answer offeror questions, and ensure all offerors have a common basis of understanding regarding the supplies or services required.

Proposal – All documents, whether attached or incorporated by reference, supplied by an offeror in response to a request for proposal. Purchase Order – A purchaser's written document to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested item(s), delivery schedule, terms of payment, and transportation.

## R

**Recycled Content Product** – Product made from pre-consumer or post-consumer recovered materials whose portion of weight or volume of recovered materials meets or exceeds the minimum content percentage standard guidelines established by the Department of Administrative Services.

**Request for Proposal (RFP)** – A process used to solicit Competitive Sealed Proposals (CSP's) from vendors for more complex goods and services such as information technology systems and services, medical equipment, etc. Also refers to all documents used for soliciting Competitive Sealed Proposals.

**Requisition** – An internal document by which a using agency sends details of supplies, services, or materials required to the purchasing authority.

**Release and Permit** – Issued by the Department of Administrative Services to state agencies when purchasing limits exceed the agency's direct purchase authority and when it has been determined that the product or service cannot be procured by DAS through the competitive selection process.

## S

**Schedule Number** – A designator specific to a vendor under a state term schedule (STS).

**Specification** – Any description of the physical or functional characteristics or of the nature of supplies or service to be purchased. It may include a description of any requirements for inspecting, testing, or preparing supplies or services for delivery.

**State Term Contract** - Contract that addresses the estimated requirements for a number of agencies for supplies or services used repeatedly or in significant quantities over a period of time. Agencies place orders directly with term contract vendors for the quantity needed.

**State Term Schedule (STS)** - An alternative procurement method to purchase supplies and services, with contracts negotiated between the Department of Administrative Services and vendors for use by all state agencies and political subdivisions. State Term Schedules require the vendor to provide the state with either the manufacturer's Federal GSA pricing or their best commercial pricing. Strict guidelines govern the states' authority to accept and negotiate product, prices, terms and conditions from qualifying companies

**Surety** – A person or entity providing a bond to a contractor to indemnify the State against all direct and consequential damages suffered by failure of the contractor to perform the contract and to pay all lawful claims of subcontractors, material suppliers and laborers as applicable.

## T

**Term Contract** – A contract for an indefinite quantity of supplies or services over a fixed period of time.

**Terms and Conditions** – Legal provisions of a contract that describe the nature and boundaries of that contract.

## U

**The United Nations Standard Products and Services Code® (UNSPSC®)** - provides an open, global multi-sector standard for efficient, accurate classification of products and services.

## W

**Waiver** – A written Waiver of the Requirement to Purchase granted to government ordering offices for goods or services which are on the Procurement List maintained by the Office of Procurement from Community Rehabilitation Programs. Waivers are generally granted for a one year period for a specific reason.

**References:** [Dictionary of Purchasing Terms](#), National Institute of Governmental Purchasing, Inc., 2007.  
Ohio Revised Code and Ohio Administrative Code, various sections.

## Commonly used acronyms ...

ASC:	Agency-Specific Contract
CFR:	Code of Federal Regulations
COB:	Close of Business
CO-OP:	Cooperative Purchasing Program
CPPB:	Certified Professional Public Buyer
CPPO:	Certified Public Purchasing Officer
CRP:	Community Rehabilitation Program
CSB:	Competitive Sealed Bid
CSP:	Competitive Sealed Proposal
CTPE:	Certified Technology Procurement Executive
CTPS:	Certified Technology Procurement Specialist
CTV:	Complaint to Vendor
DAS	Department of Administrative Services
DBE:	Disadvantaged Business Enterprise
DDD:	Desired Delivery Date
DP:	Data Processing
EDGE:	Encouraging Diversity, Growth and Equity
EEO:	Equal Employment Opportunity
EOD:	DAS Equal Opportunity Division
FAR:	Federal Acquisition Regulations
FOB:	Free On Board
GDC:	General Distribution Contract
GSA:	Federal General Services Administration
GSD:	DAS General Services Division
I-AM:	Information-Action Manual
IT:	Information Technology
ITB:	Invitation to Bid
ITPS:	DAS Information Technology Procurement Services
LDC:	Limited Distribution Contract
LTOP:	Lease to Purchase
MAC:	Multiple Award Contract
MBE:	Minority Business Enterprise
MMA:	Master Maintenance Agreement
MPC:	ABA Model Procurement Code for State and Local Governments
MRO:	Maintenance, Repair and Operating Supplies
MSDS:	Material Safety Data Sheet
NAFTA:	North American Free Trade Agreement
NASPO:	National Association of State Procurement Officials
NIGP:	National Institute of Governmental Purchasing
OAC:	Ohio Administrative Code
OAKS:	Ohio Administrative Knowledge System
OBM:	Office of Budget and Management
OCRPP:	Office of Procurement from Community Rehabilitation Programs
OEM:	Original Equipment Manufacturer
OIT:	Department of Administrative Services Office of Information Technology
ORC:	Ohio Revised Code
PB:	Performance Bond
R&P:	Release and Permit
REN:	Rental
REQ:	Requisition
RFI:	Request for Information
RFP:	Request for Proposal
RFQ:	Request for Qualifications
RFQ:	Request for Quote
S&LG:	State and Local Government Contract
SIC:	Standard Industrial Classification
SOW:	Statement of Work (Also, Scope of Work)
STS:	State Term Schedule
SV:	Site Visit
UNSPS Code:	United Nations Standard Products and Services Code
UPPCC:	Universal Public Purchasing Certification Council
WBE:	Women-owned Business Enterprise

PUR-001 Ethics

PUR-002 Fraud, waste and abuse

PUR-003 In-state preference

PUR-004 Term contract determination

PUR-005 Selecting term contracts for set aside

PUR-006 Selecting one time bids for set aside

PUR-015 Debarment



**STATE OF OHIO  
OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES  
GENERAL SERVICES DIVISION  
OFFICE OF PROCUREMENT SERVICES**

<b>POLICY/PROCEDURE No:</b>	<b>PUR- 001</b>
<b>POLICY/PROCEDURE Name:</b>	<b>Ethics</b>
<b>ORIGINAL ISSUE DATE:</b>	<b>August 3, 2001</b>
<b>REVISED DATE:</b>	<b>October 1, 2009</b>

**I. Background**

Each fiscal year (July 1 through June 30) state agencies spend in excess of \$2 billion for supplies, services and information technology required for the daily operation of their facilities. Agencies are permitted to make purchases of supplies, services and information technology up to \$25,000\* under their direct purchase authority. The Department of Administrative Services (DAS) may increase an agencies direct purchasing authority up to \$50,000; for agencies who have certified procurement professionals on staff to review and approve purchases. Purchases that exceed \$50,000 must be forwarded to DAS to make the purchase by competitive selection.

The Director of DAS has delegated authority to the Office of Procurement Services (OPS) to make purchases on behalf of state agencies. The OPS may establish contracts using competitive selection processes or using the State Term Schedule (STS) as approved by the controlling board. The processes associated with these contracting efforts involve the expenditure of tax dollars that creates a trust between the OPS and the general public. This policy and procedure will set forth the guidelines that the OPS will follow to protect this trust and to establish fair and equal treatment of all suppliers who are interested in participating in the procurement of these supplies, services and information technology.

\*DAS has granted conditional authority to all agencies to increase their direct purchasing authority to \$50,000 pending development of the state certified program, as required by law.

**II. Scope**

This policy is applicable to all employees of the OPS to include their spouse, children and family relatives as described in the Ohio Revised Code. To the extent permitted by law, this policy also applies to all private companies and their employees conducting business with or seeking to do business with the state of Ohio or with the OPS. This policy is not intended to replace or modify any existing laws, executive order(s) or DAS departmental policies relative to ethics. If any terms of this policy conflict, any existing laws, executive order(s) or DAS departmental polices shall prevail.

**III. Policy**

The OPS will conduct all procurement activities in a manner above reproach and with complete impartiality and preferential treatment to none. Employees will receive ongoing routine training on Ohio's ethics laws, executive orders and DAS departmental policies and will conform to the requirements. Prior to July 1 of a new biennium, employees will receive formal training on Ohio's ethics laws through programs offered by the Ohio Ethics Commission.

## **IV. Procedures**

### **A. Employee Responsibility**

All employees of the OPS are responsible to become familiar with the ethics laws of the state of Ohio (ORC 102.01 to 102.09), any executive orders and DAS departmental policies pertaining to ethical conduct. Employees are required to perform their daily activities in a professional and responsible manner to maintain the public trust. Employees must avoid any "perception of impropriety". Employees who violate the ethics laws, executive order(s) or DAS departmental policies will be subject to any penalties set forth by law, as well as, be subject to disciplinary action up to and including termination of employment.

In addition to the legal requirements for ethical conduct, employees of the OPS shall comply with the following:

1. No employee shall solicit anything of value for personal use, either directly or indirectly, from anyone who has or is seeking to do business with the State or with the OPS.
2. No employee shall use or authorize the use of their position of employment to secure anything of value for personal use, or promise or offer to provide anything of value from anyone who has or is seeking to do business with the State or with the OPS.
3. No employee shall outwardly display promotional items provided by anyone who has or is seeking to do business with the State or with the OPS. Use of promotional items may be permissible if done in such a manner so as to not disclose the name, logo or other identifying trademark of the supplier.
4. Employees may be invited to participate in business lunches, dinners, trade events or conferences and should use good judgment when participating in such activities. Although legally, participation in such events is permitted, public perception could suggest that this participation is contrary to law. Things the employee should consider when determining whether or not to participate include, but are not limited to:
  - Activities are not established to discuss a forthcoming procurement.
  - The employee is expected to pay for their meals, registration, travel or lodging subject to reimbursement in accordance with state travel policies.
  - Acceptance of door prizes or gifts is discouraged.
  - The only gifts or prizes that may be accepted in these circumstances are token gifts such as a t-shirt, mug or lapel pin as an expression of kindness or friendship, or an inexpensive meal worth \$20 or less, on an annual basis.
5. Activities of the OPS are of public interest and a matter of public record, unless deemed to be confidential. Employees shall conduct their official duties so that all actions can be fully substantiated and legally defended. No employee shall disclose or use, without proper authorization, any information acquired in the course of performing their official duties.
6. When required, employees shall file, an annual Financial Disclosure Statement with the Ohio Ethics Commission.

### **B. Supplier Responsibilities**

The OPS utilizes a variety of methods for establishing contracts for supplies, services and information technology. Processes for establishing contracts have been developed to ensure fair and equal treatment of all suppliers participating in the procurement activity. Any supplier that attempts to influence the evaluation and/or award of a contract either directly or through an outside agent or representative may be disqualified and if disqualified, will not be able to participate in the procurement activity. In addition, a supplier who attempts to influence an evaluation and award may be subject to penalties set forth by law up to and including debarment.

### **C. Suspected Violation of Ethics Laws**

Suspected violations of Ohio's ethics laws, executive order(s) or DAS departmental policies and procedures by any employee of the OPS or supplier are to be reported to the Chief Procurement Officer (CPO). The CPO will advise the Division Deputy Director and may forward the evidence to the DAS Office of Chief Counsel for their review and disposition. If the Office of Chief Legal Counsel concurs that a violation has occurred, the Director of

Administrative Services, and, if applicable, the Ohio Attorney General and Ohio Ethics Commission will be notified and the matter will be turned over to them for resolution.

**V. Professional Procurement Organizations**

The OPS maintains active membership in a number of professional procurement organizations, for example National Association of State Procurement Officials (NASPO), National Institute of Governmental Purchasing (NIGP), Central Ohio Organization of Public Purchasers (CO-OPP) Chapter of NIGP, Ohio River Valley Chapter of NIGP and Southwest Ohio Purchasers for Government (SWOP4G). These organizations subscribe to high ethical standards intended to govern the conduct of its members. Published herein is the Code of Ethics of the National Institute of Governmental Purchasing. To the extent practicable and permissible under Ohio law, the OPS have adopted the NIGP Code of Ethics. As printed herein;



## **NIGP CODE OF ETHICS**

*The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization.*

Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.

Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.

Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.

Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.

Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.

Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.

Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

Resists encroachment on control of personnel in order to preserve integrity as a professional manager. Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.

Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.

Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.

## ***GUIDELINES TO THE NIGP CODE OF ETHICS***

### ***I. RESPONSIBILITY TO YOUR EMPLOYER***

Follow the lawful instructions or laws of the employer.

Understand the authority granted by the employer.

Avoid activities, which would compromise or give the perception of compromising the best interest of the employer.

Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition.

Obtain the maximum benefit for funds spent as agents for the employer.

### ***II. CONFLICT OF INTEREST***

Avoid any private or professional activity that would create a conflict between your personal interest and the interests of your employer.

Avoid engaging in personal business with any company that is a supplier to your employer.

Avoid lending money to or borrowing money from any supplier.

### ***III. PERCEPTION***

Avoid the appearance of unethical or compromising practices in relationships, actions and communications.

Avoid business relationships with personal friends. Request a reassignment if the situation arises.

Avoid noticeable displays of affection, which may give an impression of impropriety.

Avoid holding business meetings with suppliers outside the office. When such meetings do occur, the meeting location should be carefully chosen so as not to be perceived as inappropriate by other persons in the business community or your peers.

### ***IV. GRATUITIES***

Never solicit or accept money, loans, credits or prejudicial discounts, gifts, entertainment, favors or services from your present or potential suppliers which might influence or appear to influence purchasing decisions.

Never solicit gratuities in any form for yourself or your employer.

Items of nominal value offered by suppliers for public relations purposes are acceptable when the value of such items has been established by your employer and would not be perceived by the offeror, receiver or others as posing an ethical breach.

Gifts offered exceeding nominal value should be returned with an explanation or if perishable either returned or donated to a charity in the name of the supplier.

In the case of any gift, care should be taken to evaluate the intent and perception of acceptance to ensure that it is legal, that it will not influence your buying decisions, and that it will not be perceived by your peers and others as unethical.

*V. BUSINESS MEALS*

There are times when during the course of business it may be appropriate to conduct business during meals. In such instances, the meal should be for a specific business purpose.

Avoid frequent meals with the same supplier.

The purchasing professional should be able to pay for meals as frequently as the supplier. Budgeted funds should be available for such purposes.

*VI. CONFIDENTIAL INFORMATION*

Keep bidders' proprietary information confidential.

Develop a formal policy on the handling of confidential information.

*VII. RELATIONSHIP WITH THE SUPPLIER*

Maintain and practice, to the highest degree possible, business ethics, professional courtesy, and competence in all transactions.

Association with suppliers at lunches, dinners or business organization meetings is an acceptable professional practice enabling the buyer to establish better business relations provided that the buyer keeps free of obligation. Accordingly, it is strongly recommended that if a seller pays for an activity that the buyer reciprocate.

Purchase without prejudice, striving to obtain the maximum value for each dollar of expenditure.

Preclude from showing favoritism or be influenced by suppliers through the acceptance of gifts, gratuities, loans or favors. Gifts of a nominal value that display the name of a firm which is intended for advertisement may or may not be accepted in accordance with the recipient's own conscience or jurisdictional rules.

Adhere to and protect the supplier's business and legal rights to confidentiality for trade secrets, and other proprietary information.

Refrain from publicly endorsing products.

***VIII. RELATIONSHIP WITH THE EMPLOYER***

Remain free of any and all interests and activities, which are or could be detrimental or in conflict with the best interests of the employer.

Refrain from engaging in activities where the buyer has a significant personal or indirect financial interest.

Exercise discretionary authority on behalf of the employer.

Avoid acquiring interest or incurring obligations that could conflict with the interests of the employer.

***IX. RELATIONSHIPS WITH OTHER AGENCIES AND ORGANIZATIONS***

A buyer shall not use his position to exert leverage on individuals or firms for the purpose of creating a benefit for agencies or organizations that he may represent.

All involvement and transactions shall be handled in a professional manner with the interest of the buyer's employer taking precedent.

***X. RELATIONSHIP WITH PROFESSIONAL PURCHASING ORGANIZATIONS AND ASSOCIATIONS.***

It is the obligation and the responsibility of the buyer, through affiliation with professional organization, to represent that organization in a professional and ethical manner.

A buyer shall not use his position to persuade an individual or firm to provide a benefit to an organization.

***XI. POLICY***

It is the policy of NIGP that any member of the Institute who personally, or on behalf of his local chapter, is involved in the process of acquiring advertisers and/or exhibitors on behalf of the Institute, shall act only in the capacity of providing referrals of potential or interested parties to the Institute. As a result of such referral, should the Institute form a contractual obligation, appropriate credit shall be given to the individual or chapter.

**State of Ohio**  
**Ohio Department of Administrative Services**  
**General Services Division**

**POLICY/PROCEDURE NAME:** Fraud, Waste and Abuse  
**POLICY/PROCEDURE NO.:** PUR- 002  
**DATE ISSUED:** August 3, 2001  
**DATE REVISED:** February 16, 2007  
**RESPONSIBLE UNIT:** Office of Procurement Services

### **I. Background**

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 Billion for supplies and services required for the daily operation of their facilities. Each department, agency, institution, board and commission, authorized to make purchases of supplies and services, bears a duty to the public to make all procurements in a responsible manner to avoid the potential for accusations of fraud, waste or abuse. Procurement activity must reflect that the item meets the need of the agency, meets the quality standards set forth in the specifications and is used for the intended purpose.

### **II. Scope**

This Policy and Procedure will provide guidance to identify and report situations of fraud, waste and abuse of state-owned property including equipment, supplies, services, staff, reimbursements and expenditures.

### **III. Policy**

It is the responsibility of each employee of Procurement Services, to perform their daily activities to avoid accusations of fraud, waste or abuse. Think of this office as living and working in a glass bowl, everyone is watching us. Caution must be exercised, however, to distinguish between errors and incidents of fraud, waste or abuse.

### **IV. Recognizing Fraud, Waste, or Abuse**

- A. “*Fraud*” means a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.<sup>1</sup> Fraud can take many forms such as insurance fraud, mail fraud, bank fraud or criminal fraud. One type of fraud that could best describe procurement processes is “*fraud in the inducement*” which occurs when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties or obligations involved; an intentional misrepresentation of a material risk or duty reasonably relied upon,

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<sup>1</sup> Black’s Law Dictionary, 8th Edition ©2004

thereby injuring the other party without vitiating the contract itself, especially about a fact relating to value<sup>2</sup>. Sometimes it can be very difficult to recognize when one party to a contract has committed fraud and it may not be seen until some point well after the contract has been performed and payment has been completed. Proving an incident of fraud can be difficult as one must be able to show evidence that the accused party intentionally misleads the other party for personal gain. What might appear to be an event of fraud could actually be an error on the part of the individual. Thus caution must be used to ensure that evidence clearly indicates that fraud has occurred. Examples that could be interpreted as fraud include, but are not limited to:

- Collusive bidding (bid rigging, price fixing)
- Falsification of bid certifications
- Contract steering
- Product substitution with sub-standard products
- Bribery
- False invoices to gain payment for goods or services not provided

B. “*Waste*” means to use, consume, or expend carelessly or thoughtlessly.<sup>3</sup> Waste can take many forms. It is not difficult to find oneself in a situation of carelessly or thoughtlessly throwing away supplies that may have some useful life available or failing to recycle items that could be used to produce new supplies. Employees should be cognizant of how they use supplies and make every effort to use the item to its fullest extent. Employees must be reminded that tax dollars are being used to purchase the item and failure to use the item to their fullest extent is a waste of the item and tax dollars. Flagrant waste should be reported to management. Examples of waste include, but are not limited to:

- Purchase of higher quality item when lesser quality would suffice
- Failure to recycle
- Failure to utilize energy efficient supplies and equipment
- Acquire supplies and store in inventory beyond warranty periods
- Release of new/unused supplies to surplus

C. “*Abuse*” means to use wrongly or improperly.<sup>4</sup> Situations of abuse occur when an employee intentionally misuses state-owned property that could result in damage to item and additional expense to the state to repair it. Intentional and flagrant issues of abuse should be reported to management. Examples of abuse include, but are not limited to:

- Intentional slamming down the lid of a copier
- Kicking a computer hard drive
- Pouring liquid onto a computer keypad
- Using a state vehicle to tow another vehicle
- Improper use of office equipment

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<sup>2</sup> Black’s Law Dictionary, 8<sup>th</sup> Edition ©2004

<sup>3</sup> Webster’s New College Dictionary, 3<sup>rd</sup> Edition ©2005

<sup>4</sup> Webster’s College Dictionary, 3<sup>rd</sup> Edition ©2005

## **V. Procedures to protect against suspected Fraud, Waste and Abuse**

- A. *Bid/RFP Documents.* Staff responsible to develop bid/RFP documents will review agency requests and make necessary adjustments to ensure that all terms, conditions and specifications reflect current industry. The State has a right to set forth certain baseline product requirements to ensure that the needs of the agency are met, but should avoid specifications that would restrict open competition. There may be situations where it is necessary to limit specifications to a certain brand to protect the interests of the state which must conform to the requirements of the Ohio Administrative Code.
- B. *Copier Pre-Approvals.* A Pre-Approval is required from Procurement Services when an agency intends to make a purchase of a copier. This is to ensure that items being purchased from a term contract are listed in the contract, that equipment being purchased corresponds to the need of the agency, to ensure that the method of acquisition is in the best interest of the agency and that pricing reflects what was accepted by Procurement Services. If not making the purchase from a term contract, the agency must provide sufficient evidence as to why they are not making the purchase from the term contract. Staff responsible for the review of pre-approvals will examine the documents to ensure that items and quantities listed conform to existing contract terms, conditions and specifications. If deemed appropriate, the pre-approval may be denied and a separate bid may be issued for the supplies or services to promote more favorable pricing, etc.
- C. *Release and Permits.* A Release and Permit may be requested by an agency when the purchase exceeds their direct purchase limits, when time to complete the purchase is a critical factor or when the item is used equipment or a sole source. Staff responsible for approving a release and permit will review the supplies or services to be purchased and the reasons for the agency requesting a release and permit. If determined that the purchase was not deliberately held to avoid the bidding processes and/or that it is not possible or advantageous for Procurement Services to establish a contract for requested supplies or services, the request will be approved. If the request is denied, the agency will re-submit the request to Procurement Services for procurement under formal competitive processes.
- D. *Contract Waivers.* A Contract waiver may be requested when the vendor on a mandatory contract is unable to furnish the requested supplies or services. The respective manager will review the written request and, if valid, will approve the waiver.

## **VI. Reporting Suspected Incidents of Fraud, Waste and Abuse**

Suspected incidents of fraud, waste or abuse, either by an employee of the Procurement Services or by an employee of a state agency, should be reported, in writing, to the Administrator. If the Administrator has reason to believe that an incident of fraud, waste or abuse has occurred, the Administrator will forward the evidence to the Deputy Director of the General Services division and to the DAS Office of Chief Counsel for their review and disposition. A number of laws have been passed to protect individuals who report incidents of fraud, waste and abuse from retribution. It is the responsibility of the person reporting the incident to seek legal advice to ensure they are protected under the “Whistle Blower” laws.

**State of Ohio**  
**Ohio Department of Administrative Services**  
**General Services Division**

**POLICY/PROCEDURE NAME:** Domestic & In-State Preferences  
**POLICY/PROCEDURE No.:** PUR-003  
**DATE ISSUED:** August 3, 2001  
**DATE REVISED:** December 20, 2007  
**RESPONSIBLE UNIT:** Office of Procurement Services

**I. Background**

In 1983, the 115<sup>th</sup> General Assembly enacted Sections 125.09 and 125.11 of the Ohio Revised Code that require the Department of Administrative Services (“DAS”) and other state agencies apply a preference to domestic Ohio bids for supplies and services, except construction, to be purchased pursuant to these statutes. DAS prescribed further criteria to be used in giving preference to domestic and Ohio products as described in Section 123:5-1-06 of the Ohio Administrative Code. The OAC established this preference at 5% over the price offered by a non-Ohio bidder.

These laws apply to competitive sealed bids and competitive sealed bids by reverse auction issued by DAS and to procurements made by state agencies under their direct or delegated authority. When evaluating bids, it is first determined whether the bidder is offering a domestic end product (Buy America) and then if the bidder is offering an Ohio produced product or if the bidder is not offering an Ohio produced product, but is claiming to have significant Ohio economic presence (Buy Ohio).

Law also permits DAS and state agencies to treat bidders located in a state bordering Ohio on the same basis as if the bidder is an Ohio bidder. As long as the border state does not impose a greater restriction upon Ohio bidders selling products or services to agencies of that state, the border state bidder will receive the same preference as an Ohio bidder. DAS recognizes the Commonwealths of Kentucky and Pennsylvania and states of Michigan, Indiana and New York as border states as they do not apply a preference against Ohio bidders. The state of West Virginia does apply a preference to Ohio bidders and is, therefore, not eligible to receive the border state preference.

**II. Scope**

This Policy and Procedure will describe the criteria DAS will follow when evaluating bid responses and how the domestic and in-state preferences will be applied. DAS will apply the domestic and in-state preferences to all competitive sealed bids and reverse auctions. After application of the preferences, contracts will be awarded to the lowest responsive and responsible bidder in accordance with Section 125.11 of the Revised Code. A state agency must adopt this Policy and Procedure for use in applying the domestic and in-state preferences to their direct and/or delegated procurements.

### III. Policy

This Policy and Procedure will be applied in accordance with Ohio Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Section 123:5-1-06, as amended. This Policy and Procedure is only applicable to those contracts established through issuance of Competitive Sealed Bids and/or Reverse Auction. All other recognized methods of contracting by DAS are exempt from the requirements of the domestic and in-state preferences set forth in this Policy and Procedure.

### IV. Definitions

**“Border State”** means any state that is contiguous to Ohio and that does not impose a restriction greater than Ohio imposes pursuant to section 125.09 of the Revised Code. To qualify for significant economic presence, the border state bidder must have either 10 or more employees or at least 75% of their employees based in the respective border state where the bidder’s company resides.

**“Canadian End Product”**<sup>1</sup> means an article that (1) is wholly the growth, product, or manufacture of Canada; or (2) in the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

**“Domestic End Product”**<sup>2</sup> means (1) an un-manufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds fifty percent of the cost of all its components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

**“Employer”** means a person who controls and directs a worker under an express or implied contract of hire and who pay’s the worker’s salary or wages.

**“Employee”** means a person who works in the service of another person (the employer) under and express or implied contract of hire, under which the employer has the right to control the details of work performance.

**“Mexican End Product”**<sup>3</sup> means an article that (1) is wholly the growth, product, or manufacture of Mexico; or (2) in the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Mexico into a new and

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<sup>1</sup> 48 CFR Ch 1 (10-1-02 Edition) Subpart 25.5, 25.003 Definitions

<sup>2</sup> 48 CFR Ch. 1 (10-1-02 Edition) Subpart 25.5, 25.003 Definitions.

<sup>3</sup> 48 CFR Ch. 1 (10-1-02 Edition) Subpart 25.2, 25.003 Definitions

different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

***“Ohio Bid”*** means a bid received from a bidder offering Ohio products or a bidder demonstrating significant Ohio economic presence.

***“Ohio Products”*** means products that are mined, excavated, produced, manufactured, raised, or grown by a person where the input of Ohio products, labor, skill, or other services constitutes no less than twenty-five percent of the manufactured cost. With respect to mined products, such products shall be mined or excavated in this state.

***“Produced”*** means the manufacturing, processing, mining, developing, and making of a thing into a new article with a distinct character in use through the application of input, within this estate, of Ohio products, labor, skill or other services. “Produced” does not include the mere assembling or putting together of non-Ohio products or materials.

***“Significant Ohio Economic Presence”*** means business organizations that:

- (1) Pay required taxes to the state of Ohio; and
- (2) Are registered and licensed to do business in the state of Ohio with the office of the Secretary of State; and
- (3) Have ten or more employees based in Ohio, or seventy-five percent or more of their employees based in Ohio.

***“Sole Proprietorship”*** means a business in which one person owns all the assets, owes all the liabilities and operate in his or her personal capacity.

## V. **General Provisions & Requirements**

- 1) **Certificate for Domestic and Ohio Preference.** Section 125.09(A) requires that bidders claiming the preference complete the Certificate for Domestic and Ohio Preference form contained in the bidding document. This form must be completed for each bid, failure to do so will result in the bidder being ineligible to receive the preference, regardless of whether they are offering an Ohio product or have significant Ohio economic presence. DAS will rely upon information provided by the bidder in this form when evaluating the bidder for the domestic and in-state preferences. In the event that DAS has reason to believe that the information is not current, is erroneous, or if a bidder fails to totally complete the Certification form, DAS will conduct additional research to verify the information as deemed necessary pursuant to OAC 123:5-1-06. Any bidder who intentionally submits false or misleading information in an attempt to receive the preferences will be immediately disqualified and may be subject to legal action up to and including debarment.

- 2) Non-Available Articles, Materials and Supplies.** The Federal “Buy America” Act includes a provision that the Federal Administrator<sup>4</sup> may develop a listing of those articles, materials and supplies that are not available in the United States in sufficient commercial quantities or of a satisfactory quality. Items contained in this listing are exempt from the requirements of Buy America. DAS has adopted the Federal list and will not apply the requirements of Buy America to such items. Further, DAS will review articles, materials and supplies to insure availability in sufficient commercial quantities in the United States and that such are of satisfactory quality. If determined otherwise, these items will appear on the DAS list of non-available articles, materials and supplies. Both the Federal and DAS lists of non-available articles, materials and supplies are a part of this Policy and Procedure. The contract analyst will make a determination if the requested products appear on any non-available lists and so note in the bidding documents that Buy America will not be applicable during evaluation of bid responses.
- 3) Sufficient Competition / Excessive Price:** Section 125.09(C)(6) of the Revised Code permits DAS to waive the requirements of the domestic and in-state preferences on a contract-by-contract basis where compliance would result in the state agency paying an excessive price or acquiring an inferior product. Sufficient competition must exist to apply the domestic and in-state preferences. Ohio law defines sufficient competition as two or more qualified bids offering products produced or mined in the United States or in Ohio there is sufficient competition to proceed with evaluation of the bids. For purposes of Buy America, a price is excessive if the lowest domestic price exceeds the lowest foreign price by more than 6%<sup>5</sup>. For purposes of Buy Ohio, a price is deemed to be excessive when the lowest “Ohio” bid exceeds the lowest non-Ohio bid be more than 5%. If sufficient competition does not exist (i.e.; only one bid submitted) or if it is determined that all prices are excessive, the analyst may: 1) recommend cancellation of the bid in its entirety, 2) recommend re-bidding of the intended purchase, or 3) recommend award of the contract with permission of the agency.
- 4) North American Products:** Section 125.09(C)(5) permits DAS to establish criteria and procedures that will be used to qualify bidders whose manufactured products, except mined products, are manufactured in other states or in North America and who have significant Ohio economic presence. DAS recognizes products manufactured in other states or territories of the United States as being domestic products. DAS has also adopted the definitions used by the Federal government for Canadian and Mexican products and such are recognized as domestic products.
- 5) Mined Products:** Ohio’s in-state preference law requires that mined products be mined in Ohio. Law also stipulates that a border state bidder is to be treated in the same manner as an Ohio bidder provided the border state does not apply a preference toward an Ohio bidder. If a border state bidder is offering mined product, the product must either be mined in Ohio or within the respective border state in which the bidder resides. Indiana, however, has an absolute preference for coal which requires coal to be mined in Indiana. Thus, if an Indiana bidder is offering a mined product, the product must be mined in Ohio to qualify for the preference.

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<sup>4</sup> 48 CFR Ch.1 (10-1-02) Edition, Subpart 25.103

<sup>5</sup> 48 CFR Ch. 1 (10-1-02 Edition), Subpart 25.25.105(b)(1)

## **VI. Procedure for Application of Preferences**

### Step 1: Review for sufficient competition

- One bid response – recommend cancel, re-bid or award (with agency agreement)
- Two or more responses – go to Step 2

### Step 2: Examine preference certification documents (Page 2)

- Preference certification not completed – bidder not eligible for preference
- Preference certification partially completed or contains inadvertently obvious mistake – contact bidder for clarification
- Preference certification completed – go to Step 3

### Step 3: Evaluate product manufacture location: foreign or domestic

- Offering foreign produced or mined product
- Offering product that meets 50% rule (see definition – “domestic end product”)
- Offering product produced or mined in Canada or Mexico

### Step 4: Evaluate bidder type: Ohio, border state, non-Ohio

- Ohio bidder – offering Ohio product or Ohio significant economic presence
- Border state bidder – located in Kentucky, Michigan, Pennsylvania, Indiana, New York
- Non-Ohio bidder – all other bidders

### Step 5: Evaluate product compliance with bid specifications

- Product meets bid specifications – proceed with award process
- No product supportive information included, not mandatory – contact bidder
- No product supportive information included, mandatory – bid not responsive

### Step 6: Application of preferences & award – mined products (sufficient competition exists)

- Any lowest responsive and responsible bidder offering Ohio mined product – award contract
- Lowest responsive and responsible border state bidder offering same border state mined product (except Indiana) – award contract
- Lowest responsive and responsible Ohio bidder offering non-Ohio mined product – apply 5% preference, award contract to lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range
- Lowest responsive and responsible border state bidder offering non-border state mined product – apply 5% preference, award lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range
- Lowest responsive and responsible non-Ohio/non-border state bidder offering non-Ohio/non-border state mined product – apply 5% preference, award contract to lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range

Step 7: Application of preferences & award – products (sufficient competition exists)

- Any lowest responsive and responsible bidder offering Ohio product – award contract
- Lowest responsive and responsible bidder with significant Ohio economic presence offering domestic / Canada / Mexico product – award contract
- Lowest responsive and responsible border state bidder offering domestic / Canada / Mexico product – award contract
- Lowest responsive and responsible non-Ohio / non-border state bidder offering domestic / Canada / Mexico product – apply 5%, award to lowest responsive and responsible Ohio / border state bidder if within 5% range
- Any lowest responsive and responsible bidder offering foreign product – apply 6%, award foreign product if greater than 6% less costly than lowest responsive and responsible bidder offering Ohio / domestic / Canada / Mexico product

Step 8: Contract award when sufficient competition does not exist

- Requires agency agreement / manager approval
- Product appears on Federal or DAS “Non-Available” lists
- No Ohio / domestic / Canada / Mexico products available in sufficient quantity or of a satisfactory quality

## **VII. Federal List of Non-Available Articles<sup>6</sup>**

Acetylene, black

Agar, bulk

Anise

Antimony, as metal or oxide

Asbestos, amosite, chrysotile & crocidolite

Bananas

Bauxite

Beef, corned & canned

Beef extract

Bephenimu hydroxynapthoate

Bismuth

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films, not printed in the United States and for which domestic editions are not available

Brazil nuts, unroasted

Cadmium, ores and flue dust

Calcium cyanamide

Capers

Cashew nuts

Castor beans and castor oil

Chalk, English

Chestnuts

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<sup>6</sup> 48CRF Ch. 1 (10-1-02 Edition) Subpart 25.104

## VII. Federal List of Non-Available Articles, cont'd

Chicle  
Chrome ore or chromite  
Cinchona bark  
Cobalt, in cathodes, rondelles, or other primary ore and metal forms  
Cocoa beans  
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form  
Coffee, raw or green bean  
Colchicine alkaloid, raw  
Copra  
Cork, wood or bark and waste  
Cover glass, microscope slide  
Crane rail (85-pound per foot)  
Cryolite, natural  
Dammar gum  
Diamonds, industrial, stones and abrasives  
Emetime, bulk  
Ergot, crude  
Erythrityl tetranitrate  
Fair linen, altar  
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal  
Goat and kidskins  
Graphite, natural, crystalline, crucible grade  
Hand file sets (Swiss pattern)  
Handsewing needles  
Hemp yarn  
Hog bristles for brushes  
Hyoscine, bulk  
Ipecac, root  
Iodine, crude  
Kaurigum  
Lac  
Leather, sheepskin, hair type  
Lavendar oil  
Manganese  
Menthol, natural bulk  
Mica  
Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property)  
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts  
Nitroguanidine (also known as picrite)  
Nux vomica, crude  
Oiticica oil  
Olive oil  
Olives (green), pitted or unpitted, or stuffed in bulk

## VII. Federal List of Non-Available Articles, cont'd

Opium, crude  
Oranges, mandarin, canned  
Petroleum, crude oil, unfinished oils, and finished products  
Pine needle oil  
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars  
Pyrethrum flowers  
Quartz crystals  
Quebracho  
Quinidine  
Quinine  
Rabbit fur felt  
Radium salts, source and special nuclear materials  
Rosettes  
Rubber, crude and latex  
Rutile  
Santonin, crude  
Secretin  
Shellac  
Silk, raw and unmanufactured  
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available  
Spices and herbs, in bulk  
Sugars, raw  
Swords and scabbards  
Talc, block, steatite  
Tantalum  
Tapioca flour and cassava  
Tartar, crude; tartaric acid and cream of tartar in bulk  
Tea in bulk  
Thread, metallic (gold)  
Thyme oil  
Tin in bars, blocks and pigs  
Triprolidine hydrochloride  
Tungsten  
Vanilla beans  
Wax, carnauba  
Wire glass  
Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, Angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak  
Yarn, 50 Denier rayon

## **VIII. DAS List of Non-Available Articles**

All items appearing on this list require prior approval of the State Purchasing Administrator.

Pineapple, all varieties

Canned Tuna

The following types of contracts are approved by the Controlling Board and are not subject to the requirements of the domestic preferences (Buy America):

Master Maintenance Agreement (MMA)

Multiple Award Contracts (MAC)

State Term Schedules (STS)

## REQUIRED CERTIFICATION FOR BIDDING

Those bidders claiming preference for Domestic Source End Products and/or the Ohio preference, pursuant to Revised Code Sections 125.09 and 125.11 and Administrative Code Section 123:5-1-06 must complete the following information. Bidders who qualify as an "Ohio" bidder (offer an Ohio product or who have significant Ohio economic presence) or who qualify as a Border State bidder are eligible to receive a five percent (5%) preference over non-Ohio/Border state bidders. The state reserves the right to clarify any information during the evaluation process. **BIDDERS MUST COMPLETE THIS CERTIFICATION TO RECEIVE THE PREFERENCE.**

**A. DOMESTIC PREFERENCE (BUY AMERICA):** [Not applicable to **"Excepted Products"**]

- Where is each product/services being offered mined, raised, grown, produced or manufactured?  
 United States: \_\_\_\_\_ (State)     Canada     Mexico    (Go to B-1)  
 Other: (Specify Country) \_\_\_\_\_ (Go to A-2)
- End product is manufactured outside the United States and at least 50% of the cost of its components are produced, mined, raised, grown or manufactured within the United States. The cost of components may include transportation costs to the place of manufacture and, in the case of components of foreign origin, duty whether or not a duty free entry certificate is issued.  
 Yes (Go to Section B-1)     No (Go to Section A-3)
- The Bidder hereby certifies that each end product, except the products listed below, is a domestic source end product as defined in the Buy America Act and that components of unknown origin have been considered to have been mined, produced, grown or manufactured outside the United States.  
\_\_\_\_\_(Item) \_\_\_\_\_(Country of Origin)  
\_\_\_\_\_(Item) \_\_\_\_\_(Country of Origin)

A domestic end source product is deemed to be excessively priced if it exceeds the cost of the foreign product by more than 6%. Pursuant to FAR, Part 25, the state of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The contractor, their subcontractor(s) and any agent of the contractor or subcontractor must not acquire any supplies or services originating from sources within, or that were located in or transported from or through Cuba, Iran, Iraq, Libya, North Korea, Sudan Territory of Afghanistan controlled by the Taliban, or Serbia (excluding the territory of Kosovo).

**B. OHIO PREFERENCE (BUY OHIO):**

- The products/services being offered are raised, grown, produced, mined or manufactured in Ohio.  
 Yes (Go to C)     No (Go to B-2)
- Bidder has significant economic presence within the state of Ohio.     Yes (Answer a, b, c, d below)     No (Go to B-3)
  - Bidder has paid the required taxes due the state of Ohio     Yes     No
  - Bidder is registered with the Ohio Secretary of State  
 Yes (Charter/Registration No.: \_\_\_\_\_)     No  
Questions regarding registration should be directed to (614) 466-3910 or visit their web site at:  
<http://www.sos.state.oh.us/>
  - Bidder has ten or more employees based in Ohio or border state.     Yes     No (Go to B-2d)
  - Bidder has seventy-five percent or more employees based in Ohio or border state.     Yes     No (Go to B-3)
- Border state bidder:  
 Yes (Specify which state then go to B-2c):  KY     MI     NY     PA     IN     No (Go to B-4)
- Border state bidder: mined products mined in respective border state     Yes     No     Not Applicable



**C. E.D.G.E. DESIGNATION**

Bidder is certified E.D.G.E. business     Yes     No

For information on E.D.G.E. designation, please visit the DAS Equal Opportunity Division website at:  
<http://das.ohio.gov/Eod/Edge/Index.htm>

**D. DECLARATION REGARDING MATERIAL ASSISTANCE/NON-ASSISTANCE TO A TERRORIST ORGANIZATION (DMA)**

The Bidder being awarded this Contract must:

- review the Terrorist Exclusion List at [http://www.publicsafety.ohio.gov/links/terrorist\\_exclusion\\_list.pdf](http://www.publicsafety.ohio.gov/links/terrorist_exclusion_list.pdf)
- complete the Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA) form <http://www.publicsafety.ohio.gov/links/HLS0038.pdf> and submit this with your bid response.

Failure to complete the Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA) form may result in the bidder being deemed not responsive and/or may invalidate any Contract award. If not submitted with the bid response, the bidder will have seven (7) calendar days, after notification, to submit the form.

**State of Ohio**  
**Ohio Department of Administrative Services**  
**General Services Division**

**POLICY/PROCEDURE NAME:** Hierarchy of Procurement Methodologies  
**POLICY/PROCEDURE NO.:** PUR-04  
**DATE ISSUED:** August 3, 2001  
**DATE REVISED:** February 16, 2007  
**RESPONSIBLE UNIT:** Office of Procurement Services

### **I. Background**

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 billion for supplies and services to meet the mission of the agency. A variety of procurement methods are available to agencies that include:

- Intra-agency purchases
- Sheltered work centers
- Visually Impaired
- DAS Contracts
- Direct purchase authority

Although these various methods are available to agencies, they may not, by law, randomly select which method to use to make the purchase.

### **II. Scope**

Prior to making any purchase, agencies must give first consideration to the following state sources :

- Ohio Penal Industries (OPI)
- Central Warehouse/Pharmacy Services (OSS)
- Office of Procurement from Community Rehabilitation Programs (DAS)
- Rehabilitation Services Commission (RSC)
- DAS Term Contracts

Agencies are required by law to make purchases from these entities before making a purchase from any other source. If items are not available from these organizations, agencies must obtain a written waiver and then may then exercise their direct purchase authority unless the value of the purchase for supplies exceeds \$33,500 or value of services exceeds \$67,000. For purchases above these limits, agencies must make the

purchase from or through DAS, Office of Procurement Services, State Purchasing Unit. If State Purchasing determines that it is not practical or advantageous to make the purchase, the agency will be issued a Release and Permit to make the purchase under their direct authority. If an agency's direct purchases exceed their cumulative annual threshold (\$50,000/\$75,000) in a fiscal year, the agency must seek approval from the Controlling Board to make the purchase, which also requires a Release & Permit from State Purchasing. This Policy and Procedure will describe the various methods and the order which must be followed to complete the purchase.

### **III. Policy**

Procurement Services – State Purchasing will review all purchase requests to ensure that the agency has followed the order of priority described in this Policy and Procedure. A purchase request for supplies or services offered by any of the mandatory sources will not be processed unless such is accompanied by a written waiver from the respective mandatory source.

### **IV. Procedures for Initiating a Purchase Request**

- A. State Sources.** Law has established various state sources to furnish certain supplies and services to state agencies. Whenever the required supply or service is available from a state source, the agency must make the purchase from the respective source or obtain a waiver to make the purchase from another source. If the agency proceeds to make the purchase without obtaining a waiver, the purchase will be considered invalid and the person making the purchase could be held personally responsible to reimburse the state for the expenditure.

**Special Note:** Some products or services offered by OPI, OPCR (State Use), DMH/OSS and RSC may also appear on a DAS term contract. Agencies are required to make purchases from OPI, OPCR, DMH/OSS and RSC prior to using a DAS term contract.

Examples of the types of supplies and services offered by state sources include, but are not limited to:

- Ohio Penal Industries (OPI)
  - Office Panel Systems
  - Office Furniture
  - Files
  
- Community Rehabilitation Programs (Previously, State Use Program)
  - Housekeeping/Janitorial Services
  - Pens & Pencils
  - Printed Clothing

- Central Warehouse/Pharmacy Services (Mandatory for institutional agencies)
  - Foods
  - Pharmaceuticals
  - Laboratory Testing Services
  
- Rehabilitation Services Commission (RSC)
  - Beverage Vending Services
  - Food Vending Services
  - Cafeteria Services
  
- DAS Term Contracts (State Purchasing / State Printing)
  - Copier Equipment / Paper
  - Vehicles / Fuel / Tires
  - Hardware Supplies / Equipment

Agencies may make purchases from any state sources without delay and without any dollar limitation provided respective funding is available. Purchases from state sources are not counted against the agency's cumulative annual threshold.

**B. Purchases from or through Procurement Services – State Purchasing .** When the value of the purchase for supplies exceeds \$33,500 or services exceed \$67,000, the agency must forward the purchase request to State Purchasing. If it is determined that the request can be made through State Purchasing, the agency will be so notified and a determination made as to which purchasing method will be used to establish the contract. State Purchasing utilizes the following methods to establish contracts (in order of consideration):

- Competitive Sealed Bid (Authorized by ORC)
  - Invitation to Bid / Invitation to Bid by Reverse Auction
  - Known requirement / clearly defined specifications
  - Price driven
  - Mandatory use contract
  
- Competitive Sealed Proposal (Authorized by ORC)
  - Request for Proposal
  - Looking for best solution
  - Price secondary
  - Mandatory use contract
  
- Multiple Award Contract (Authorized by Controlling Board)
  - Utilizes Invitation to Bid process
  - Multiple awardees for similar or like items/services
  - Unless otherwise stated, optional use contracts
  
- State Term Schedules (Authorized by Controlling Board)
  - Contracts with manufacturers/agents only
  - Manufacturers may name authorized dealers

- Pricing based upon federal FSS (GSA) or better
- Contain maximum order limits, requires pre-approval to exceed
- Optional use contracts

Once a contract is established, the agency may make purchases as needs arise and in any volume provided sufficient funding is available to support the purchase. Purchases from these contracts do not affect the agency annual cumulative threshold nor do these contracts require approval from the Controlling Board, except for release of capital funds. Typically, a minimum of 120 calendar days is required for these processes, but additional time may be necessary depending upon the complexity of the project. Requests to expedite the process will be handled on a case-by-case basis.

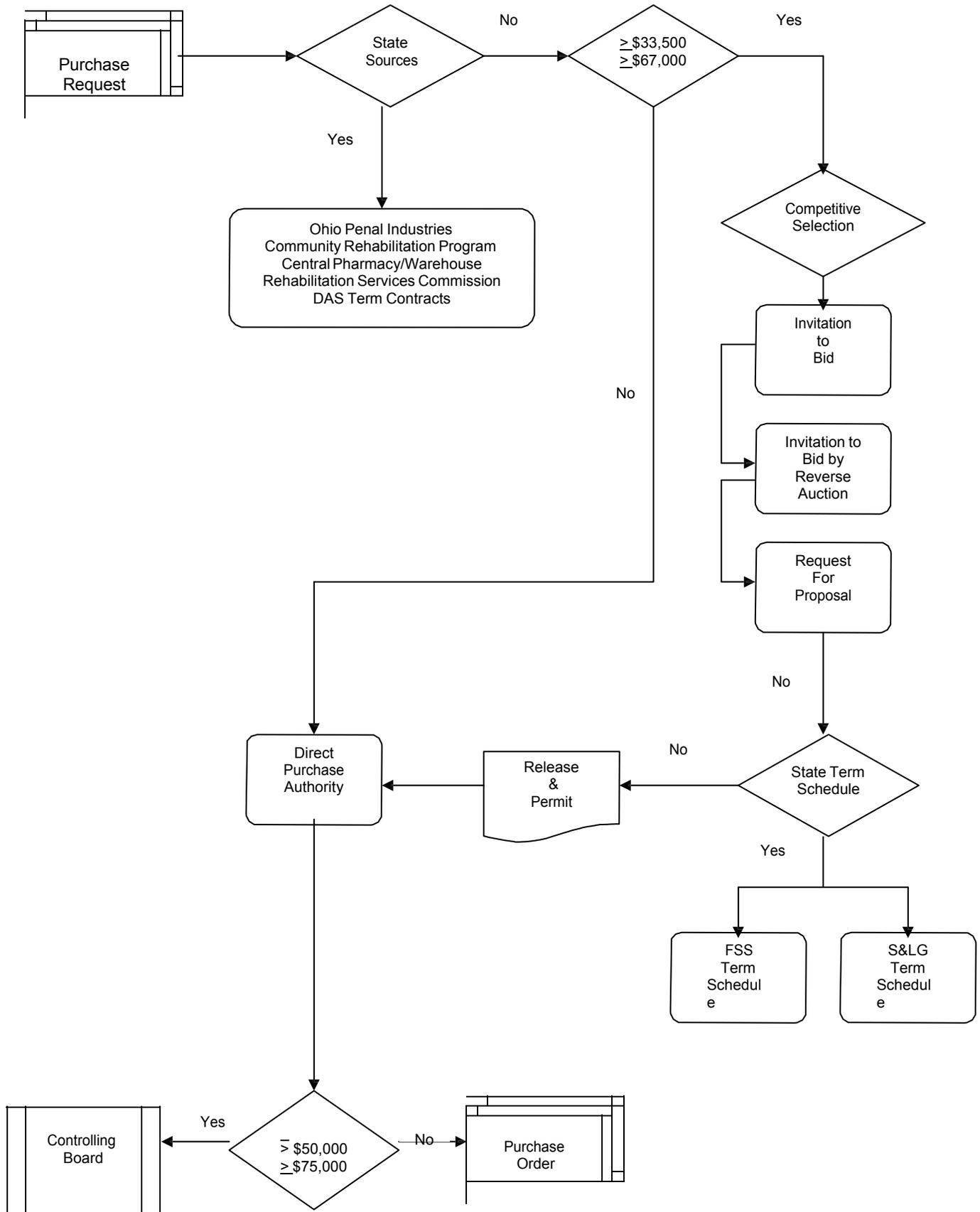
**C. Release and Permit.** When State Purchasing determines that it is not possible or advantageous to establish the contract, the agency will be granted a Release and Permit to make the purchase under their direct purchase authority. The agency must use a competitive process to make the purchase. If the value of the purchase will cause the agency to exceed its cumulative annual threshold (\$50,000/\$75,000) the agency must seek approval from the Controlling Board to enter into the contract. To avoid unnecessary delays or the potential for breach of contract, the agency should discuss the purchase with State Purchasing prior to making a commitment with the supplier as the Release and Permit may be denied in favor of using a different method to make the purchase.

**D. Direct Purchase Authority.** Law permits a state agency to make purchases of supplies with a value of \$33,500 or less, and services with a value of \$67,000 or less when such supplies or services are not available from any of the mandatory sources described in this Policy and Procedure. When an agency exercises its direct purchase authority, it must follow the competitive process outlined in all of the following:

- DAS Directive maintained by DAS, Office of Chief Counsel
- State Procurement Handbook maintained by Office of Procurement Services
- Policies and Procedures of the Office of Procurement Services

If an agency fails to follow the processes outlined in these documents, the purchase could be deemed to be invalid and could leave the person who made the purchase, financially liable to reimburse the State for the procurement. The DAS Directive is available online at <http://www.das.ohio.gov/asd/Legpage.htm#Directives> and the other documents are available from the State Procurement Website at [procure.ohio.gov](http://procure.ohio.gov), click on training and reference materials.

# Procurement Method Determination Flow Chart



**State of Ohio  
Ohio Department of Administrative Services  
General Services Division**

**POLICY/PROCEDURE NAME:** Contracting Process Determination  
**POLICY/PROCEDURE NO.:** PUR-05  
**DATE ISSUED:** August 3, 2001  
**DATE REVISED:** February 16, 2007  
**RESPONSIBLE UNIT:** Office of Procurement Services

### **I. Background**

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 billion for supplies and services that are necessary for the daily operation of their agency. Law provides that agencies may procure supplies up to \$33,500 and services up to \$67,000 using their direct purchase authority. For purchases above these limits, agencies must make the purchase from or through the Department of Administrative Services, Office of Procurement Services - State Purchasing.

State Purchasing is responsible to establish an agreement (“the contract”) between the contractor and DAS to acquire the supplies or services requested by the agency. This contract serves as an agreement between DAS and the contractor and includes specifications, terms, conditions and pricing for the respective supplies or services. The agency will make the purchase by procurement card, purchase order or other encumbering document referencing the contract agreement. This document authorizes the contractor to deliver the supplies or perform the services at an agreed upon date and time. Once delivery and acceptance have occurred, the agency will then pay the contractor in accordance with the agreement.

When determining which type of contract to establish, State Purchasing will consider various factors such as; time constraints, potential for repetitive purchases by one or more agencies, standardization of specifications and ability of suppliers to meet the needs of the state. Purchases an agency makes from a DAS contract are not subject to further approval by the Controlling Board unless capital funds are be used. In addition, purchases from DAS contracts are not applied toward the agency’s cumulative annual threshold (\$50,000 / \$75,000) established by the Office of Budget & Management.

### **II. Scope**

This Policy and Procedure will explain the contracting processes and the decision processes utilized by State Purchasing to determine which type of contract will best meet the needs of the State.

### **III. Policy**

State Purchasing will review all purchase requests to determine the most cost-effective and efficient method to establish the contract. In making this determination, State Purchasing will consider such things as, but not limited to:

- One or more agencies may require the supplies or services
- Supplies or services will be utilized on a routine or sporadic basis
- Specifications must reflect current technology to maximize competition
- Combining needs to take advantage of volume discounts

First consideration will be given to using competitive selection to establish contracts. If it is determined that use of competitive selection will not be in the best interest of the State, State Purchasing will utilize other methods as appropriate.

### **IV. Definitions**

“*Agency Specific Contract (ASC)*” means a mandatory use term contract established with one or more contractor(s) to provide specific supplies or services required by one state agency. ASC contracts may only be used by the named state agency.

“*Competitive Selection*” means any of the following procedures for making purchases:

- Competitive sealed bidding under section 125.07 of the Revised Code; or
- Competitive sealed proposals under section 125.071 of the Revised code; or
- Reverse auctions under section 125.072 of the Revised Code.

“*Controlling Board*” means a legislative body consisting of a President appointed by the Governor and legislators appointed by the House and Senate to review and approve contracts established by an agency under their direct purchase authority, the value of which exceeds their cumulative annual threshold or when capital funds are used to make the purchase.

“*General Distribution Contract (GDC)*” means a mandatory use term contract with one or more contractor(s) to provide specific supplies or services routinely required by state agencies over an extended period of time. Generally, GDC contracts are made available to all state agencies and Cooperative Purchasing members.

“*Limited Distribution Contract (LDC)*” means a mandatory use term contract established with one or more contractor(s) to provide specific supplies or services to specific state agencies. LDC contracts may be used by only the named agencies.

“*Multiple Award Contract (MAC)*” means a mandatory term contract established with multiple contractors for the same or similar item(s). MAC’s are mandatory contracts unless otherwise noted in the contract.

“*One Time Bid*” means a contract for a specific item(s) required by a specific agency for delivery at a pre-established time. Once delivery and acceptance are completed the contract is closed.

“*Optional Use Term Contract*” means a requirements contract for supplies or services with one or more contractors offering the same or similar item(s). The state may not be bound to procure all required needs from the contractor(s).

“*State Term Schedules*” means a contract for the same or similar item(s) negotiated with manufacturers offering their federal FSS agreements or with manufacturers offering their best pricing for similarly situated customers. STS’s are optional use term contracts.

“*Term Contract*” means a requirements contract for the routine purchase of supplies or services over a fixed period of time.

## **V. Procedures for Requesting a DAS Contract**

### **1) The Purchase Request**

The agency forwards the Purchase Request to State Purchasing using a memorandum or Requisition (ADM-0500), signed by an authorized representative of the agency. The signed document authorizes State Purchasing (DAS) to let a contract on behalf of the agency. State Purchasing will not proceed with any verbal purchase request.

The purchase request may include detailed specifications for the supplies or services, delivery times and locations, billing and invoicing information and any other special requirements of the agency. The purchase request will be time/date stamped upon receipt at State Purchasing and will be forwarded to the appropriate team manager. Team managers will meet weekly to review all purchase requests and re-bids/renewals of existing contracts for determination of type of contract and procurement method.

If managers concur that it is not practical or advantageous for State Purchasing to make the purchase, the agency will be granted a Release and Permit to make the purchase under their direct purchase authority or will be re-directed to the appropriate state agency (i.e.; State Architect, Office of Information Technology, Community Rehabilitation Programs, Ohio Penal Industries, etc.).

### **2) Procurement Method and Type of Contract**

State Purchasing managers will review the purchase request to determine which type of contract will be most advantageous and which process must be used to establish the contract. Their recommendations will be reviewed and approved by the State Purchasing Contracts Manager or Administrator, in his absence. The types of contracts and respective bidding processes include:

• One Time Bid (Spot Purchase Bid)	}	<i>Competitive Selection</i>
• Agency Specific Term Contract	}	<i>Competitive Selection</i>
• Limited Distribution Term contract	}	<i>Competitive Selection</i>
• General Distribution Term Contract	}	<i>Competitive Selection</i>
• Multiple Award Contract	}	<i>Controlling Board Approval</i>
• State Term Schedule	}	<i>Controlling Board Approval</i>

Factors to be considered when determining the type of contract include, but are not limited to:

- Dollar value per fiscal year is estimated to exceed direct purchase limits of \$33,500 for supplies or \$67,000 for services or cumulative annual threshold of \$50,000/\$75,000.
- The agency may make sporadic purchases (1-2 times per year), or more routine purchases (monthly, quarterly, etc.).
- The length of time the agency require the supplies or services.
- Potential that other agencies have a need for the supplies or services.
- Type of industry providing the supplies or services (i.e. stocking distributors, brokers, etc.).
- Pricing stability (firm-fixed price or flexible pricing).
- Availability of competition (multiple sources, specialized sources, sole source, etc.).
- Homeland security and/or emergency requirements

These and other related factors are to be used to determine the most appropriate type of contract that will best meet the need. Once the determination as to the type of contract has been made, the manager will assign the purchase to an analyst. The analyst may prepare the bidding documents using the specifications furnished by the agency as a baseline. The analyst will be responsible to conduct necessary research to ensure that specifications reflect the most current technology and that such specifications are not restrictive. The final version of bidding documents will be reviewed and approved by the manager, or contracts manager in his/her absence, prior to issuance to bidders and posting on the State Procurement website.

Typically, one time bids require a minimum of forty-five (45) calendar days to complete the process. Term contracts require a minimum of one hundred twenty (120) days for completion. Requests to expedite the process will be handled on a case-by-case basis. Once a contract has been established, agencies may purchase items from the contract at any time and in any volume thus eliminating process delays and requirements for maintaining local inventories to offset process delays.

### **3) Set Aside and EDGE Considerations**

State Purchasing and/or the DAS/Equal Opportunity Division will review purchase requests and/or existing term contracts to discuss those that may be good candidates for set aside to certified minority business enterprises under the state's set aside program or that may provide business opportunities for EDGE certified vendors.

#### **4) Evaluation and Award Process**

The analyst will follow established procedures for development of bid documents, advertising bid documents, evaluating bid responses and awarding contracts. When competitive selection processes are utilized, contracts will be awarded to the lowest responsive and responsible bidder on Invitations to Bid or to the most advantageous offeror on Requests for Proposals. When applicable, consideration will also be given to the domestic and in-state preferences.

#### **5) Signing Contracts**

All DAS contracts established by State Purchasing will bear the signature of the Director of Administrative Services. The Director may delegate signature authority to the Division Deputy Director, the Procurement Services Administrator, the State Purchasing Contracts Manager and the unit Procurement Manager to enter into contracts on behalf of the Department. All management level employees for the Office of Procurement Services will have an active professional certification from the Universal Public Purchasing Certification Council (UPPCC) of Certified Public Purchasing Officer (CPPO) to qualify for delegated signature authority from the Director. Levels of signature authority will be at the discretion of the Director of DAS.

#### **6) Contract Renewals for a New Biennium**

No contract may extend beyond June 30 of the current biennium. When the duration of a contract crosses a biennium, the analyst will prepare an amendment to the contract to affirmatively renew the contract for the balance of its term in the new biennium. All biennial contract renewals should be completed at least thirty days prior to the end of the fiscal biennium.

#### **7) Decision to Renew or Re-bid**

Generally, term contracts will contain a clause that will permit unilateral renewal for a minimum of thirty calendar days and/or renewal, by mutual agreement of all parties, for up to twenty-four months. All contract renewals are subject to approval of the Contracts Manager and/or the Administrator. In deciding whether to renew or re-bid a term contract, factors to consider include, but are not limited to:

- Do specifications of the existing contract reflect current technology?
- Does the existing contract meet the needs of the agency(ies)?
- Is pricing for the existing contract comparable with current market?
- Is there sufficient time to complete a rebid?
- Is there a sufficient number of new bidders to warrant a rebid?
- Is it in the best interest of the state to renew or rebid?

**State of Ohio**  
**Ohio Department of Administrative Services**  
**General Services Division**

**POLICY/PROCEDURE NAME:**     **Selecting Contracts for Set Aside**  
**POLICY/PROCEDURE NO.:**     **PUR-006**  
**DATE ISSUED:**                 **August 3, 2001**  
**DATE REVISED:**               **February 16, 2007**  
**RESPONSIBLE UNIT:**         **Office of Procurement Services**

### **I. Background**

The Office of Procurement Services/State Purchasing (“State Purchasing”) is responsible to establish contracts for a variety of supplies and services that are purchased routinely by state agencies. These contracts are established using either competitive selection or with approval of the state’s Controlling Board. Ohio law requires the Department of Administrative Services to set aside approximately fifteen percent (15%) of the aggregate value of all purchases for participation by minority business enterprises who have been certified by the DAS/Equal Opportunity Division. With respect to State Purchasing contracts, only those contracts that have been established through competitive selection are subject to set aside.

### **II. Scope**

State Purchasing maintains several types of contracts that are established through competitive selection:

- One Time Bid (Spot Purchase)
- General Distribution Term Contracts
- Limited Distribution Term Contracts
- Agency Specific Term Contracts
- Requests for Proposal

The final decision as to which contracts will be set aside lies with the Administrator of the Office of Procurement Services and/or the State Purchasing Contracts Manager. Agencies will be given an opportunity to have input into the final set aside determination to assist them with meeting their set aside goals. State Purchasing and the Equal Opportunity Division will review the term contracts annually and determine which contracts are candidates for set aside. This policy and procedure will describe the process used to make these selections.

### **III. Policy**

Prior to establishing a contract through competitive selection, consideration will be given to setting aside the purchase for participation by certified minority business enterprises only. State Purchasing will endeavor to select contracts, the aggregate value of which is estimated at 15% of the total value of all contracts, for set aside.

#### **IV. Definitions**

“*Competitive Selection*” means any of the following procedures for making purchases:

- Competitive sealed bidding under section 125.07 of the Revised Code;
- Competitive sealed proposals under section 125.071 of the Revised Code;
- Reverse auctions under section 125.072 of the Revised Code.

“*Minority Business Enterprise*” means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are residents of this state and are members of one of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Orientals.

#### **V. Considerations for Selecting a Purchase for Set Aside**

The agency may request that the intended purchase be set aside so as to apply toward their 15% goal, which will generally be honored. If an agency has not requested that the intended purchase be set aside, State Purchasing may elect to set aside the purchase to meet the 15% goal for DAS. Whenever an intended purchase is set aside and successfully awarded to a certified MBE, the agency may also claim purchases made under the contract as set aside purchases.

Factors State Purchasing may consider when selecting an intended purchase for set aside include, but are not limited to:

- There are sufficient qualified MBE’s available to bid on the purchase. Two or more qualified bidders must be available to foster competition. The analyst or purchasing assistant will prepare a list of certified MBE’s from the list of certified MBE’s maintained by EOD.
- The size and nature of the purchase may not be conducive to the MBE community registered for the product or service area. For example, expected volume of purchase activity requires distribution network that potential MBE community cannot provide.
- A significant number of other purchase requests for similar products or services have been selected for set aside. Issuing the new request to the open market will prevent a potential of repeatedly selecting entire categories of products or services for set aside.

If set aside, only those bids received from certified MBE’s will be opened following the standard process for bid opening.

A decision to not set aside the purchase must be approved by the State Purchasing Contracts Manager or the Administrator of Procurement Services. The agency will be advised of the final determination and the reasons supporting the determination prior to issuance of the bidding documents.

## VI. Procedures

**1) One Time Purchases & New Term Contracts.** The agency will forward their purchase request via the ADM-0500 Requisition (for One Time Purchases) or a memorandum (for term contracts). Either of these documents must be signed by a representative of the agency who is authorized to commit the agency to the purchase. These documents will also include product or service specifications, funding information, delivery information, etc. relative to the purchase. If the agency has requested the purchase be set aside, the purchasing assistant will prepare a list of certified MBE vendors who have registered for the respective supplies or services. The contract analyst will then discuss potential for set aside with the manager. If determined that the purchase is to be set aside, the analyst will proceed with preparation of the bidding documents in accordance with standard processes. If determined that the purchase will not be set aside, the manager will seek approval from the Contracts Manager or Administrator to bid the purchase to the open market.

**2) Existing Term Contracts.** Not later than January 1<sup>st</sup> of the current fiscal year, a listing of all active term contracts, that will expire in the approaching fiscal year, will be prepared. The list will not include contracts for fuel or mailing services or any other product category that has been exempted from set aside consideration by EOD Coordinator. A determination will be made as to which contracts will be renewed and which will be candidates for set aside in the approaching fiscal year. The list of active term contracts selected for set aside will be forwarded to EOD for their review and input.

**3) Set Aside Report.** The managers will prepare a report for the Contracts Manager indicating those contracts to be bid open market and those contracts to be bid set aside during the approaching fiscal year. Every effort will be given to meeting the 15% goal established by law. Precautions will be taken to avoid setting aside certain categories of supplies or services repeatedly. Tasks to be performed and questions to consider in preparing this report include, but are not limited to:

- Make complete copy of the term contract to include all addenda
- Prepare list of certified MBE's for each contract using the EOD database
- Note annual dollar value of contract
- Note if contract is currently open, set aside or partial set aside
- Note if current contractor(s) are open market or MBE companies
- Note if contract is broker based or stocking distributor based
- Note if contract has been set aside previously, and the number of times set aside
- Note past contract issues, if any (i.e. CTV's filed, informal performance issues, etc.)
- Note bidder disqualification and reason for disqualification
- Note required specification changes for next bid
- Note issues that could limit MBE participation (i.e. contract size, stocking distributors, etc.)
- Note if contract may be renewed for the next fiscal year
- Note if COOP contract
- Note if agency specific, if agency is agreeable to set aside
- Note if contract is to be cancelled and not renewed
- Note any additional information that may be helpful
- Number of qualified MBE's available to bid (minimum 2, 4 preferred)
- Note impact upon state if set aside (i.e. price competitive)
- Note impact upon DAS and agency goals if not set aside

The Contracts Manager will prepare a final report indicating the percentages of contracts to be bid open market and those to be bid set aside during the approaching fiscal year to include the estimated dollar

values and respective percentages. Every effort will be made to set aside a minimum of 15% of the intended purchases for the approaching fiscal year. Adjustments will be made to the lists, as necessary, to attain the 15% goal set forth by law.

The final report will be forwarded to Administrator and Deputy Director of GSD for review and approval. Once approved, the report will be forwarded to the Director of DAS no later than February 28<sup>th</sup> of the current fiscal year. The approved listing will then be distributed to managers and contract analysts. The list will also be distributed to EOD and other interested parties.

## **VII. Adjustments to the Approved Listing**

During the course of the approaching fiscal year it may be necessary to make adjustments to the approved list. Some examples include a change of status from MBE to open market or vice-versa, new contract offerings or cancellation of the contract. State Purchasing may select other contracts for set aside to offset any reductions so as to maintain the minimum 15% goal as required by law.

## **VIII. Recruiting Minority Businesses**

Law places the responsibility for recruitment and certification of minority business enterprises with the Equal Opportunity Division of DAS. State Purchasing will utilize the list of certified MBE's when determining which contracts will be set aside. If State Purchasing ascertains that insufficient MBE's exist to support setting aside of particular contracts to meet the 15% goal, notification will be forwarded to EOD of such situation and that State Purchasing will be unable to meet the goal established by law. State Purchasing will place a request that EOD either recruit and certify additional MBE's for respective product/service areas or exempt the category(ies) of product/services from the overall volume of purchases.

**State of Ohio  
Ohio Department of Administrative Services  
General Services Division**

**POLICY/PROCEDURE NAME:** Debarment  
**POLICY/PROCEDURE NO.:** PUR-015  
**DATE ISSUED:** December 01, 2005  
**DATE REVISED:** February 16, 2007  
**RESPONSIBLE UNIT:** Office of Procurement Services

### **I. Background**

The Department of Administrative Services is empowered by law to make purchases of supplies and services required by state agencies. The Office of Procurement Services has been delegated authority by the Director of DAS to develop and establish contracts for these supplies and services. A variety of methodologies are used to establish these contracts including competitive sealed bids, competitive sealed proposals, multiple award contracts, state term schedules and contracts negotiated with sheltered workshops. Many of these contracts are also made available to local governments and other political subdivision enrolled in the DAS Cooperative Purchasing Program.

### **II. Scope**

The processes used by Procurement Services to establish contracts are set forth in law and are designed to promote open competition and fairness to all vendors interested in selling their products or services to the state of Ohio. These processes are also structured to protect the interests of the State. Whenever a vendor does not follow the structured processes or does not properly perform a contract, the interests of the State could be placed into jeopardy. This Policy and Procedure was developed to address issues of non-conformance by a vendor in the procurement processes used by the State to procure supplies and services.

### **III. Policy**

The Office of Procurement Services will continuously monitor activities of vendors attempting to do or who are currently doing business with the State to ensure conformance to the procurement processes and that vendors properly perform contracts. If a vendor fails to comply, the vendor will be subjected to the remedies as set forth in this Policy and Procedure.

#### **IV. Submitting Bids and Awarding of Contracts**

When Procurement Services gives notice to the supplier community of its desire to establish a contract for supplies or services there is an expectation that interested businesses will submit bids, proposals and offers in accordance with established procedures and that they will honor their bids, proposals and offers upon award of a contract. A contract is awarded by Procurement Services with the expectation that both the vendor and the state have entered into the agreement in good faith and that both parties will perform their respective duties and obligations in accordance with the contract terms, conditions and specifications at the prices quoted. When a vendor fails to comply with these expectations, Procurement Services will take necessary action, pursuant to law, to resolve the problem and to protect the interests of the state. These remedies may include, but are not limited to:

1. Denial of contract awards;
2. Cancellation of existing contracts;
3. Seeking replacement items from alternative sources; and
4. Seeking reimbursement of any additional costs for such replacement items from the contractor.

When problems become so severe as to jeopardize the interests of the state, the Director of Administrative Services (“the Director”) or his designee may debar a contractor from participating in the business of the state. When implementing debarment efforts, the Director will follow the procedures set forth below.

#### **V. Causes for Debarment (ORC Section 125.25)**

The Director of Administrative Services may debar a vendor from consideration for contract awards upon a finding based upon a reasonable belief that the vendor has done any of the following:

1. Abused the selection process by repeatedly withdrawing bids or proposals before purchase orders or contracts are issued or failing to accept orders based upon firm bids; or
2. Failed to substantially perform a contract according to its terms, conditions, and specifications within specified time limits; or
3. Failed to cooperate in monitoring contract performance by refusing to provide information or documents required in a contract, failed to respond to complaints to the vendor, or accumulated repeated justified complaints regarding performance of a contract; or
4. Attempted to influence a public employee to breach ethical conduct standards or to influence a contract award; or

5. Colluded to restrain competition by any means; or
6. Been convicted of a criminal offense related to the application for or performance of any public or private contract, including, but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and any other offense that directly reflects on the vendor's business integrity; or
7. Been convicted under state or federal antitrust laws; or
8. Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract; or
9. Violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director; or
10. Through the default of a contract or through other means had a determination of unresolved finding for recovery by the Auditor of State under Section 9.24 of the Revised Code; or
11. Acted in such a manner as to be debarred from participating in a contract with any governmental agency.

## **VI. Procedures for Debarment**

A. Investigation and referral. State agencies and Cooperative Purchasing members may notify the Office of Procurement Services, in writing, of vendor performance issues by any of the following means:

1. E-mail via the internet or similar means
2. Vendor performance survey
3. Complaint to Vendor
4. Letter
5. Other

After the documentation has been reviewed and verified, and if the Administrator reasonably believes that grounds for debarment exist, the Administrator will prepare a written report to the Director setting forth such findings, including recommendation for debarment of the vendor.

B. Notice of debarment. When the Director reasonably believes that grounds for debarment exist, the Director will send the vendor, and any specifically named affiliate, officer, employee, or other individual or entity associated with the vendor, a notice of the proposed debarment. The notice must include at least the following:

1. Reasons for the proposed action;
2. The law or rule directly involved;
3. Statement that the vendor may request a hearing within thirty (30) days of the time of mailing the notice;
4. A statement that the vendor may be represented by his attorney or by such other representative as is permitted to practice before the agency;
5. A statement that the vendor may present his position, arguments, or contentions in writing;
6. A statement that the vendor may present evidence at the hearing and examine witnesses appearing before and against him;
7. Any other information the Director deems relative to the proposed debarment.

The notice will be given by registered mail, return receipt requested. A copy of the notice will be mailed to attorneys or other representatives of record representing the vendor. Whenever a notice sent by registered mail is returned due to failure of delivery, the Director will make personal delivery of the notice by an employee or cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known residence or business of the vendor is located. When notice is given by a publication, a copy of the newspaper, with the first publication of notice marked, will be mailed to the last known address and the notice will be deemed received as of the date of the last publication.

C. Request for hearing, notice of hearing, right to appeal. Whenever the vendor requests a hearing, the Director will immediately set the date, time and place for the hearing and immediately notify the vendor. The date set for the hearing will be within fifteen (15) days, but not earlier than seven (7) days after the vendor has requested a hearing, unless otherwise agreed between the Director and the vendor. If requested by the vendor in writing, the Director may designate the place of the hearing to be in the county seat of the county in which the vendor resides or maintains its principal place of business in Ohio or at a place within fifty miles of the vendor's residence or principal place of business. If the vendor is not a resident of and has no place of business in the state of Ohio, the Director will hold the hearing in Franklin county, Ohio. The failure of the Director to give notice for any hearing as required by Sections 119.01 to 119.13 of the Revised Code will invalidate any order entered pursuant to the hearing.

A vendor adversely affected by the order of the Director may be appealed in accordance with Chapter 119 of the Revised Code.

## **VII. Period of Debarment**

The Director will determine the length of the debarment period commensurate with the seriousness of the cause for such debarment up to, and including, permanent debarment. The Director, at his discretion, may rescind the debarment at any time if it is deemed to be in the best interest of the state of Ohio. After ninety days of the initial effective date of

the debarment, a vendor can apply for reinstatement, in writing, to the Director, citing actions taken to remedy the reason for debarment or steps taken to prevent a recurrence of the situation that caused the debarment. The Director may extend the period of the debarment if the Director that the extension is necessary to protect the interests of the state of Ohio.

### **VIII. Effect of Debarment**

During the period covered by the debarment any vendor, and any specifically named affiliate, officer, employee, or other individual or entity associated with the vendor who has been debarred by the Director shall be ineligible to do any of the following:

1. Be included on any vendor lists;
2. Receive and submit bids or proposals issued by the state for the procurement of supplies and services;
3. Be awarded a contract for supplies or services; and
4. Participate in any business activities with any state department, board, commission, or institution.

### **IX. Posting of Debarment Decision**

The Director will post notice of any debarment decision on the website maintained by the Office of Procurement Services.