

ITEMS FOR DISCUSSION AND ACTION/FISCAL, FACILITIES AND AUDIT

June 17, 2021

ACTION: **First Round Approval of Revisions to Board Policy 7010; Purchases; Bids; Public Lettings, Board Policy 7015; Contracts; Limitations, Exemptions, Board Policy 7016; Contracts; Consulting Services, Board Policy 8064; Capital Construction and Information Technology (IT); Bids, Board Policy 8065; Capital Construction; Contracts; Approvals, Board Policy 8066; Capital Construction; Contracts; Professional Consulting Services, Board Policy 8067; Capital Construction; Contracts; Works of Art and Board Policy 8068; Capital Construction; Contracts; Forms, Payments**

An NSCS team comprised of leadership and staff from the System Office and the three State Colleges have undertaken a project to update and revise eight (8) Board policies that address procurement and contracts. The goal is to simplify and clarify the policies to increase efficiency, and to reduce the potential for confusion and errors that can lead to auditor findings. Also, several thresholds for bidding and contract approval are overdue for adjustments. During the March 17, 2021 Board of Trustees meeting, a matrix depicting the significant changes to each of these policies was discussed as an informational item and the modifications proposed at that time are reflected in the attachments.

The more significant revisions include raising the open solicitation limit for the bidding of general supplies and services to \$25,000, and for construction and information technology to \$50,000. The formal bidding thresholds are revised to \$75,000 for general supplies and services, and to \$150,000 for construction and information technology. Board contract approval thresholds would move to \$150,000 per year for consulting contracts and change orders, and to \$300,000 per year for other contracts, including construction and information technology. Certain contracts including revenue bond auditor, food service and bookstore contracts, and agreements establishing collaborative educational partnerships and international study abroad trips will continue to require Board approval regardless of dollar amount.

It is anticipated that for proposed second round approval at a subsequent Board meeting, these revised policies will be reorganized into a more readable and useful format to include a numbering system for the content of each policy. If reasonable, some policy consolidation may also occur for the second round proposal.

The System Office recommends approval of the Revisions to Policies 7010; 7015; 7016; 8064, 8065; 8066; 8067; and 8068.

ATTACHMENTS:

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

- Revisions to Board Policy 8064 (PDF)
- Revisions to Board Policy 8065 (PDF)
- Revisions to Board Policy 8066 (PDF)
- Revisions to Board Policy 8067 (PDF)
- Revisions to Board Policy 8068 (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. See also: Policy 7015 Contracts; Limitations, Exemptions
Policy 7016 Contracts; Consulting 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.~~

For procurement of capital construction, architects and engineers, capital construction artwork, Information Technology Resources, and all other equipment including vehicles and machinery, refer to:

Policy 8064 Capital Construction; Bids

Policy 8065 Capital Construction; Contracts; Approvals

Policy 8066 Capital Construction; Contracts; Professional Consulting Services

Policy 8067 Capital Construction; Contracts; Works of Art

Policy 8068 Information Technology (IT) & All Equipment; Procurement

For IT purchasing, please refer to Policy 8068, and consult with the College Chief Information Officer (CIO) or Vice President for Information Technology (VPIT) on all IT purchases.

Emergency

Emergency shall mean any situation where it is necessary to ~~enter into a contract~~make a purchase 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 Such~~ Chancellor ~~may also approve~~approval automatically includes 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, items or services are proprietary and only available from the manufacturer or a single ~~distributor~~entity.
- Additions to a system must be compatible with the original system, equipment or software.
- The same vendor/contractor of an installed pilot project system may install expansions to that system.
- Factory authorized maintenance must be utilized in order to maintain ~~validity of~~validity of a warranty or integrity of system.
- Only one (1) type of ~~computer product, solution or~~ software exists for a specific application.
- The software or materials are copyrighted and are only available from the publisher or a single ~~distributor~~entity.

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- 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 entity~~ services the region in which the supplies, items, solutions, or services are needed.
- Donors providing funding for an item, service or system may specify a particular vendor, manufacturer or brand.

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 or multi-institution contract, including other state colleges and higher education institutions and any purchasing association, or when the price has been established by the federal General Services Administration. Additional exceptions include all utilities and fuels, including wood chips, lodging, airfare, used items, library acquisitions, medical clinic and nursing services, trash/recycling, cable television and internet services, and game guarantee contracts. Exceptions also include repairs of less than ~~fifty-seventy-five~~ thousand dollars (~~\$50,000~~75,000) for ~~vehicles, equipment, furnishings, Information Technology hardware/software/systems, and facilities/grounds~~ general items and supplies. Repairs Where possible, repairs under seventy-five thousand dollars (\$50,00075,000) 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 exceptions are Board policies 8066, 8068, 8071, 9015 and 9020, where the RFP proposals are not considered "bids" since the final contract amount is derived through negotiations with the highest ranked consultant or contractor.)~~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) and equipment 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.

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

Purchases

The responsibility for the purchasing, receiving, storing and distributing of all materials, supplies, ~~moveable furniture and moveable equipment, as well as securing, and ordinary~~ 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

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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 applicable Policy 7010 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-seventy-five~~ thousand dollars (~~\$50,000~~75,000) 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 requested~~ 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.

- 2) By an informal bidding process in all cases in which the purchases are of estimated value equal to or exceeding twenty-five thousand dollars (\$25,000) but less than ~~fifty-seventy-five~~ thousand dollars (~~\$50,000~~75,000);

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 twenty-five thousand dollars (\$25,000). If it is determined by the College/System Office that solicitation of bids for items costing less than twenty-five thousand dollars (\$25,000) 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~~may be prepared to serve as notification of award and documentation for the purchase of supplies ~~or~~ 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)~~per the Exceptions paragraph on page 2. 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.~~per the Exceptions paragraph on page 2.

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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-or~~ 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-seventy-five~~ thousand dollars (~~\$975,000~~) 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:

- 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; and
- ~~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)8) Such other information as may be secured having a bearing on the decision to award the contract.~~

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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.

No employee of the Colleges or the System Office shall be financially interested, or have any beneficial personal interest, directly, or indirectly, in the purchase or leasing of any articles or property, 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.

Legal Reference: RRS 4-114 Public employer and public contractor; register with and use federal immigration verification system; Department of Labor; duties
RRS 73-101 through 105 Public Lettings

RRS 73-107 Resident disabled veteran or business located in designated enterprise zone; preference; contract not in compliance with section; null and void

Policy Adopted: 1/28/77
Policy Revised: 7/22/83
Policy Revised: 3/16/90
Policy Revised: 3/11/94
Policy Revised: 11/11/95
Policy Revised: 9/26/97
Policy Revised: 9/15/06
Policy Revised: 4/13/07
Policy Effective: 7/1/10
Policy Revised: 6/2/11
Policy Revised: 11/4/11
Policy Revised: 3/15/13
Policy Revised: 9/6/13
Policy Revised: 9/6/14
Policy Revised: 3/26/15
Policy Revised: 6/18/15
Policy Revised: 4/23/20

Approved: 6/3/10

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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-seventy-five~~ thousand dollars (\$~~50~~75,000): lodging, airfare, ~~advertising~~advertisements, and repairs for vehicles, equipment, furnishings, and facilities/grounds, all maintenance services and all Information Technology products and services.

College departments and units are responsible for negotiating contracts prior to submission to the appropriate Vice President. 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.) 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. Refer to the first two paragraphs above for when online user agreements are considered 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-cancellation~~ 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.

Per Policy 9006, all revenue bond auditor contracts require Board approval regardless of dollar amount, as do all food service and bookstore contracts per policies 9015 and 9020. All agreements establishing collaborative, educational partnerships, and international study abroad trips, also require Board approval regardless of dollar amount. 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. Contracts related to international study abroad trips are considered educational partnerships and must be approved in advance by the Board. Contracts that declare an intent to travel in the future may be signed by the Chancellor without Board approval.

All contracts for capital construction projects must follow the criteria stipulated in Policies ~~8063-8064~~ through ~~8068~~8067.

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

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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 three hundred thousand dollars (\$50,000-300,000) per year 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-three~~ hundred thousand dollars (~~\$100300,000~~). In cases of multiple-year contracts, contract amendments, contract extensions, contract renewals, and contracts with optional years, the ~~one-three~~ hundred thousand dollar (~~\$100300,000~~) 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, or wood chips 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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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 or change order or addendum/amendment associated with an emergency approved by the Chancellor.

All exempt contracts shall be signed by the President, the Vice President for Administration and Finance or the Vice President for Academic Affairs. In the event that the President, 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.

All other contracts not addressed above, including construction, Information Technology products and services, and all other contracts for purchases and services, require Board approval when the dollar amount reaches three hundred thousand dollars (\$300,000) per year. Such approval may be in the form of authorizing the Chancellor to approve and sign the contract.

Change orders, addenda, and amendments to contracts require Board approval, or authorization for the Chancellor to approve, when they reach one hundred fifty thousand dollars (\$150,000) or more.

All consulting contracts of one hundred fifty thousand dollars (\$150,000) or more require Board approval or authorization for the Chancellor to approve and sign.

A list of ~~the exempt~~ all contracts over ~~fifty-one-hundred~~ thousand dollars (~~\$50100,000~~), ~~authorized and signed by the College or System Office~~ and all change orders, addenda and amendments of fifty thousand dollars (\$50,000), 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, 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.

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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: 4/23/20
Policy Revised: 7/24/20

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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 ~~thirtyseventy~~-five thousand dollars (~~\$3575,000~~). Such contracts shall be signed by the President, the Vice President for Administration and Finance, or the Vice President for Academic Affairs. In the event that the President, 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 ~~thirtyseventy~~-five thousand dollars (~~\$3575,000~~) and ~~seventy-one hundred fifty~~ thousand dollars (~~\$70150,000~~), the contracts shall be approved by the Chancellor and signed by the President, 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-one hundred fifty~~ thousand dollars (~~\$70150,000~~). Such contracts shall be signed by the Chancellor or Vice Chancellor for Finance and Administration or General Counsel.

All other consulting contracts exceeding ~~seventy-one hundred fifty~~ thousand dollars (~~\$70150,000~~) 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, 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.

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Contracts; Consulting Services

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All ~~other~~ consulting contracts over one hundred thousand dollars (\$100,000) not requiring Board approval must be reported to the Board, per Policy 7015.

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: 4/23/20

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 8064 Capital Construction and Information
Technology (IT); Bids**

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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 and facility related services, facilities and Information Technology (IT) related procurement, 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. For Information Technology and all other equipment not associated with construction, see Policy 8068.~~

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 Technology Resource, 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 or Vice President for Administration and Finance, for approval by the Chancellor. ~~The Such~~ Chancellor ~~may also approve~~approval automatically approves 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, items or services are proprietary and only available from the manufacturer or a single ~~distributor~~entity.
- Additions to a system must be compatible with the original system equipment or software.
- The same vendor/contractor of an installed pilot project system may install expansions to that system.
- Factory authorized maintenance must be utilized in order to maintain validity of a warranty or integrity of system.
- Only one (1) type of computer product, solution or 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 entity services the region in which the supplies-items are needed.
- Donors providing funding for an item, service or system may specify a particular vendor, manufacturer or brand.

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 Vice President for Administration and Finance in consultation with either the Vice Chancellor for Facilities and Information Technology, or the Vice Chancellor for Finance and Administration.

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

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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/facility~~ maintenance agreements, purchase from a previously competitively bid government, ~~or multi-state compact~~ or multi-institution contract, including other state colleges and higher education institutions and any purchasing association, or when the price has been established by the federal General Services Administration. Exceptions also include repairs of less than ~~fifty-seventy-five~~ thousand dollars (\$~~5075~~,000) for ~~vehicles, facility~~ equipment, furnishings, ~~Information Technology hardware/software/systems,~~ and facilities/grounds. ~~Repairs~~ Where possible, repairs under seventy-five thousand dollars (\$5075,000) 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 exceptions are Board policies 8066 and 8071, where the RFP proposals are not considered "bids" because the final contract amounts are derived through negotiations with the highest ranked consultant or contractor.)~~ 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.

The ~~Board/Colleges~~ shall, within the limits prescribed by law, prepare specifications, advertise projects, evaluate and award all bids for capital construction projects ~~and information technology related purchases~~ in the System.

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.

FORMAL PROCEDURE

Construction projects and ~~information technology~~ related purchases exceeding one hundred fifty thousand dollars (~~\$100150~~,000) shall observe the following bidding procedures:

1. Specifications: All specifications and plans for buildings to be renovated or constructed, are to be prepared by professional architects and/or engineers when required by state law. The specifications and plans shall be prepared in such a manner that the completed building, landscaping and parking facilities, including the cost of equipment and fixtures necessary for the project, or the completed renovation cost shall not exceed to conform with the budget amount authorized for that purpose. ~~Specifications for information technology related purchases may be prepared by College information technology staff or hired consultants.~~

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 8064 Capital Construction ~~and Information~~
~~Technology (IT); Bids~~**

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2. Advertising project: For construction, the public notice shall appear once ~~a week for three (3) consecutive weeks~~ in a publication based in or near the locality of the project, ~~and in a~~ Other widely circulated publications and electronic platforms may be utilized for advertising as deemed necessary by 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. ~~For information technology procurement, the College determines the most effective means of advertising and distributing the Request for Proposals (RFP).~~

The notice, bid specifications or RFP shall include, at a minimum, the following information:

- a) Name of Board of Trustees/College
- b) Description of project
- c) Date, place and time when bids must be received
- d) ~~Person to contact~~Contact for information
- e) Locations where bid documents can be viewed/obtained

A copy of the advertisement shall be kept on file with the College responsible for placing the advertisement and will be made available to the System Office upon request.

3. Bid Opening for Construction: 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 are to be returned unopened. The bidder's envelope is to be attached to the back of the bid form. ~~The 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. Electronic bidding may be used where allowed by law. The following requirements shall be noted at the time of opening the bid:

- a) Conformance with bidding instructions
- b) Use of proper bid forms
- c) Accompanied by bid bond or certified check (not applicable to information technology)
- d) Acknowledgment of any addendum
- e) Bid is signed

~~For information technology RFP's, proposal submissions generally follow the bid opening procedures above, except that electronic proposals may be accepted.~~

4. Bid Evaluation for Construction: 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 responsible 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 responsible bidder, in addition to price, the following elements shall be given consideration:

- a) The ability, capacity, and skill of the bidder to perform the contract required;
- b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- c) Whether the bidder can perform the contract within the time specified;
- d) The quality of performance of previous contracts;

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 8064 Capital Construction ~~and Information Technology (IT)~~; Bids

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- e) The previous and existing compliance by the bidder with laws relating to the contract;
- f) The life-cost of the article or property in relation to the purchase price and the specific use of item;
- g) The performance of the article or property, taking into consideration any commonly accepted tests and standards of product usability and user requirements;
- h) Energy efficiency ratio as stated by the bidder for alternative choices of appliances or equipment; and
- i) Such other information as may be secured having a bearing on the decision to award the contract.

~~For information technology RFP's, proposal evaluation generally follows the construction bid evaluation procedures above, except that the contract is not necessarily awarded to the lowest cost proposal, but to the top ranked proposal based on the criteria outlined in the RFP.~~

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.

A capital construction ~~or information technology~~ contract may be conditioned upon later refinements in scope and price and may permit the College in agreement with the contractor to make changes in the project without invalidating the contract. Later refinements shall not exceed the ~~scope of the program statement~~budget or available funding.

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. 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.

The contractor must specifically agree not to discriminate against any recipient of services on the basis of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry, and not to discriminate against any employees or applicant for employment on the basis of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry.

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.

The recommendation, bid tab sheet and other applicable materials shall be provided to the System Office for review. ~~In the event that~~ If less than three (3) bids or proposals are received, the Vice Chancellor for Facilities and Information Technology may approve award of contract based on documentation received. Approval of less than three (3) bids only applies to the Formal Procedure. then bids may be accepted upon documentation of the bidding process.

For any construction project that has a total cost of more than one hundred thousand dollars (\$100,000), 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, written by a Surety licensed to do business in the State of Nebraska.

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 Board always reserves the right to reject any or all bids.

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 8064 Capital Construction ~~and Information~~
~~Technology (IT)~~; Bids

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INFORMAL PROCEDURE

Construction projects and ~~information technology~~ related purchases with a total project cost between ~~thirty-fifty~~ thousand dollars (\$~~30~~50,000) and one hundred fifty thousand dollars (\$~~100~~150,000) shall observe the following bidding procedure:

1. Three or more quotations for the project or purchase shall be solicited from responsible 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.
2. A fixed bid receipt date or public opening is not required.
3. A formal contract shall be executed for the project or purchase after negotiating a price that is reasonable and within budget. ~~The contract may be the System's short form, long form, or other form acceptable to the Vice Chancellor for Facilities and Information Technology~~

A capital construction ~~or information technology~~ purchase contract may be conditioned upon later refinements in scope and price and may permit the College in agreement with the contractor to make changes in the project or the purchase without invalidating the contract. Later refinements shall not exceed the ~~scope of the program statement~~budget or available funding.
4. All resulting quotations or refusals to quote shall be documented by the College for reference.
5. Information on these contracts shall be reported to the Board of Trustees ~~at the first Board meeting following College acceptance of the contract, per Policy 7015.~~

OPEN SOLICITATION

Construction projects and ~~information technology~~ related purchases with a total cost of less than ~~thirty-fifty~~ thousand dollars (\$~~30~~50,000) shall follow the open solicitation process, as follows:

1. Competitive bidding is not required.
2. The College may contract directly with a responsible contractor after negotiating a contract price that is reasonable and within budget.
3. A capital construction ~~or information technology purchase~~ contract may be conditioned upon later refinements in scope and price and may permit the College in agreement with the contractor to make changes in the project without invalidating the contract. Later refinements shall not exceed the ~~scope of the program statement~~budget or available funding.

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 8064 Capital Construction ~~and Information~~
~~Technology (IT); Bids~~**

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~~INFORMATION TECHNOLOGY (IT) PURCHASING~~

~~Security of data, and requirements for NSCS Technology Resources, need to be considered when NSCS employees make IT purchases. In accordance with Standard 10: Technology Resources Acquisition, from the NSCS Information Security Program in Board Policy 7003, all employees must consult with the applicable Chief Information Officer (CIO) or System Office Information Security Officer (SOISO) before developing, purchasing or contracting for products, services, and/or consulting that have implications for Technology Resource components, data, security, or technical support. This includes, but is not limited to, cloud services, communication systems, information storage and processing systems, software systems, physical facilities related to such systems, and contractual relationships with vendors of such systems and services.~~

Legal Reference: RRS 72-802	Public buildings; plans and specifications; limitations; bids; appropriations; limits
RRS 72-803	Public buildings; construction; improvement and repair; contracts; bidding; procedure; exceptions
RRS 73-101.01	Public lettings; resident bidder; defined; preference
RRS 73-102	Fair Labor Standards, statement of compliance required.
RRS 81-1108.43	Capital construction project; prohibited acts; exceptions; warrant; when issues
RRS 81-1114	Department of Administrative Services; building division; powers, duties, and responsibilities
RRS 85-304	Board of Trustees; powers; enumerated
RRS 81-3449	Practice of architecture; exempted activities
RRS 81-3453	Practice of engineering; exempted activities

Policy Adopted: 3/11/94
Policy Revised: 8/29/97
Policy Revised: 10/29/97
Policy Revised: 9/10/02
Policy Revised: 2/12/04
Policy Revised: 9/15/06
Policy Revised: 9/14/07
Policy Revised: 9/11/09
Policy Revised: 4/22/10
Policy Revised: 6/2/11
Policy Revised: 6/18/15
Policy Revised: 11/17/17
Policy Revised: 6/18/19
Policy Revised: 11/14/19

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 8065 Capital Construction; Contracts; Approvals

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BOARD POLICY

~~The Board of Trustees is responsible for all capital construction contracts.~~ No contract may commit funds for a project until the fund resource has been identified and approved by the Board of Trustees with the exception of Task Force for Building Renewal funds which require approval by the Chancellor. 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. Further, 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 submitted for approval.

~~The Consistent with Policy 7015, the~~ following types of contracts are to be submitted to the Board for approval:

1. Construction contracts and land purchases amounting to ~~one-three~~ hundred thousand dollars (\$~~100300,000~~) or more. If approval of the contract is critical to the schedule of the project, the following exception will be made:

The Chancellor shall be authorized to approve construction contracts and land purchases above ~~one-three~~ hundred thousand dollars (\$~~100300,000~~) 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.

2. Any contract or agreement with an engineer or architect if the fee would exceed ~~seventy-one hundred fifty~~ thousand dollars (\$~~70150,000~~). If approval of the contract is critical to the schedule of the project, the following exception will be made:

The Chancellor shall be authorized to approve engineer or architect contracts above ~~seventy-one hundred fifty~~ thousand dollars (\$~~70150,000~~) 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.

3. Contract change orders and addenda or amendments involving additional expenditure over one hundred fifty thousand dollars (\$150,000). ~~Total change order amount shall include increases to architect or engineer fees, construction contract, equipment purchases and all other miscellaneous expenditure items related to that change order.~~

If approval of the change order, addendum or amendment is critical to the schedule of the project, ~~change orders involving an expenditure in the range from fifty thousand dollars (\$50,000) up to and including one hundred thousand dollars (\$100,000) may be approved by~~ the Chancellor has the option of approving it as an emergency as defined in Policy 8064. Such emergency approvals and will be provided as an information item at the next Board meeting.

Once approved by either the Board or the Chancellor, the documents ~~shall be signed~~ final signature shall be executed by the ~~vendor, the President or Vice President for Administration and Finance, and then by the~~ Chancellor or Vice Chancellor for Finance and Administration, or General Counsel. The documents shall also have been signed by the vendor or contractor, and the President or Vice President for Administration and Finance.

The President or Vice President for Administration and Finance is delegated the responsibility for bidding, negotiating and signing on behalf of the Board the following types of construction contracts and change orders:

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 8065 Capital Construction; Contracts; Approvals

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1. 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 not exceed ~~one-three~~ hundred thousand dollars (~~\$100300,000~~).
2. Contracts with architects or engineers where the fee will be less than ~~seventy-one hundred fifty~~ thousand dollars (~~\$70150,000~~).
3. Contract change orders, addenda and amendments involving each additional expenditure under ~~fifty-one hundred fifty~~ thousand dollars (~~\$150,000~~).

Appropriate bidding/contracting procedures will be followed in all circumstances. Contracts for construction-type projects ~~of less than one hundred thousand dollars (\$100,000), architectural/engineering contracts whereby the fee is less than seventy thousand dollars (\$70,000) and contract change orders amounting to less than fifty thousand dollars (\$50,000) shall be reported by the College at the next Board meeting in a format developed by the System Offices shall be reported to the Board per Policy 7015.~~

Construction status reports shall be provided as information to the Board per Policy 8050.

All contracts for construction and other related services in excess of ~~one-three~~ hundred thousand dollars (~~\$100300,000~~) will be reviewed by the legal counsel or Vice Chancellor for Facilities and Information Technology prior to submission to the Board for consideration and action.

FORMS

Contract forms developed by the System Office ~~shall may~~ be used for all construction projects and other related services where the cost will be less than one hundred thousand dollars (\$100,000). If over this amount, and a professional architect or engineer has designed and specified the project, the latest applicable American Institute of Architects (AIA) contract form should be utilized and must incorporate the standard NSCS Long Form provisions.

A construction contract may be conditioned upon later refinements in scope and price and may permit the College in agreement with the contractor to make changes in the project without invalidating the contract. Later refinements shall not exceed the budget or available funding for the project. No construction contract may commit funds for a future fiscal year unless specific funding has been approved by the Board or an appropriate cancellation clause has been inserted into the contract.

PAYMENTS

For construction contracts with phased payments, the payment schedule shall be as follows:

1. 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 is substantially complete. 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.
2. When the project reaches final completion, the retainage will be paid in full.

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 8065 Capital Construction; Contracts;
Approvals

Legal Reference:	RRS 85-304	Board of trustees; powers; enumerated.
	RRS 85-306	State Colleges; presidents; duties.
	RRS 85-316	State Colleges; funds; contingencies; disbursements; travel expenses
	RRS 85-325	Construction projects; board of trustees; powers.
Policy Adopted:	3/11/94	
Policy Revised:	6/19/98	
Policy Revised:	4/13/00	
Policy Revised:	2/12/04	
Policy Revised:	9/15/06	
Policy Revised:	9/14/07	
Policy Revised:	1/15/13	
Policy Revised:	3/15/13	
Policy Revised:	11/15/13	
Policy Revised:	11/7/14	
Policy Revised:	6/18/15	
Policy Revised:	4/20/18	

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 8066

**Capital Construction; Contracts;
Professional Consulting Services**

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BOARD POLICY

For consulting services related to construction projects, the State College System will follow the procedures established by the Nebraska Consultant's Competitive Negotiation Act (RRS §§81-1701 through 81-1721) in its selection of professionals needed for capital construction projects.

PROCEDURE

For projects whose basic construction costs are estimated to be more than the limit established in state statute §§81-1108.43 and periodically adjusted by the State Building Division (currently seven hundred five thousand dollars [\$705,000] until January 1, 2022) and the estimated fee is anticipated to exceed the limit established in state statute §§81-1712 and periodically adjusted by the State Building Division (currently seventy thousand dollars [\$70,000] until January 1, 2022), except in cases of ~~public~~ emergencies ~~so certified~~ approved by the ~~President~~ Chancellor per Policy 8064, and in cases where ~~the a~~ DAS "Open End Agreement" consulting firm is utilized at less than one hundred fifty thousand dollars (\$150,000) in fees, the following procedures shall be followed:

1. A Request for Proposal (RFP) advertisement for the project shall be drafted by the College and reviewed by System Office staff before publication. The advertisement shall include a general description of the project and ~~the name of the person at the College to contact for additional~~ information. This advertisement must be published once ~~a week (weekdays only) for three (3) consecutive weeks~~ at least thirty (30) days prior to the deadline for receipt and opening of the proposals in a publication based in or near the locality of the project and in other widely circulated publications or electronic platforms as deemed necessary by the College. A timeline shall be noted in the advertisement ~~for letters of interest to be submitted by the professional consultants. The College shall then notify the interested firms of including~~ the deadline for submittal of proposals ~~and. The RFP will~~ direct the firms to include specific forms/information with their proposals.
2. The President is authorized to appoint a campus screening committee to review the professional consultants' proposals and to select three or four firms for interviews by the selection committee. It is suggested that the local committee include the Chair/Dean of the College/Division/Department for which the facility is being constructed/renovated; the College's Vice President of Administration; the College Director of Physical Plant/Facility Services; and others deemed appropriate by the President.

In evaluating the proposals, the screening committee shall give consideration to the following criteria:

- a) Demonstrated interest in project
 - b) Relevant experience in projects of similar nature
 - c) Background of key personnel to be involved in project
 - d) Planned use of outside consultants
 - e) Approach in working with campus staff, students, faculty
 - f) Past performance in meeting budget limits and time schedules
 - g) Evaluation of firm's work on other state projects
 - h) Evaluation of proposal
 - i) Current workload and past volume of work for State Colleges to promote an equitable distribution of contracts among qualified firms
3. The President shall recommend the membership of the Selection Committee to the Board of Trustees for approval. Included as members of the committee will be a Board of Trustee member; the Chair of the Fiscal, Facilities & Audit Committee; the Vice Chancellor for Facilities and Information Technology; and appropriate campus personnel as desired by the President. ~~If the consultant being sought is an engineer, a licensed engineer shall also be on the selection committee; if architectural firms are being interviewed, the selection committee shall have one member who is a certified architect. NOTE: If the project is a state-funded project, a representative of the State Building Division shall also serve on the selection committee.~~

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 8066 Capital Construction; Contracts;
Professional Consulting Services**

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4. The College representative in charge of the selection process shall consult with the System Office staff in scheduling the date for the interviews. Once the firms to be interviewed have been identified by the screening committee, notification and appropriate material shall be forwarded to the selection committee for review prior to the interviews. The objective criteria shall be similar to that identified in the preceding paragraph 2.
5. Unless time is not available, each firm shall be interviewed for one (1) hour, including questions from the selection committee. When the interviews have all been completed, the committee shall discuss the strengths of the firms in relation to the proposed project and shall arrive at agreement on the first-, second- and third-place firms. The College shall then negotiate a contract, in consultation with System Office staff, with the selected firm, keeping in mind the budget for professional fees. ~~If the negotiations are concluded within the budget limitations and all other issues resolved, a recommendation shall be made by the President to the members of the Fiscal, Facilities & Audit Committee who shall then submit a recommendation to the Board of Trustees for approval.~~ If the fee cannot be negotiated with the first-place firm within the budget limits and required terms, negotiations shall be held with the second-place firm. If agreement cannot be reached with the second qualified firm, negotiations shall be undertaken with the third-place firm. If those negotiations do not result in a satisfactory agreement, the College and System Office staff will determine the next steps.

~~The Presidents are delegated the responsibility for the selection process and for negotiating on behalf of the Board and reporting the same to them, contracts for architectural or engineering services, under seventy thousand dollars (\$70,000) which have been included in the operations budget, revenue bond budget or capital construction budgets. These contracts shall be signed by the President or Vice President for Administration and Finance. The College will include information on these contracts in its subsequent report to the Board.~~

~~For contracts above seventy thousand dollars (\$70,000), once approved by the Board, or the Chancellor as per Policy 8065, the contract shall be signed by the consultant, President or Vice President for Administration and Finance, and then by the Chancellor or Vice Chancellor for Finance and Administration or General Counsel. See Policy 8065 for architect and engineer consulting contracts approval thresholds.~~

A consultant services contract may be conditioned upon later refinements in scope and price and may permit the College in agreement with the consultant to make changes in the project without invalidating the contract. Later refinements shall not exceed the ~~scope of the program statement contained in the request for proposals~~ budget or available funding for the project.

~~The Board of Trustees/Professional Consultants form shall be used for all agreements entered into by the Colleges. The short form may be used for services to develop a Program Statement. The long form must be used for all other professional design phases of a construction project.~~

The Department of Administrative Services "Open End Agreement" as defined by DAS Standard Form of Consulting Services: Design and Contract Administration, Nebraska Open End Agreement may be substituted as defined by DAS policy. Per the current DAS-BD Open End Agreement, ~~which expires in January of 2021~~, the policy applies to projects not to exceed two million dollars (\$2,000,000). The policy recognizes the DAS-BD Open End Agreement as an already complete Proposal Request.

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 8066 Capital Construction; Contracts;
Professional Consulting Services**

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All contracts and professional consulting service agreements involving the use of Building Renewal funds must conform to Project Procedures/Standards as promulgated by the Task Force for Building Renewal.

Legal Reference:	RRS 81-1108.43	Requirement to hire consultant for design
	RRS 81-1701 through	Nebraska Consultant's Competitive Negotiation Act
	RRS 81-1721	
	RRS 85-411	Campus buildings and facilities; board; powers
	RRS 85-306	State college; president; duties; responsible to board
	RRS 85-304	Board of Trustees; powers; enumerated

Policy Adopted:	3/11/94
Policy Revised:	6/19/98
Policy Revised:	9/10/02
Policy Revised:	2/12/04
Policy Revised:	9/15/06
Policy Revised:	11/13/09
Policy Revised:	4/22/10
Policy Revised:	3/15/13
Policy Revised:	11/15/13
Policy Revised:	11/7/14
Policy Revised:	11/13/15
Policy Revised:	3/24/17
Policy Revised:	4/20/18

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 8067 Capital Construction; Contracts;
Works of Art**

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BOARD POLICY

At least one percent (1%) - minus applicable deductibles - of any appropriation for the original construction cost of any public building under the supervision of the Board shall be spent for the acquisition of works of art. Such buildings shall not include repair shops, garages, warehouses or buildings of a utilitarian nature. The work of art may be an integral part of the structure, attached to the structure, detached within or outside of the structure, or may be exhibited by the Board in other public facilities.

The Board, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available for the purchase of art for each project under its supervision. The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Board in consultation with the Nebraska Arts Council.

PROCEDURE

The President of each College to which an appropriation is made for the construction, expansion, or renovation of a public building will appoint an art selection committee consisting of a minimum of three members for the purpose of advising the President on art for eligible projects.

1. The committee should be established at the earliest practical time after appropriation of design funds. The decision as to whether the art is to be an integral part of the structure, attached to the structure, detached within or outside of the structure, or exhibited in other public facilities should be made prior to the design of the project and shall be made by the President with the advice of the committee and the architect.
2. The committee shall be responsible for advising the President on the type of art; the selection and commissioning of an artist; the design and execution of the proposed work of art; the placement and acceptance of the work of art.
3. For each project which comes under the purview of the Board's policy and these procedures the President shall arrange the following:
 - a) Consulting with the Nebraska Arts Council prior to any formal action by the Board. Consultation should cover the amount of funds available for art; the type, placement, and acceptance of art; the selection and commissioning of an artist; and the proposed art design.
~~Reporting to the Fiscal, Facilities & Audit Subcommittee of the Board of Trustees prior to any formal action by the Board on the amount of funds to be allocated; the type and placement of art; the commissioning of an artist; and the proposed art design.~~
 - b) An art contract may be conditioned upon later refinements in scope and price and may permit the College in agreement with the artist to make changes in the project without invalidating the contract. Later refinements shall not exceed the scope of the program statement contained in the request for proposals.
 - ~~b) Consulting with the Nebraska Arts Council, after the Board of Trustees has been advised on the art and prior to any formal action by the Board. Consultation should cover the amount of funds available for art; the type, placement and acceptance of art; the selection and commissioning of an artist; and the proposed art design.~~
 - c) Obtaining Board approval of funding; the artist; and the proposed art design.

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~~d) Advising the Director of Administrative Services that the requirements of the Statutes pertaining to acquisition of art for public buildings have been met so that warrants may be issued for payment on the project.~~

ed) Accepting the art.

Legal Reference:	RRS 82-316	Nebraska Arts Council Cash Fund
	RRS 82-317	Declaration of policy
	RRS 82-318	Terms defined
	RRS 82-319	New state capital construction
	RRS 82-320	Nebraska Arts Council duties
	RRS 82-321	Construction project committee
	RRS 82-322	Nebraska Arts Council; Promulgate rules
	RRS 82-323	Nebraska Arts Council; Artists
	RRS 82-324	Nebraska Arts Council; Insure compliance with act
	RRS 82-325	Expenditures for works of art
	RRS 82-326	Appropriation; Works of art; Administration
	RRS 82-327	Works of Art; How displayed
	RRS 82-328	Works of Art; Property of State of Nebraska
	RRS 82-329	Works of Art; Nebraska Arts Council, maintain inventory, inspect, recommend procedures
	RRS 85-304.01 - 304.03	Nebraska State Colleges; new capital construction; appropriation; percentage used for works of art

Policy Adopted: 5/14/82
Policy Revised: 3/11/94
Policy Revised: 11/11/95
Policy Revised: 4/13/00
Policy Revised: 9/15/06
Policy Revised: 4/22/10

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BOARD POLICY

~~No capital construction contract for a project costing more than one hundred thousand dollars (\$100,000) may be executed before approval has been granted by the Board or the Chancellor, as stipulated in Policy 8065. After Board approval, the contract will be signed in this order:~~

- ~~1. Contractor~~
- ~~2. President or Vice President for Administration and Finance~~
- ~~3. Chancellor or Vice Chancellor for Finance and Administration or General Counsel~~

Form

~~If a contract is for labor and material costing less than one hundred thousand dollars (\$100,000), a short form may be used. The short form should include the following elements:~~

- ~~1. Owner is the Board of Trustees of the Nebraska State Colleges doing business as (d.b.a.) _____ State College~~
- ~~2. Detailed Scope of Work~~
- ~~3. Contract Sum~~
- ~~4. Progress Payment Schedule (if applicable)~~
- ~~5. Time of Commencement and Completion~~
- ~~6. Fair Labor Standards Statement~~
- ~~7. Equal Employment Opportunities Statement~~
- ~~8. ADA and Drug Free Workplace Requirements~~
- ~~9. New Employee Work Eligibility Status~~
- ~~10. Listing of contract documents (attachments/specifications/drawings)~~
- ~~11. Binding Parties statement~~
- ~~12. Signature blocks for contractor and College President~~

~~The latest AIA Abbreviated Form of Agreement Between Owner and Contractor, may be used or the short form document developed by the System Office.~~

~~If the contract is for labor and material costing more than one hundred thousand dollars (\$100,000), the latest AIA contract, Standard Form of Agreement Between Owner and Contractor, shall be used. Attached to the base contract shall be the contractor's proposal form, the Notice to Proceed, general conditions of the contract, supplemental conditions of the contract, certificate of insurance as specified in the bid documents, the index of the specifications for the project, and any other documents deemed a part of the contractual agreement.~~

~~A capital construction contract may be conditioned upon later refinements in scope and price and may permit the College in agreement with the contractor to make changes in the project without invalidating the contract. Later refinements shall not exceed the scope of the program statement contained in the request for proposals.~~

~~All contracts shall contain the following clause: Continuance of this contract beyond the limits of funds available shall be contingent upon appropriation or allocation of the necessary funds, and the termination of this contract for lack of funds shall be without penalty.~~

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Payments

~~For construction contracts with phased payments, the payment schedule shall be as follows:~~

- ~~1. 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 is complete, except that ten percent (10%) retainage shall be used on projects fully funded by the 309 Task Force for Building Renewal, and small projects, as determined by the College.~~
- ~~2. When the project reaches final completion, the retainage will be paid in full.~~

Applicability

~~Board Policy 8068 applies to the procurement of all types of Technology Resources including devices, IT equipment, hardware, software, licenses, subscriptions, and all IT products and services and IT consulting. This policy also applies to the procurement of all types of equipment not associated with IT or construction, including furnishings, fixtures, vehicles and machinery.~~

Information Technology (IT) Purchasing

~~Security of data, and requirements for NSCS Technology Resources, need to be considered when NSCS employees make IT purchases. In accordance with Standard 10: Technology Resources Acquisition, from the NSCS Information Security Program in Board Policy 7003, all employees must consult with the applicable Chief Information Officer (CIO), Vice President for Information Technology (VPIT) or System Office Information Security Officer (SOISO) before developing, purchasing or contracting for products, services, and/or consulting that have implications for Technology Resource components, data, security, or technical support. This includes, but is not limited to, cloud services, communication systems, information storage and processing systems, software systems, physical facilities related to such systems, and contractual relationships with vendors of such systems and services.~~

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 Technology Resource, 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. Such Chancellor approval automatically includes the suspension of bidding or request for proposal (RFP) requirements for the emergency purchase.~~

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, items or services are proprietary and only available from the manufacturer or a single entity.~~
- ~~➤ Additions to a system must be compatible with the original system, equipment or software.~~

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- The same vendor/contractor of an installed pilot project system may install expansions to that system.
- Factory authorized maintenance 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 software or materials are copyrighted and are only available from the publisher or a single entity.
- 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 supplies, items, solutions or services are needed.
- Donors providing funding for an item, service or system may specify a particular vendor, manufacturer or brand.

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 Vice President for Administration and Finance 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, software licenses and Technology Resources maintenance agreements, purchase from a previously competitively bid government, multi-state compact or multi-institution contract, including other state colleges and higher education institutions and any purchasing association, or when the price has been established by the federal General Services Administration. Additional exceptions include used items, library acquisitions, and the sharing of IT products and services among institutions. Exceptions also include repairs of less than seventy-five thousand dollars (\$75,000) for vehicles, equipment, furnishings, and Technology Resources. Where possible, repairs under seventy-five thousand dollars (\$75,000) 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/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 exceptions are Board policies 8066 and 8071, where the RFP proposals are not considered “bids” since the final contract amount is derived through negotiations with the highest ranked consultant or contractor.)

FORMAL PROCEDURE

Information Technology and all other equipment purchases exceeding one hundred fifty thousand dollars (\$150,000) shall observe the following bidding or RFP procedures:

1. Specifications: Specifications for Technology Resource purchases and all other equipment may be prepared by College staff or hired consultants.
2. Advertising: For Technology Resources and all other equipment the College determines the most effective means of advertising and distributing the Request for Proposals (RFP) or other necessary bidding specifications.

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The notice, bid specifications or RFP shall include, at a minimum, the following information:

- a) Name of Board of Trustees/College
- b) Description of project, systems or items to be procured
- c) Date, place and time when bids or proposals must be received
- d) Locations where bid documents can be viewed/obtained if not part of the specifications or RFP.

Documentation of the advertisement shall be kept on file with the College responsible for placing the advertisement and will be made available to the System Office or auditors upon request.

3. Bid/Proposal Opening: Electronic proposals, facsimile and e-bids are acceptable. No bids or proposals are to be received or opened after the specified time. College or System Office staff shall be responsible for opening and documenting the bids/proposals. Bid documents shall be considered public information.
4. Bid/Proposal Evaluation: College or System Office staff shall evaluate the bids or proposals received. Awarding of the contracts shall be based on competitive bidding with award to the lowest responsible bidder, except when the RFP specified criteria in addition to price. In such cases, an interview process may be included, and subsequent "best and final offers" submitted, in order to determine the best overall proposal.

INFORMAL PROCEDURE

Technology Resources and all other equipment purchases with a total project cost between fifty thousand dollars (\$50,000) and one hundred fifty thousand dollars (\$150,000) shall observe the following informal procedure:

1. Three or more quotations for the project or purchase shall be solicited from responsible 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.
2. A fixed bid receipt date is not required.
3. A formal contract may be executed for the project after negotiating a price that is reasonable and within budget.
4. All resulting quotations or refusals to quote shall be documented by the College for reference.

OPEN SOLICITATION

Technology Resources and all other equipment purchases with a total cost of less than fifty thousand dollars (\$50,000) shall follow the open solicitation process, as follows:

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1. Competitive bidding is not required.
2. The College may contract directly with a responsible contractor after negotiating a contract price that is reasonable and within budget.

INFORMATION TECHNOLOGY (IT) CONSULTING

For IT consulting contracts of one hundred fifty thousand dollars (\$150,000) or more, a formal, advertised Request for Proposals (RFP) process shall be utilized. The advertisement may be electronically distributed to reach the best pool of potential consultants as determined by the College, or the System Office. The project leader is responsible for determining the IT consultant selection committee, which shall consist of at least two other members from the College or System Office.

Each IT consultant selection committee will be responsible for the development of the RFP specifications, requirements, and criteria for proposal evaluation and ranking. The committee will evaluate proposals and select the best proposal based on application of the stated criteria and any additional information derived through interviews. The committee may also consider “best and final offers” to determine final selection and award of contract.

IT consultants may be hired for pilot projects to evaluate existing systems, make recommendations, and to install partial systems to explore the viability of larger, necessary solutions, which may include new or replacement systems. If the College or System Office eventually installs new or replacement systems because the pilot project was successful, the new or replacement systems will be considered an expansion of an existing system, and therefore qualifying as a sole source project.

BOARD POLICY 8068 CONTRACTS

A contract may be conditioned upon later refinements in scope and price and may permit the College or System Office in agreement with 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 or the purchase.

The most current NSCS Long Form contract should be used for all Policy 8068 purchases, with proposals or price quotations attached as an exhibit. In cases where the vendor or company requires use of their own contract form, great care should be taken to incorporate all provisions of the most current NSCS Long Form into the body of the contract, or as an additional exhibit. Refer also to Board Policy 7015 for additional contract guidance, Board contract approval thresholds, a listing of contracts exempt from Board approval, and requirements for the reporting of contracts.

Legal Reference: RRS 85-304

Board of trustees; powers enumerated

Policy Adopted: 3/11/94
Policy Revised: 9/26/97
Policy Revised: 2/12/04
Policy Revised: 9/15/06
Policy Revised: 11/13/09
Policy Revised: 4/22/10
Policy Revised: 3/15/13
Policy Revised: 6/18/15