

Board of Trustees of the Nebraska State Colleges

Fiscal Operations

POLICY
NAME: Contracts and Agreements

POLICY
NUMBER: 6401

A. PURPOSE

To ensure that all situations involving a contract or agreement (hereinafter referred to as contracts) for acquiring goods and services are clear and that the appropriate process is followed when entering into a contract. A contract is necessary whenever a legal relationship is established consisting of rights and duties that go beyond the sale transaction details.

B. DEFINITIONS

1. **Contract** - A written agreement between two or more parties creating legally enforceable obligations. Whether a document is titled as a contract, an agreement, a memorandum of understanding, or any other type of cooperative undertaking, any written arrangement wherein parties exchange value, such as the exchange of services for payment, is legally considered to be a contract. The relationship's legal status does not change just because the document is labeled as something other than a contract.
2. **Informal Bids:** Informal bids are price quotations for services which are secured by telephone calls or letters to potential vendors or from the vendors' published material.
3. **Formal Bids:** A formal bid is a written quote from a vendor which may include a facsimile quote or an email.
4. **Competitive Sealed Bids:** Price quotations secured from vendors by means of an advertised Request for Proposal (RFP). An RFP is a document that announces a project, describes the scope of the project, details criteria for bids, and solicits bids from vendors. A minimum of fifteen (15) calendar days shall elapse between the time the RFP is advertised and the time of the bid opening. Bids must be opened in the manner, time and date specified in the RFP. Facsimile quotes or emails received by the College are not allowed during this competitive process.
5. **Information Technology (IT):** IT services include any contracting or support provided by vendors related to software systems or IT equipment.

- 6. Emergency:** Any situation where it is necessary to enter into a contract to (a) avoid the loss of life, health, safety or property; (b) respond to time limits established by an external authority; (c) ensure the continuation of an essential College service, function, utility, facility or (d) avoid, correct or repair a situation outside the control of the College including detrimental negligence or acts of an employee, natural or manmade disasters.

C. POLICY

1. Application of Policy

- Policy 6401 applies to all situations where there will be a contractual relationship or terms established in writing with a third-party except capital construction and facility maintenance and repair, and where the purchase of fixed facility equipment acquisitions will involve a contract, which fall under Policies 8064 through 8066.
- Any contract related to IT consulting or services must also adhere to the requirements laid out in Policy 7018.
- Purchases of insurance are not subject to these bidding and contract requirements, instead refer to Policy 6608.

2. Contract Thresholds

Thresholds are determined based on the total contract amount for the initial term of the contract, not to include renewal periods. All contracts shall conform to the following thresholds for bidding and contract signature approvals.

2.1. All Contracts Except for Consulting Agreements

- Contracts less than \$25,000
 - Signed by the President, Vice President for Administration and Finance (VPAF) or Vice President for Academic Affairs (VPAA).
 - No bid is required when the contract will be less than twenty-five thousand dollars (\$25,000). If it is determined by the College or System Office that solicitation of bids for contracts costing less than twenty-five thousand dollars (\$25,000) would result in a lower cost or better service, informal bids may be secured by telephone or in writing.
 - No contract is required for repair or maintenance services less than twenty-five thousand dollars (\$25,000) to moveable equipment, vehicles, and furnishings.
- From \$25,000 but less than \$150,000
 - Signed by the President, VPAF or VPAA.

- The contract is awarded using a formal bid process. If it is not possible to get three (3) bids, the process and reasons should be documented.
- \$150,000 but less than \$300,000
 - Contract is awarded based on a competitive sealed bid process.
 - Signed by the President, VPAF or VPAA.
- \$300,000 and above
 - Contract is awarded based on a competitive sealed bid process.
 - Requires Board approval or Board authorization for the Chancellor to approve.
 - Signed by the Chancellor, Vice Chancellor for Finance and Administration (VCFA) or General Counsel; and the President, VPAF or VPAA.

2.2 Consulting Contracts

- Contracts less than \$75,000
 - Signed by the President, VPAF or VPAA.
 - No bid required when the contract will be less than seventy-five thousand dollars (\$75,000). If it is determined by the College or System Office that solicitation of bids for contracts costing less than seventy-five thousand dollars (\$75,000) would result in a lower cost or better service, informal bids may be secured by telephone or in writing.
- From \$75,000 but less than \$150,000
 - Signed by Chancellor, VCFA or General Counsel; and the President, VPAF or VPAA.
 - The contract is awarded using a competitive sealed bid process. A minimum of three (3) quotes is necessary. If it is not possible to get three (3) bids, the process and reasons should be documented.
- \$150,000 or more
 - Requires Board approval or Board authorization for the Chancellor to approve.
 - Signed by the Chancellor, VCFA or General Counsel; and the President, VPAF or VPAA.
 - Contract is awarded based on a competitive sealed bid process.

3. General Bid Requirements

3.1. Minimum Number of Bidders

If services are to be purchased by competitive sealed bidding, the College or System Office shall prepare standards and specifications for the RFP in such a manner it will be possible for three (3) or more vendors to submit competitive bids. If bids cannot be obtained from three (3) bidders, bids may be accepted from a fewer number of bidders than three (3), upon documentation of the bidding process, including the companies contacted.

3.2. Bid Timelines

The RFP shall state the manner, day and time upon which bids shall be returned, received and opened.

3.3. Bid Preference

When a public bid is to be awarded to the lowest bidder, a Nebraska residential bidder shall be allowed a preference over a nonresident bidder from a state, which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder. This provision shall not apply to any contract for any project upon which federal funds would be withheld because of such provisions.

3.4. Nondisclosure

No person who is in charge of any bids prior to the time fixed for opening, shall open them prior to the time or otherwise disclose to any bidder the contents, amount or other details of any rival bid.

3.5. Lowest Bidder

All purchases of services shall be made from the lowest bidder, taking into consideration the best interest of the College, the quality of the materials proposed to be supplied, conformity with specifications, the purposes for which required, and the times of delivery. In determining the lowest bidder, in addition to price, the College may develop criteria specific to a purchase or may give the following elements consideration when appropriate:

- The ability, capacity and skill of the bidder to meet the specifications;
- The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- Whether the bidder can meet the delivery expectations;
- The performance on past awarded bids;
- The previous and existing compliance by the bidder with laws relating to the contract;
- The life-cycle costs of the personal property in relation to the purchase price and specific use of the item;

- The performance of the materials, taking into consideration any commonly accepted tests and standards of product usability and user requirements; and
- Such other information as may be secured having a bearing on the decision to award the bid.

3.6. Bid Rejection

Any or all bids may be rejected, including the bid of any bidder who has failed to perform a previous contract with the Colleges or the State of Nebraska. In any case, where competitive bids are required all bids rejected, and the proposed purchase is not abandoned, new bids shall be called for as in the first instance.

4. Compliance Requirements

4.1. Contract Execution

No work should be performed under the contract until it has been signed by all parties. No contract, lease, or purchase agreement that requires approval by the Board or Chancellor shall be signed or finalized in any form until the Board or Chancellor has authorized the College to enter into the contract.

4.2. Contract Cancellation

Contracts can only be cancelled by individuals who are authorized to sign contracts on behalf of the College.

4.3. Non-Appropriation Clause

No contract may commit funds for a future fiscal year, unless specific funding has been identified in a Legislative appropriation bill or an appropriate cancellation clause has been inserted in the contract.

4.4. Contract Negotiation and Authorization

College departments are responsible for negotiating contracts prior to submission to the appropriate Vice President. The Presidents and VPAFs are primarily responsible for signing College contracts, however, the VPAA may sign contracts of an academic nature including, but not limited to, Academic Collaborations, Partnerships and Affiliations; Academic Transfer or Articulation Agreements; Academic Camps; Community Service and Service Learning; International Travel; Library Collections; academic events, speakers or activities; and work-based learning experiences, such as internships, practicums, clinical placements, student teaching, etc.

4.5. Chancellor Approval

The Chancellor can execute and sign a contract in place of the President, VPAF or VPAA for a College.

4.6. Contract Reporting

Contracts over one hundred fifty thousand dollars (\$150,000) and all subsequent change orders, addenda and amendments over fifty thousand dollars (\$50,000) shall be reported to the Board.

4.7. Contract Form

- The NSCS standard contract forms are to be used whenever possible. (See Contracts and Procurement found at www.nscs.edu.)
- In cases where there are no alternatives to using vendor contract forms, the applicable provisions of the appropriate NSCS form need to be incorporated into the contract.
- If an online user agreement (sometimes referred to as a “click-through agreement”) is required for a purchase, the terms and conditions are to be approved by the appropriate Vice President.

4.8. Equal Opportunity Statements

All contracts will contain equal opportunity statements to ensure compliance with Federal Government requirements associated with Title VI and Title VII of the Civil Rights Act of 1964, and other appropriate equal opportunity procurement policies.

4.9. Drug-Free Workplace

All contractors and vendors responding to bids with a College must establish and provide proof of a drug-free workplace policy or submit a statement that they are in compliance with the State of Nebraska’s Drug-Free Workplace requirement.

4.10. Fair Labor Standards Compliance

All bids shall include a statement that they are complying with, and will continue to comply with the fair labor standards in the pursuit of their business and in the execution of the contract on which they are bidding. Fair labor standards shall mean wages paid and conditions of employment as are paid and maintained by at least fifty percent (50%) of similar businesses. If it is shown that any contractor submitting a bid has not complied with fair labor standards, such lack of compliance shall be the basis for disqualification of the bid.

4.11. Independence and Conflict of Interest

- While an employee, as a prospective user, may informally seek information and confer with a vendor about services and prices, negotiation for purchase of services must be done in compliance with the College and Board policies.
- The principal purchasing agent shall retain responsibility for assuring compliance with procurement procedures.

- If correspondence is carried on between a prospective use and a vendor, copies of such correspondence shall be included, along with other price documentation accompanying a purchase order, to the extent determined appropriate by the principal purchasing agent. Employees are to be aware of and follow the conflict-of-interest requirements stated in Policy 5002 when working with potential vendors.
- No employee shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any services, nor in any firm, partnership, corporation or association furnishing them. No such person shall receive or accept directly or indirectly from any person, firm or corporation submitting any bid or to whom a contract may be awarded, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future reward or compensation.

4.12. Threshold Adherence

All services shall be bid as a single whole item. In no case shall services be divided or broken-up in order to produce several small contracts, which are of an estimated value below that required for bidding.

4.13. Work Eligibility Status

Contractors that are an individual, LLC, or sole proprietorship must complete the "United States Citizenship Attestation Form". All other contractors shall register and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

4.14. Disabled Veteran or Enterprise Zone Act Preference

- In accordance with state law, when a state contract is to be awarded to the lowest bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.
- Resident disabled veteran means any person who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense.
- The resident disabled veteran must own and control a business or, in the case of a publicly owned business, more than fifty percent (50%) of the stock must be owned by one (1) or more persons that meet the

definition of a resident disabled veteran. The management and daily business operations of the public business must also be controlled by one (1) or more persons meeting the definition of resident disabled veteran.

4.15. Federal Funding

When services are purchased with federal funds, federal purchasing requirements must also be followed. For those purchases meeting the federal definition of a “covered transaction”, the purchaser shall verify that the potential vendor has not been suspended or debarred.

5. Contracts Delegated to Colleges or System Office

The following contracts do not require review and approval by the Board or the Chancellor, but must adhere to approval and bidding requirements, if appropriate:

- Any contract that establish placements for students to complete work-based learning experiences, such as an internship, practicum, clinical placement, student teaching, etc.
- Any community service and service learning contract.
- Any Northeast Nebraska Teacher Academy agreement (NENTA).
- Any articulation agreement to determine course equivalencies in accordance with Board Policies.
- Any bus chartering contracts.
- Any contract for the purchase of supplies and commodities used in the regular course of business operations.
- Any contract for the purchase of a license to use a mailing list, email list, or similar list of contracts.
- Any contract for the purchase of utilities, gasoline, oil, diesel fuel, or wood chips used in the regular course of business operations. Utilities shall include trash services, cable television and internet services.
- Any contract for the purchase of material to be added to the collection of any College library.
- Any contract with the state or federal government for the provision of Financial Aid.
- Any contract or change order or addendum associated with an emergency approved by the Chancellor.

6. Exceptions, Emergencies, and Sole Sourcing

6.1. Exceptions to Bidding Requirements

The following are exceptions to the bid requirements. Documentation justifying the exception should be kept on file by the College or System Office:

- Software license renewals.
- Technology resource maintenance contracts.
- Purchasing services from a previously competitively bid government contract, including the State of Nebraska, the University of Nebraska System, or a multi-state compact contract.
- When pricing has been established by the federal General Services Administration.
- Placement of ads or advertising.
- Purchase of insurance as addressed in Policy 660.
- Other exceptions include medical clinic and nursing services.

6.2. Emergency

Emergency purchases shall be documented by the College and submitted to the President, VPAF or VPAA, for approval by the Chancellor. Chancellor approval of an emergency automatically includes the suspension of bidding requirements as appropriate for each emergency. Emergency shall mean any situation where it is necessary to purchase something to:

- Avoid the loss of life, health, safety, or property.
- Respond to time limits established by an external authority.
- Ensure the continuation of an essential College service, function, utility, facility or computer/software system.
- Avoid, correct or repair a situation outside the control of the Colleges, including detrimental negligence or acts of an employee, natural or manmade disasters, and security or data compromise.

6.3. Sole Source

Documentation to purchase based on sole source without competitive bids or proposals shall be documented by the College and approved by the President, VPAF, or VPAA and given System Office approval by either the VCF or VCFA. A sole source purchase is when there is only a single feasible or sole source for the services. A single feasible or sole source exists when:

- Services are proprietary and only available from the company or a single entity.
- The same vendor/contractor of an installed pilot project system is required to install expansions to that system.

- Factory authorized maintenance services must be utilized in order to maintain a warranty or integrity of system.
- Only one (1) type of product or solution or software exists for a specific application.
- The services of a particular provider are unique, e.g. entertainers, authors, etc.
- Based on current research, it is determined that only a single entity services the region in which the services are needed.

7. Contracts Requiring Board Approval at Any Amount

7.1 Revenue Bond Auditors

All revenue bond auditor contracts as detailed in Policy 6800, require Board approval regardless of dollar amount. All contracts related to revenue bond facilities will be in accordance with the indentures, statutes, and related Board policies.

7.2 Educational Partnerships

- All contracts establishing collaborative, educational partnerships, and international study abroad trips require Board approval. Contracts, Memorandum of Understandings, or Agreements establishing collaborative, educational partnerships between the Colleges and external entities must be approved in advance by the Board and signed by the Chancellor.
- Contracts related to international study abroad trips are considered educational partnerships and must be approved in advance by the Board.
- Contracts that are solely for the purpose of exploring the potential for future substantive contracts do not require approval of the Board and shall be signed the President or the VPAA.

7.3 Food Service and Bookstore Contracts

All external food service and bookstore contracts require Board approval in advance per Policies 9300 and 9500.

8. Consultant Contract Guidance

The Board recognizes the value and financial savings that may accrue from the use of experienced consultants to the Board, staff and faculty on special aspects of College and System Office programs. Since no College can include in its personnel appointments all the highly qualified and widely experienced people on all phases of College or System Office operations, the Board will therefore contract from time to time, as appropriate, with individuals or groups for special consulting services.

8.1. CPA Firms, Lobbyist and Search Consultants

The hiring and retention of personnel, excluding annual auditors which are approved by the Board, hired for a duration greater than five (5) days for any College or the System Office, shall be approved by the Chancellor. The Chancellor is delegated the responsibility for selecting and negotiating these services on behalf of the Board. The Chancellor shall determine if a contract is necessary. A competitive process is not required. In each instance the Chancellor shall notify the Board.

8.2 Legal Services

All legal services shall be coordinated through the System Office as approved by the Chancellor. The Colleges are not authorized to obtain legal services or hire attorneys.

8.3 System Consultants

The Chancellor is delegated the responsibility for selecting and negotiating on behalf of the Board, all other special consulting contracts for the System where the total cost is expected to be under one hundred fifty thousand dollars (\$150,000). Such contracts shall be signed by the Chancellor, VCFA or General Counsel.

FORMS/APPENDICES:

None

SOURCE:

Legal Reference:	Neb. Rev. Stat. 4-114	Public employer and public contractor; register with and use federal immigration verification system; Department of Labor; duties.
	Neb. Rev. Stat. 73-107	Resident disabled veteran or business located in designated enterprise zone; preference; contract not in compliance with section; null and void.

Neb. Rev. Stat. 85-304

Board of trustees; powers and duties,
enumerated.

Policy Adopted: July 1983

Policy Revised: March 1994, June 1995, April 2007, November 2011, March 2013, September 2013, November 2014, June 2015, May 2016, June 2017, September 2018, March 2019, September 2019, April 2020, July 2020, September 2021, April 2022, November 2022, April 2023, April 2024