

Board of Trustees of the Nebraska State Colleges

Facilities

POLICY NAME: Capital Construction, Facility Maintenance and Repair Contracts, and Fixed Equipment Acquisitions

POLICY NUMBER: 8064

A. PURPOSE

To explain requirements for capital construction, facility maintenance and repair contracts, and the process for acquiring fixed equipment.

Acquiring moveable equipment must follow Policies 6400 and 6401. Professional consulting services related to capital construction must follow Policy 8066.

B. DEFINITIONS

1. **Construction Project:** Any new facility, expansion of a current facility, major remodeling, or renovation of a current facility.
2. **Maintenance and Repair Project:** The routine upgrades, replacements of facility components, or repairs to current facilities.
3. **Informal Bids:** An Informal Bid is a written quote from a vendor which may include a facsimile quote or an email from the vendor.
4. **Formal Bids:** Bids or proposals secured from contractors, vendors and bidders by means of an advertised public notice bid solicitation or 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. A minimum of fifteen (15) calendar days shall elapse between the time the public notice or RFP opportunity is advertised and the time of the bid opening. Bids must be opened in the manner, time and date specified. Facsimile quotes or emails received by the institution are not allowed during this formal process.
5. **Facility or Facilities:** Any buildings or structures, above or below ground. May also refer to campus grounds, landscaping, and utility systems.
6. **Capital Construction Project:** A project estimated at \$2,000,000 and above for renovation and new construction of programmatic spaces, per Policy 8060.
7. **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.

8. Fixed Equipment: Equipment that is affixed to the facility and is not movable.

C. POLICY

1. Contracting and Fixed Equipment Acquisition Thresholds

All contracts and fixed equipment acquisitions shall conform to the following dollar thresholds and bidding process.

1.1 Less than \$50,000 – Bids not required

Competitive bidding is not required for projects and fixed equipment that are less than fifty thousand dollars (\$50,000). The College may contract directly with a contractor after negotiating a contract price that is reasonable and within budget.

- No contract is required for repair, maintenance, or construction services less than fifty thousand dollars (\$50,000) for fixed equipment, facilities, and grounds.

1.2 From \$50,000 but less than \$300,000 – Informal Bid process

Construction and fixed equipment contracts with a total cost between fifty thousand dollars (\$50,000) and less than three hundred thousand dollars (\$300,000) shall observe the following bidding procedure.

- Three (3) or more quotations shall be solicited from bidders. Original quotations may be obtained in writing or verbally. Any verbal quotations must be followed up with a written or faxed confirmation for project files.
- A fixed bid receipt date or public opening is not required.
- A contract shall be executed for the project after negotiating a price that is reasonable and within budget.
- All resulting quotations or refusals to quote shall be documented by the College.

1.3 \$300,000 or more – Formal Bid process

Construction and maintenance contracts and fixed equipment with a total cost of three hundred thousand dollars (\$300,000) or more shall use the Formal Bid process.

2. Project and Contract Approvals

2.1. Approval of Projects

- No capital construction, maintenance or repair contract may commit funds for a project until the funds have been identified and approved by the Board, with the exception of Task Force for Building Renewal 309 funds.
- While Task Force projects must follow all other requirements in this Policy, unless otherwise noted, 309 funding does not have to be accepted by the Board prior to committing funds in accordance with this Policy.
- For state funded projects, the appropriation must have been received before construction contracts are submitted for approval.
- For revenue bond projects, bond proceeds or surplus funds must be available, and their expenditure approved by the Board before construction contracts are executed.

2.2 Contracts and Change Orders for College Approval and Execution

The President or Vice President for Administration and Finance (VPAF) is delegated the responsibility for bidding, negotiating, and signing on behalf of the Board the following types of construction contracts and any related change orders/addenda.

- Any contract for the construction, alteration, renovation, remodeling, repair, or demolition of any building or other improvement to real property, under which payment by the College will be less than three hundred thousand dollars (\$300,000).
- Contracts with architects or engineers or consultants where the fee will be less than one hundred fifty thousand dollars (\$150,000).
- Contract change orders, addenda and amendments involving each additional expenditure under one hundred fifty thousand dollars (\$150,000).

2.3 Board Approval of Contracts and Change Orders

The following types of contracts are to be submitted to the Board for approval.

- Capital construction, facility maintenance or repair contracts amounting to three hundred thousand dollars (\$300,000) or more.
- Any contract with an engineer or architect where the fee will be one hundred fifty thousand dollars (\$150,000) or more.
- Contract change orders and addenda involving additional expenditure of one hundred fifty thousand dollars (\$150,000) or more.
- Once approved by the Board (or the Chancellor per 2.4 below), the construction or maintenance contract shall be signed by the President

or VPAF, and then by the Chancellor, Vice Chancellor for Finance and Administration (VCFA) or General Counsel. A contract signed by the vendor should be available for execution at the Board meeting when approved.

2.4 Board Approval Exception: Chancellor Authorization to Approve and Sign Contracts and Change Orders

If approval of any construction or maintenance contracts and change orders are critical to the schedule of the project, the Chancellor is authorized to approve and sign these contracts and change orders at the following thresholds.

- The Chancellor shall be authorized to approve construction and maintenance contracts of three hundred thousand dollars (\$300,000) or more, so long as the Board has authorized the project and compliance with all specifications, bidding and contract procedures has taken place. Notification of these approvals shall be provided as an information item to the Board at a subsequent meeting.
- The Chancellor shall be authorized to approve engineer or architect contracts of one hundred fifty thousand dollars (\$150,000) or more, so long as the Board has authorized the project and compliance with all consultant selection procedures has taken place. Notification of these approvals shall be provided as an information item to the Board at a subsequent meeting.
- If approval of a contract, change order or addenda requires immediate action, the Chancellor has the option of approving it as an emergency similar to 4.2 below. Such approved emergency contracts, change orders and addenda will be provided as an information item at the next Board meeting.

3. Formal Bidding Requirements

The details below must be followed when using a Formal Bid process to award a contract.

3.1. Specifications

All specifications and plans for buildings to be renovated or constructed are to be prepared by professional architects and/or engineers in accordance with state law. The specifications and plans shall be prepared to conform with the budget amount authorized for that project.

3.2. Advertising

A public notice for construction shall appear once in a publication based in or near the locality of the project and in other widely circulated publications and electronic platforms as deemed necessary by the College. A copy of the advertisement shall be kept on file with the College. The notice shall not appear on a weekend or holiday. A minimum of fifteen (15) calendar

days shall elapse between the time Formal Bids are first advertised or called for and the time of their opening. The notice, bid specifications or RFP shall include, at a minimum, the following information.

- Name of Board of Trustees and the College
- Description of project
- Date, place and time when bids must be received
- Person to contact for information
- Locations where bid documents can be viewed/obtained

3.3. Bid Submission and Opening

Bids shall be submitted in a sealed envelope with notation of the project on the front. Bids shall be opened on the date, time and place as advertised. The bid opening shall be conducted in public so that all bidders and interested parties may be present. No bids are to be received after the specified time and if so, are to be returned unopened. The bidder's envelope is to be attached to the back of the bid form. College staff or the professional consultant shall be responsible for opening and reading aloud the bids. Bid documents shall be considered public information after they have been opened. The following requirements shall be noted at the time of opening the bid.

- Conformance with bidding instructions
- Accompanied by bid bond or certified check or sent in separately in case of a bid submitted electronically
- Acknowledgment of any addendum
- Bid is signed

3.4. Evaluation

When bids are received, publicly opened and read, the contractors shall not be notified of the final decision until a later date so that adequate study and analysis can be made of the bids received. The professional consultant shall evaluate the bids received and make a recommendation to the College. Awarding of the contracts shall be based on competitive bidding with award to the lowest bidder, taking into consideration the best interests of the State of Nebraska and the System, the quality or performance of the firm and the materials to be supplied, their conformity with specifications, and the times of completion. In determining the lowest bidder, in addition to price, the following elements shall be given consideration.

- The ability, capacity and skill of the bidder to perform the contract required;

- The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- Whether the bidder can perform the contract within the time specified;
- The quality of performance of previous contracts;
- The previous and existing compliance by the bidder with laws relating to the contract;
- Energy efficiency ratio as stated by the bidder for alternative choices of appliances or equipment;
- The life cost of the article or property in relation to the purchase price and the specific use of the item;
- The performance of the article or property, taking into consideration any commonly accepted tests and standards of produce usability and user requirements; and
- Such other information as may be secured having a bearing on the decision to award the contract.

3.5. Bid Acceptance

The recommendation, bid tab sheet and other applicable materials shall be kept on file by the College for review. If less than three (3) bids or proposals are received, then bids may be accepted upon documentation of the bidding process. If the recommendation is to reject the lowest bid for any one or more of the reasons stated above, the recommendation must include the reason(s) for the rejection. The Nebraska State College System (NSCS) always reserves the right to reject any or all bids.

4. Exceptions, Emergencies and Sole Sourcing

4.1. Exceptions to Bidding Requirements.

The following are exceptions to bidding requirements. Documentation justifying the exception should be kept on file by the College.

- Purchasing from a previously competitively bid government contract, including the State of Nebraska, the University of Nebraska System, or a multistate compact contract. Competitively bid government contracts by non-government entities, such as consortiums, organizations, and partnerships, are also included.
- When pricing has been established by the federal General Services Administration
- Utilities and fuels, including woodchips
- Advertising for facility projects
- Facility maintenance agreements

4.2. Emergency

- Proposed emergency projects and fixed equipment acquisitions meeting the definition of an emergency shall be documented by the College and submitted to the Vice Chancellor for Facilities (VCF) for approval by the Chancellor.
- Chancellor approval of an emergency automatically includes the suspension of bidding requirements as appropriate for each emergency.

4.3. Sole Source

A sole source exception would be permitted where there is only one firm with the necessary skillset to perform the services or there are other extenuating circumstances. Documentation to hire a vendor based on sole source without competitive bids or proposals shall be documented by the College and approved by the VPAF and either the VCF or the VCFA. A sole source situation may exist under the following conditions.

- Services are proprietary and only available from the manufacturer of a building system or equipment and the vendor is the only firm providing the unique expertise.
- Additions to a system must be compatible with the original equipment or facility software.
- The same vendor of an installed system is necessary to install expansions to that system.
- Factory authorized maintenance services must be utilized to maintain a warranty or the integrity of system.
- Based on current research, it is determined that only a single entity services the region in which the project is needed.
- Donors providing the funding for an item, service or system may specify a particular vendor, manufacturer, or brand of equipment to be used for the project.

5. General Contract Guidance

5.1. Performance Bond

For any construction project that has a total cost of more than three hundred thousand dollars (\$300,000), the successful bidder for the project shall be required to furnish a Performance Bond and a Labor Material Payment Bond, each in the amount of one hundred percent (100%) of the contract sum and written by a Surety licensed to do business in the State of Nebraska.

5.2. Resident Bidder Preference

When a public contract is to be awarded to the lowest bidder, a resident bidder shall be allowed a preference over a nonresident bidder from a state which gives or requires a preference to bidders from that state.

5.3. Contract Negotiation and Legal Requirements

A contract may be conditioned upon later refinements in scope and price and may permit the College, with written agreement by the contractor, to make changes in the project or the purchase without invalidating the contract. Later refinements shall not exceed the budget or available funding for the project.

5.4. Fair Labor Standards Compliance

All bidders on College projects must file a statement that they are complying with, and will continue to comply with, fair labor standards in the pursuit of their business and in the execution of the contract on which they are bidding.

5.5. Drug Free Workplace Compliance

All bidders must also comply with the State of Nebraska's Drug Free Workplace requirement. The proposal form used to bid projects shall contain a clause, which, when the proposal is signed by the bidder certifies that the firm has a drug free workplace policy in accordance with State requirements.

5.6. Non-Discrimination Requirement

The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended, the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, as amended, and Board Policy 5000. Unlawful harassment and/or discrimination in employment and procurement is prohibited. The Contractor further agrees to insert a similar provision in all subcontracts for services.

5.7. Contract Forms

- All contracts for construction and maintenance projects and related services of three hundred thousand dollars (\$300,000) or more will be reviewed by General Counsel or VCF prior to submission to the Board for consideration and action.
- Contract forms developed by the System Office may be used for all construction and other related services where the cost will be less than three hundred thousand dollars (\$300,000).
- If the project will be three hundred thousand dollars (\$300,000) or more, and a professional architect or engineer has designed and specified the project, the latest applicable American Institute of Architects (AIA) contract form must be utilized and must incorporate the standard NSCS Long Form provisions.

5.8 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.

5.9 Independence and Conflict of Interest

- No College employee or Board member shall furnish or cause to be furnished any technical information or solicit proposals and/or prices or take any type of action, which would or could be construed to give a direct or indirect advantage or disadvantage to a potential bidder for a College project.
- No person shall attempt to influence in any way or participate or assume responsibility in the evaluation of proposals and selection of contractors when participation constitutes a conflict of interest.
- While an employee, as a prospective user, may informally seek information and confer with a vendor about services and product prices, negotiation for purchases of services and products 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 user 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 below when working with potential vendors.
- An employee, employee's family member, and/or business with which the employee is associated shall not enter into a College or System contract valued at two thousand dollars (\$2,000) or more, in any one (1) year, unless the contract is awarded through an open and public process in compliance with Neb. Rev. Stat. §49-14,102.
- An employee should not be involved in an advisory or decision-making capacity relating to College or System purchases where the employee, employee's family member and/or business has a financial interest.
- If an employee, the employee's family or a business with which the employee is associated has a financial interest directly, or indirectly in a College or System purchase the Vice Chancellor for Finance & Administration must review information regarding the financial interest and approve the terms of the purchase and/or contract in advance.
- Employees or employees' family members may not receive or accept, either directly or indirectly, by rebate, gift, or otherwise, any money or other specific item of value whatsoever, or any promise, obligation or

contract for future reward or compensation from any vendor, person, firm, corporation or other entity which is conducting business with the College or System.

- For purposes of this Policy, a direct or indirect financial interest does not include de minimis holdings or transactions that are unlikely to influence, or appear to influence, the employee's decision making. A financial interest shall be considered de minimis if: the value of the interest in a publicly traded entity does not exceed \$5,000 in aggregate, including stock, stock options, or other ownership interests; and, the employee does not serve in a managerial, board, or executive capacity with the entity; and, the interest does not represent more than 1% ownership in the entity.

5.10 Threshold Adherence

In no case shall materials and services be divided or broken up to avoid required bidding.

5.11 Reporting to the Board

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.

5.12 Disabled Veteran or Enterprise Zone Act Preference

- In accordance with state law, when a 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 operations of the public business must also be controlled by one (1) or more persons meeting the definition of resident disabled veteran.

5.13 Work Eligibility Status

Contractors shall register and use a federal immigration system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

5.14 Payments

For construction contracts of \$300,000 or more with phased payments and retainage requirements, the payment schedule shall be as follows.

- Every application of payment shall be based on a portion of the Contract sum, properly allocable to the completed portion of work and shall be reviewed and payment authorized by the architect/engineer. A retainage of five percent (5%) shall be kept until the project reaches substantial completion, except that ten percent (10%) retainage may be used on projects fully funded by the 309 Task Force for Building Renewal, and small projects, as determined by the College.
- When the project reaches final completion, the retainage will be paid in full.

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. 72-802	Public buildings; plans and specifications; limitations; bids; appropriations; limits; exceptions; violation; penalty.
Neb. Rev. Stat. 72-803	Public buildings and grounds; construction; improvement and repair; contracts; bidding; procedure; exceptions.
Neb. Rev. Stat. 73-102	Fair labor standards; statement of compliance required.
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. 81-1108.43	Capital construction project; prohibited acts; exceptions; warrant; when issued.
Neb. Rev. Stat. 81-1114	Department of Administrative Services; building division; powers; duties, and responsibilities.
Neb. Rev. Stat. 81-3449	Practice of architecture; exempted activities.
Neb. Rev. Stat. 81-3453	Practice of engineering; exempted activities.
Neb. Rev. Stat. 85-304	Board of trustees; powers and duties; enumerated.

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