

## ITEMS FOR DISCUSSION AND ACTION\ACADEMIC AND PERSONNEL

January 14, 2020

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***ACTION:***                                    **First Round Approval of Revisions to Board Policy 7010; Purchases; Bids; Public Lettings; Board Policy 7015; Contracts; Limitations, Exemptions and Board Policy 7016; Contracts; Consulting Services**

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The revisions to these policies expand contract signing authority to include the Vice Presidents for Academic Affairs. The Presidents requested this change to increase contracting efficiencies particularly with contracts that are academic in nature.

The System Office recommends approval of the Revisions to Board Policies 7010; 7015; 7016.

**ATTACHMENTS:**

- Revisions to Board Policy 7010      (PDF)
- Revisions to Board Policy 7015      (PDF)
- Revisions to Board Policy 7016      (PDF)

# BUSINESS MANAGEMENT, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 7010**

**Purchases; Bids; Public Lettings**

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## BOARD POLICY

### Applicability

Board Policy 7010 applies to bidding and purchases of general items, supplies and ordinary services. Board Policy 7016 applies to contracts for legal counsel, auditor, lobbyists, search consultants, and other consultants and specialized services not associated with facilities or information technology in the 8000 series Board policies. Policy 8064 applies to construction, facilities and Information Technology (IT) related purchases and bidding, and includes facilities related purchases such as carpet/flooring & wall finishes, equipment, fixtures, furnishings, and window coverings even when their purchase is not associated with a capital construction project. The following four sections: **Emergency; Sole Source; Exceptions to Bidding Requirements; and Requests for Proposals (RFP)**, apply to both Board policies 7010 and 8064.

### Emergency

Emergency shall mean 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 computer/software system, or (d) 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.

Proposed emergency purchases shall be documented by the College unit or department, and submitted to the [President](#), Vice President for Administration and Finance [or Vice President for Academic Affairs](#), for approval by the Chancellor. The Chancellor may also approve the suspension of bidding requirements as appropriate for each emergency.

### Sole Source

A sole source purchase is when there is only a single feasible or sole source for the supplies or services. A single feasible or sole source exists when:

- Supplies are proprietary and only available from the manufacturer or a single distributor.
- Additions to a system must be compatible with the original equipment or software.
- Factory authorized maintenance must be utilized in order to maintain validity of a warranty.
- Only one (1) type of computer software exists for a specific application.
- The software or materials are copyrighted and are only available from the publisher or a single distributor.
- The services of a particular provider are unique, e.g. entertainers, authors, etc.
- Based on current research, it is determined that only a single distributor services the region in which the supplies are needed.

Documentation to purchase based on sole source without competitive bids or proposals shall be documented by the College unit or department, and approved by the [President](#), Vice President for Administration and Finance, [or the Vice President for Academic Affairs](#) in consultation with either the Vice Chancellor for Facilities and Information Technology, or the Vice Chancellor for Finance and Administration.

### Exceptions to the Bidding Process

Exceptions to the bidding process are defined as: emergency and sole source purchases with proper approval, advertising, software licensing renewals and software/hardware maintenance agreements, purchase from a previously competitively bid government or multi-state compact contract, including other state colleges and higher education

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**POLICY: 7010 Purchases; Bids; Public Lettings**

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institutions, or when the price has been established by the federal General Services Administration. Exceptions also include repairs of less than fifty thousand dollars (\$50,000) for vehicles, equipment, furnishings, Information Technology hardware/software/systems, and facilities/grounds. Repairs under \$50,000 require negotiation to assure quality work is performed at a reasonable price.

### **Requests for Proposals (RFP)**

A Request for Proposal (RFP) process includes a detailed description of the items/supplies/services/systems desired, but important factors other than cost are made part of the process and considered in the award of the contract. For the purpose of Board policies, an RFP can be considered a form of bidding, and may be used when formal or informal bidding is required. The exception to that is when a proposal is received through an RFP process for the purpose of selecting a design/construction consultant or contractor in Board policies 8066 and 8071. In such cases, the proposals are not considered "bids" since the final contract amount is derived through negotiations with the highest ranked firm.

### **Public Lettings**

All public lettings made by the Colleges and the System Office shall meet the requirements of state statute for such activities. Policies related to public lettings for capital construction projects and Information Technology (IT) are found in Policy Series 8000. Additional policies and guidance related to contracts are found in Policy 7015.

Advertisements for bids shall fix the day and time upon which bids shall be returned, received and opened. When a public contract is to be awarded to the lowest responsible 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. 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.

All contractors bidding on public lettings in the System shall file with the bid form, a statement that he/she is complying with, and will continue to comply with, fair labor standards in the pursuit of his/her business and in the execution of the contract on which he/she is bidding. If it is shown that any contractor submitting a bid has not complied with fair labor standards in the pursuit of his/her business, such lack of compliance shall be the basis for disqualification of the bid.

All contractors and vendors wishing to enter into a contract 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. Purchase Orders used to obtain products or services shall contain a statement that, by virtue of accepting the Purchase Order, providing the project or services and receiving payment for the same, the vendor is verifying that his/her business has established a drug-free workplace policy and is in compliance with the policy.

All 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.

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.

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### **Purchases**

The responsibility for the purchasing, receiving, storing and distributing of all materials, supplies, moveable furniture and moveable equipment, as well as securing services, other than consulting services, to support the activities and programs of each College and the System Office, unless otherwise provided, is delegated by the Board to the President of each College or to the Chancellor. The Vice President for Administration and Finance of the College shall serve as the Principal Purchasing Agent for the College and shall be responsible for the development and implementation of College processes and procedures which conform to the requirements of the Board of Trustees. Should such processes and procedures include the appointment of a College purchasing agent and a decentralized purchasing function, responsibility for conformance with Colleges' and Board of Trustees' requirements shall remain with the Principal Purchasing Agent.

While a staff member as a prospective user may informally seek information and confer with a vendor about the characteristics and list price of a product, negotiation for purchase of such product must be done in compliance with the College/Board of Trustee's policies. In instances where the College has a decentralized purchasing function which may involve the prospective user of a product, 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 requirements stated in Policy #5002, Conflict of Interest; Employment Requirements when working with potential vendors for their College.

Purchasing processes and procedures shall be designed to assure that all materials, supplies, equipment and contractual services, using appropriate standards and specifications, can be purchased at the most advantageous price. Where feasible and appropriate, each College shall attempt to determine its annual supply and equipment needs so that purchasing may be coordinated to realize the potential economies of standardization of materials and large scale purchases. State purchasing assistance or contracts may be utilized where found to be advantageous.

When purchases are made using 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.

Payment will be made on satisfactory evidence that the materials have been received or the services rendered; that the designated specifications have been met; and that the price charged is correct. In that the State of Nebraska prefers that electronic payments be made to contractors and suppliers when possible, the following text shall appear on all State College Requests for Proposals, bid requests, contracts and purchase orders: "The Colleges may request that payments be made electronically instead of by State warrant."

All purchases shall be bid in the following manner, except for specific exceptions defined above, and as follows:

- 1) By a competitive formal sealed bidding process in all cases in which the purchases are of estimated value in the amount of fifty thousand dollars (\$50,000) or more;

*Competitive formal sealed bids are price quotations secured from vendors by means of A Quotation Request form. A minimum of fifteen (15) calendar days shall elapse between the time formal bids are advertised or called for and the time of their opening. Bids are opened publicly at the time and date specified in the Quotation Request. Facsimile quotes or e-mails received by the institution are not allowed during this process.*

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**POLICY: 7010**

**Purchases; Bids; Public Lettings**

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- 2) By an informal bidding process in all cases in which the purchases are of estimated value equal to or exceeding five thousand dollars (\$5,000) but less than fifty thousand dollars (\$50,000) ;

*Informal bids are price quotations for goods or services which are secured by telephone calls or letters to potential vendors or from the vendors' published material. If the bids are obtained by telephone, the College/System Office is required to document such bids in writing.*

- 3) By a non-bidding process in all cases in which the purchases are of estimated value less than five thousand dollars (\$5,000). If it is determined by the College/System Office that solicitation of bids for items costing less than five thousand dollars (\$5,000) would result in a better quality product or lower cost, informal bids may be secured by telephone or in writing.

- 4) All contracts shall be bid as a single whole item. In no case shall contracts be divided or fractionated in order to produce several contracts which are of an estimated value below that required for competitive bidding.

- 5) Purchase Orders or Purchase Requisitions shall be prepared to serve as notification of award and documentation for the purchase of supplies, materials or equipment when the item(s) are being purchased under an existing State of Nebraska or College contract. Purchase orders are not required when purchasing supplies, materials, equipment or services that cost less than five thousand dollars (\$5,000).

- 6) Used vehicles, used equipment, used materials, or used supplies may be purchased by a non-bidding process up to the amount of fifty thousand dollars (\$50,000). Documentation justifying the purchase should be kept on file by the College for future reference.

- 7) Library acquisitions may be purchased by a non-bidding process when comparable pricing is checked through the Library's automation software or other specialized price comparison software available specifically for library acquisitions.

### **Competitive Formal Bids**

The Department of Administrative Services/Materiel Division has delegated purchasing authority to each College and bidding shall follow the requirements of the Board. State purchasing assistance or State contracts and other procurement procedures may be utilized where found to be advantageous.

If articles are to be purchased by competitive formal bidding, the Colleges and System Office shall prepare standards and specifications for these articles in such a manner it will be possible for three (3) or more manufacturers, vendors, or suppliers to submit competitive bids. If a requisition for articles exceeds fifty thousand dollars (\$50,000) and bids cannot be obtained from three (3) bidders, then bids may be accepted from a fewer number of bidders than three, upon documentation of the bidding process.

All purchases required to be based on competitive formal bids, shall be made to the lowest responsible bidder, taking into consideration the best interest of the College, the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery. In determining the lowest responsible bidder, in addition to price, the Colleges may develop criteria specific to a purchase or may give the following elements consideration where applicable:

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**POLICY: 7010 Purchases; Bids; Public Lettings**

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- 1) The ability, capacity and skill of the bidder to perform the contract required;
  - 2) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
  - 3) Whether the bidder can perform the contract within the time specified;
  - 4) The quality of performance of previous contracts;
  - 5) The previous and existing compliance by the bidder with laws relating to the contract;
  - 6) The life-cycle costs of the personal property in relation to the purchase price and specific use of the item;
  - 7) The performance of the personal property, taking into consideration any commonly accepted tests and standards of product usability and user requirements;
  - 8) Energy efficiency ratio as stated by the bidder for alternative choices of appliances or equipment;
  - 9) The information furnished by each bidder concerning life-cycle costs between alternatives for all classes of equipment, evidence of expected life, repair and maintenance costs, and energy consumption on a per-year basis;
  - 10) The results of the United States Environmental Protection Agency tests on fleet performance of motor vehicles. Each bidder shall furnish information relating to such results; and
  - 11) Such other information as may be secured having a bearing on the decision to award the contract.

**In accordance with state law, when a state contract is to be awarded to the lowest responsible 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 (a) 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 and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent (50%) of the stock is owned by one or more persons described in subdivision (a) of this paragraph and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this paragraph.**

Any or all bids may be rejected by the College or System Office, 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 and all bids rejected, and the proposed purchase is not abandoned, new bids shall be called for as in the first instance.



## BUSINESS MANAGEMENT, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 7015

Contracts; Limitations, Exemptions

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### BOARD POLICY

#### Contracts Guidance

A contract is necessary whenever a legal relationship is established consisting of rights and duties that go beyond the sale transaction details. Thus, a contract is NOT required when there are no terms beyond the documentation of purchase details, such as 1) definition of items/scope, 2) delivery of the items/services, and 3) the timing of billing and payment.

The following purchases do NOT require a contract when the purchase is below fifty-thousand dollars (\$50,000): lodging, airfare, advertising, and repairs for vehicles, equipment, furnishings, facilities/grounds, and Information Technology products and services.

College departments and units are responsible for negotiating contracts prior to submission to the appropriate Vice President ~~for Administration and Finance~~. The Vice President for Administration and Finance is primarily responsible for signing College contracts, however, the Vice President for Academic Affairs may also 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; NENTA; Academic Events, Speakers or Activities; and, Work-based learning experiences, such as an internship, practicum, clinical placement, student teaching etc.

The NSCS standard contract forms are to be used for the initial review draft. (See “*Contract for Services Guidance and Instructions*” found at [www.nscs.edu](http://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 initial review draft. 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 reviewed by the College department or unit prior to review and approval by the appropriate Vice President ~~for Administration and Finance~~. Refer to the first two paragraphs above for when online user agreements are considered contracts.

~~The Board is responsible for all contracts.~~ No contract may commit funds for a future fiscal year, unless specific funding has been identified in a Legislative appropriation bill or an appropriate escape clause has been inserted in the contract.

No contract, purchase agreement or lease/purchase agreement, that requires Board approval, shall be signed or finalized in any form until the Board has authorized the College to enter into such an understanding.

Contracts, Memorandums 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 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 by the President or the Vice President for Academic Affairs.

All contracts for capital construction projects must follow the criteria stipulated in Policies 8063 through 8068.

All contracts related to revenue bond facilities will be in accordance with the indentures, statutes, and related Board policies.



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POLICY: 7015

Contracts; Limitations, Exemptions

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### Exempt Contracts

Certain contracts do not require review and approval by the Board. An exempt contract shall be defined as any of the following;

1. Any contract with individual students for room and board or deferred payment programs.
2. Any Agreements that establish placements for students to complete work-based learning experiences, such as an internship, practicum, clinical placement, student teaching etc.
3. Any community service and service learning contracts.
4. Any Northeast Nebraska Teacher Academy agreements (NENTA.)
5. Any articulation agreements to determine course equivalencies in accordance with Board Policies.
6. Any bus chartering contracts.
7. Any contract for the purchase of food and consumable food service items used in the regular course of business operations.
8. Any contract for the purchase of a license to use a mailing list, email list, or similar list of contacts.
9. Any contract for the purchase of supplies and commodities used in the regular course of business operations. *“Note: Advertising contracts are not considered an exempt contract. Advertising contracts in excess of \$50,000 require Board approval.”*
10. Any contract for the purchase of installation services including repairs or maintenance agreements or movable equipment including information technology products and services, licenses and maintenance agreements where the total cost does not exceed one hundred thousand dollars (\$100,000). In cases of multiple-year contracts, contract amendments, contract extensions, contract renewals, and contracts with optional years, the one hundred thousand dollar (\$100,000) limit only applies to any given one (1) year period as defined in the contract documents.
11. Any contract for the purchase of utilities, gasoline, oil, or diesel fuel used in the regular course of business operations. Utilities shall include trash services, cable television and internet services.
12. Any contract dealing with the sale of College personal property, if Board Policy 7014 is followed.
13. Any granting of a lease or rental agreement to an external party, if the annual proceeds are less than twenty-four thousand dollars (\$24,000) in accordance with Board Policy 8027.
14. Any contract relating to the staging or performance of any cultural, artistic, musical, scholarly, recreational, or intercollegiate athletic event (at home or away).
15. Any contract for the purchase of material to be added to the collection of any College library.

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**POLICY: 7015**

**Contracts; Limitations, Exemptions**

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16. Any contract that does not exceed twenty-four thousand dollars (\$24,000), whereby a College will provide services to an external party, including, but not limited to, instruction, consulting, planning, technical assistance or program development courses. (For contracts to receive services, refer to Board Policy 7016.)
17. Any sponsorship agreements (refer to Board Policy 7017.)
18. Any contract with the state or federal government for the provision of Financial Aid.
19. Any contract associated with an emergency approved by the Chancellor.

All exempt contracts shall be signed by the President, ~~or~~ the Vice President for Administration and Finance or the Vice President for Academic Affairs. In the event that the President, ~~and the~~ Vice President for Administration and Finance or the Vice President for Academic Affairs are not able to sign on behalf of their respective institution, the Chancellor is authorized to execute a contract on behalf of the institution. The Chancellor or Vice Chancellor for Finance and Administration or General Counsel are authorized to sign exempt contracts for the System Office.

A list of the exempt contracts over fifty thousand dollars (\$50,000), authorized and signed by the College or System Office, shall be provided to the Board of Trustees for information in the proper format.

All other contracts, once approved by the Board, shall be signed by the President, ~~or the~~ Vice President for Administration and Finance, or the Vice President for Academic Affairs and then by the Chancellor or Vice Chancellor for Finance and Administration, or General Counsel.

Legal Reference: RRS 85-304  
RRS 85-411

Board of Trustees; Powers; Enumerated  
Campus buildings and facilities; Board; Powers

Policy Adopted: 7/22/83  
Policy Revised: 3/11/94  
Policy Revised: 6/15/95  
Policy Revised: 4/13/07  
Policy Revised: 11/4/11  
Policy Revised: 3/15/13  
Policy Revised: 9/6/13  
Policy Revised: 11/7/14  
Policy Revised: 6/18/15  
Policy Revised: 5/3/16  
Policy Revised: 6/16/17  
Policy Revised: 9/15/18  
Policy Revised: 3/21/19  
Policy Revised: 9/12/19

Policy Revised:

## BUSINESS MANAGEMENT, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 7016

Contracts; Consulting Services

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### BOARD POLICY

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 institution 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.

### LEGAL COUNSEL, AUDITOR, LOBBYIST AND SEARCH CONSULTANT

The hiring and retention of personnel not regularly employed by the Colleges and the System Office to act as legal counsel, auditor or independent certified public accountant (other than revenue bond auditor in accordance with Policy 9007), lobbyist, or search consultant for durations 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 service contract is necessary. A competitive process is not required. In each instance the Chancellor shall notify the Board.

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.

### ALL OTHER CONSULTING SERVICES

“All other consulting contracts” in the following paragraphs applies to contracts other than legal counsel, auditor or independent certified public accountant, lobbyist, and search consultant found in the section above. In addition, it does not apply to architect/engineering and IT consulting services, which can be found in Policy Series 8000.

The Presidents are delegated the responsibility for selecting and negotiating on behalf of the Board, all other consulting contracts for their respective Colleges where the total cost (fees plus related expenses) is expected to be under thirty-five thousand dollars (\$35,000). Such contracts shall be signed by the President, ~~or the~~ Vice President for Administration and Finance, or the Vice President for Academic Affairs. In the event that the President, ~~and the~~ Vice President for Administration and Finance, or the Vice President for Academic Affairs are not able to sign on behalf of their respective institution, the Chancellor is authorized to execute a consulting contract on behalf of the institution.

For all other consulting contracts where the total cost is estimated to be between thirty-five thousand dollars (\$35,000) and seventy thousand dollars (\$70,000), the contracts shall be approved by the Chancellor and signed by the President, ~~or the~~ Vice President for Administration and Finance, or the Vice-President for Academic Affairs and then by the Chancellor or Vice Chancellor for Finance and Administration or General Counsel.

The Chancellor is delegated the responsibility for selecting and negotiating on behalf of the Board, all other consulting contracts for the System Office or Systemwide where the total cost is expected to be under seventy thousand dollars (\$70,000). Such contracts shall be signed by the Chancellor or Vice Chancellor for Finance and Administration or General Counsel.

All other consulting contracts exceeding seventy thousand dollars (\$70,000) that are covered under this policy shall follow a competitive RFP process and be approved by the Board. These contracts, once approved by the Board, shall be signed by the President, ~~or the~~ Vice President for Administration and Finance, or the Vice President for Academic Affairs and then by the Chancellor or Vice Chancellor for Finance and Administration or General Counsel.

All other consulting contracts not requiring Board approval must be reported to the Board.

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**POLICY: 7016**

**Contracts; Consulting Services**

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Legal Reference: RRS 85-304

Board of Trustees; Powers; Enumerated

Policy Adopted: 3/11/94

Policy Revised: 9/15/06

Policy Revised: 4/13/07

Policy Revised: 6/15/12

Policy Revised: 3/15/13

Policy Revised: 8/12/14

Policy Revised: 9/6/14

Policy Revised: 11/7/14

Policy Revised: 3/26/15

Policy Revised: 1/12/16

Policy Revised: 9/15/18

Policy Revised: