



Authority For Local Purchase Manual

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MATERIALS MANAGEMENT DIVISION PURCHASING MANUAL BULLETIN NO. 00.07

To: All State Departments and Agencies

1. NEW PUBLICATION:

Bulletin No. 00.07, covering Authority for Local Purchase (ALP).

2. PUBLICATIONS SUPERSEDED:

Bulletin No. 00.04, covering Authority for Local Purchase (ALP).
Bulletin No. 00.03, covering Authority for Local Purchase (ALP),
Bulletin No. 00.02, covering Authority for Local Purchase (ALP),
Bulletin No. 00.01, covering Authority for Local Purchase (ALP),
Bulletin No. 9-03, covering Authority for Local Purchase (ALP), and
Materials Management Division Rules and Regulations for Local
Purchase.

3. SUMMARY OF CONTENTS:

The bulletin contains revised, up-to-date instructions and procedures for making purchases at the local agency level. Additions, deletions, corrections, and clarifications will be posted on the Materials Management Division's website as they become available.

Betsy Hayes, Director

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Preface

Materials Management Division Mission Statement

To facilitate the strategic acquisition of goods and services for the State of Minnesota and other governmental entities and to provide retail and publishing services through Minnesota's Bookstore. The division aspires to meet its customers' reasonable expectations while upholding the highest legal and ethical standards of responsible business and procurement practices.

The Challenge to Professionals in Purchasing

A special responsibility is required of all people entrusted with the spending of other people's money. As purchasing personnel, we are obligated to perform with the highest integrity. At the same time, we are asked to manage more effectively, achieve better economic results, speed up the process, delegate the authority when appropriate, and be innovative in accomplishing our mission.

Section 1: Authority for Local Purchase

For the purposes of this document, the word “solicitation” refers to any Request for Bid (RFB), Request for Proposal (RFP), Telephone Quotes or SWIFT Events that are issued by an ALP certified buyer.

GENERAL INFORMATION

1.1 Commissioner of Administration. Pursuant to Minn. Stat. § 16C.03, subd. 3, the commissioner of Administration acquires all goods, services, and utilities needed by agencies.

1.2 Delegated Authority. Pursuant to Minn. Stat. § 16C.03, subd. 16, the commissioner of Administration may delegate duties to an agency head or any subordinate of the agency head. The authority for local purchase (ALP) is a delegation from the commissioner of Administration to individuals in state of Minnesota (State) agencies to directly purchase certain goods and services. This delegation may be rescinded at any time. The authority delegated to individuals in agencies belongs only to that individual and cannot be transferred, assigned or otherwise delegated. Because the individual is a delegated representative of the commissioner of Administration, he or she is required to oversee, review, and approve all agency purchasing up to \$5000.00 conducted by others in the agency who are authorized to purchase, but not certified. The purchaser certified by Materials Management Division (MMD) ensures that the state of Minnesota purchasing laws, rules, policies, and procedures are known by agency staff and checks to see that they are followed.

1.3 Applicability. All departments and agencies making direct purchases in accordance with this authority must follow the policies and procedures and instructions contained in this manual and all applicable laws and rules, including but not limited to:

- Minnesota Department of Administration ALP Manual and Appendices
- Minnesota Statutes Chapters 13, 16A, 16B, and 16C,
- Minn. Stat. §§ 10A.07, 15.43, 43A.38, 609.43, and 609.456,
- Minn. Rules chapter 1230, and
- Uniform Commercial Code (UCC) as adopted by Minnesota (Minn. Stat. chapter 336).

Also see **Appendix H**, Laws & Rules Governing State Purchasing & Contracting.

1.4 Purchasing Card, Field Purchase Order, Fleet Card, and Emergency Card. The policies and procedures in this manual must be followed when the State Purchasing Card, Field Purchase Order (FPO), Fleet Card, and Emergency Card is used, unless a written exemption is granted by MMD. State agencies must closely monitor all purchases on the following cards:

1.4.1 Purchasing Card. The purchasing card is for official state business only. To participate in the State Purchasing Card Program, an agency must develop policies and procedures that meet the requirements of **Purchasing Policy 1** and **Purchasing Card Use Policy 1b**, and submit the documents to MMD for approval by the **commissioner of Administration**. **Purchasing Card Use Policy 1b** provides information on card restrictions, statewide policies, pilot project requirements, agency policy and procedure requirements, sales and use tax responsibilities, and statewide policy for frequent flyer miles. See **Appendix N, Policy 1**, Statewide Policy on Expenditures by State Employees and Authorized Users, **Policy 1b**, Purchasing Card Use Policy and Contract Release C-684(5), Cards: Purchasing Payment Services, on the MMD's website.

1.4.2 Field Purchase Order (FPO). **Purchasing Policy 2** provides information on the FPO. The FPO limit is \$5,000.00 per purchase which includes freight and miscellaneous charges, but not sales and use taxes. The FPO is intended for use in immediate-need situations when an employee is not in his or her primary work location and procuring goods and allowable general services cannot be done in the Statewide Integrated Financial Tools System (SWIFT). Exceptions may be granted by the **commissioners of Administration and Minnesota Management and Budget**. See **Appendix N, Policy 2**, Field Purchase Order (FPO) Policy & Limits, and **Appendix D, Forms**, Field Purchase Order Form and Request for Field Purchase Order Policy Exception.

1.4.3 Fleet Card. **Purchasing Policy 1** and **Fleet Card Use Policy 1a** provide information on the Fleet Card. The Fleet Card is for certain fuel and incidental vehicle costs. The Fleet Card allows the State to efficiently and cost-effectively manage fleet vehicle assets and purchases for vehicles. See **Appendix N, Policy 1**, Statewide Policy on Expenditures by State Employees and Authorized Users, and **Policy 1a**, Fleet Card Use Policy.

1.4.4 Emergency Card. **Purchasing Policy 1** and **Emergency Card Use Policy 1c** provide information on the Emergency Card. The Emergency Card is for use in responding to emergencies quickly, efficiently and cost effectively. It is intended to be of very limited availability and authorized only for persons involved in the management of emergency response actions by the agency. See **Appendix N, Policy 1**, Statewide Policy on Expenditures by State Employees and Authorized Users, and **Policy 1c**, Emergency Card Use Policy.

1.5 Levels of Authority for Local Purchasing – Purchases at all dollar levels are subject to compliance with all laws, rules, policies, and procedures in this ALP Manual, including all Appendices. Compliance includes preparing an informal or formal solicitation with all terms and conditions, such as detailed specifications for the product or general services requested, insurance requirements, bonding requirements as needed, delivery requirements, etc.

State agency buyers that split awards to stay within their delegated authority are in violation of their delegated authority. The total cost for a purchase includes, but is not limited to, all maintenance, service, installation, non-professional and technical training, freight and miscellaneous charges related to the purchase. The total cost does not include sales and use taxes.

Below are the delegated authority levels. For detailed information on each delegated authority level, see **Appendix N, Policy 23**, ALP Policy and Procedures Overview. For certification information, see **Appendix P**, ALP Certification Information.

1.5.1 Up to \$5,000.00. When an agency has an ALP certified buyer, any State employee may, if permitted by the employee's agency, make purchases up to \$5,000.00 (including FPOs and use of the State Purchasing Card) without certification from MMD. Purchases made by agency non-certified buyers must be reviewed and approved by the ALP certified buyer. The ALP certified buyer, as a delegate from the commissioner of Administration, has the responsibility to ensure that State purchasing laws, rules, policies, and procedures are followed on all purchases.

1.5.2 Up to \$10,000.00. Certification up to \$10,000 is available to State employees after attending \$10,000.00 ALP training, successfully completing the \$10,000.00 ALP certification test, and certification in writing by MMD. ALP certified buyers must be recertified every three years. See **Appendix P, ALP Certification Information**, ALP Recertification Form.

1.5.3 Up to \$25,000.00/\$50,000.00. Certification up to \$25,000.00/\$50,000.00 is available to State employees who are certified at the \$10,000.00 level. To obtain \$25,000.00/\$50,000.00 certification, eligible ALP certified buyers must have:

- approval of the agency head or delegate,
- attend SWIFT system training or be proficient in SWIFT,
- attend the \$25,000.00 ALP training,
- successfully pass the in-class \$25,000.00 ALP test,
- process a minimum of five solicitations between \$10,000.00 and \$25,000.00 in SWIFT within a one year period,
- submit a request for an MMD review/audit of five solicitations, and
- successfully pass an audit/review by MMD.

ALP certified buyers must be recertified every three years. See **Appendix P, ALP Certification Information**, ALP Recertification Form.

1.5.4 Memorandum of Understanding (MOU) Delegations. MOU delegations granting authority in excess of \$50,000.00 are available to eligible ALP certified buyers after demonstrating a need for the authority and the ability to conduct purchasing at this level in accordance with all laws, rules, policies and procedures. Requests for special purchasing authority must be submitted in writing by the agency head or delegate to the MMD **acquisitions manager**, specifying the goods or general services for which the additional authority is needed, listing the name and purchasing qualifications for each agency ALP certified buyer who need the special delegation and explaining how value is added by conducting the purchases at the local level. Approval of such requests is at the discretion of the MMD. All special delegation requests and approvals must be in writing. See **Appendix N, Policy 6**, Purchasing Policy on Special Delegation to ALP Authority.

1.6 Exceptions to Levels of Delegated Authority

1.6.1 Emergency Acquisition. Minn. Stat. § 16C.02, subd. 6b, defines an emergency as a threat to public health, welfare, or safety that threatens the functioning of government, the protection of property, or health or safety of people. See **Appendix H**, Laws & Rules Governing State Purchasing & Contracting. For emergency card information, see **Appendix N, Policy 1**, Statewide Policy on Expenditures by State Employees and Authorized Users, and **Policy 1c**, Emergency Card Use Policy.

1.6.1.1. Emergency Exception. The solicitation process described in Minn. Stat. chapter 16C is not required in an emergency as defined above. In such an emergency, the commissioner of Administration “may make any purchases necessary for the repair, rehabilitation, and improvement of a State-owned structure or may authorize an agency to do so and may purchase, or may authorize an agency to purchase, goods, services, or utility services directly for immediate use.”

1.6.1.2. Purpose of Emergency Action. Actions utilizing the emergency authority exception are limited to those necessary to alleviate the emergency. Only what is needed to expeditiously reestablish the functioning of government, the protection of property, or the health or safety of people is eligible for the emergency authority exception.

1.6.1.3. Declaring an Emergency. The MMD **director** or **acquisitions manager** may declare an emergency. **Section 1.6.1.3.2** identifies when an agency head or delegate may declare an emergency.

1.6.1.3.1 MMD Approval. When time permits, obtain MMD’s advance authorization to declare an emergency. Contact the MMD **acquisitions manager** at 651.201.2402 or the MMD **director** at 651.201.2400. Submit a final report to MMD upon completion of the emergency activities (see **Section 1.6.1.4** below).

1.6.1.3.2 Agency Head/Delegate Approval. When time does not allow contacting MMD for advance authorization, an agency head or authorized delegate may declare an emergency.

When an agency head or delegate declares an emergency without advance authorization from MMD, the State agency must:

- Document the declaration of an emergency in writing, including the nature, date, location and scope of the emergency and any limits to actions that should be taken to rectify the situation,
- Submit a copy of the above documentation to MMD as soon as practicable, and
- Submit a final report to MMD upon completion of the emergency activities (see **Section 1.6.1.4** below).

In declared emergencies, any State agency employee may handle the purchase if required to respond to the emergency.

1.6.1.4. Emergency Final Report. Whenever MMD or an agency head declares an emergency, the State agency must:

- Prepare a written report upon completion of its emergency procurement activities when the total cost of goods and services exceeds \$5,000.00. The report shall fully document the actions taken, why the competitive bid process could not be utilized, how the scope of work was minimized to what was immediately necessary, and the total costs of the goods and services procured under the emergency authority.
- Submit a copy of the final report to MMD.
- Maintain a copy of the final report in the agency purchasing file.

1.6.2 Public Works/Construction Contracts. ALP certified buyers are limited to their ALP delegation, but not to exceed \$50,000.00, for public works/construction contracts. The only exception to this is if an agency or an ALP certified buyer has a written MOU delegation. See **Section 1.5.4**, Memorandum of Understanding (MOU) Delegations. All public works/construction contracts must follow the requirements in **Appendix Q**, Instruction for Construction Solicitations. Also see **Section 1.8**, Building Construction, and **Appendix D**, Format for Construction Solicitations.

All public works/construction contracts require proof of insurance prior to beginning work. See **Section 2.40**, Insurance, **Appendix C**, Insurance, and **Appendix Q**, Instructions for Construction Solicitations.

1.6.3 MMD Contract Items. ALP certified buyers need not stay within their delegated ALP authority limits, unless restricted by their agency or the State contract, when making purchases from State contracts established by MMD. State agencies must reference the contract number on all purchasing documents. See **Section 2.3** for more information on purchasing from State contracts.

1.6.4 Products and General Services from State Agencies. When purchasing products and general services from an agency, ALP certified buyers:

- May exceed their ALP delegation, unless restricted by their agency,
- Do not need to go through the solicitation process, and
- Do not need to complete a Service Contract Certification Form for State agency general services.

For assistance in determining if a product and/or service is available from a State agency, contact the MMD **acquisition management specialist (AMS)** assigned to the product/service or the MMD **acquisitions manager**.

NOTE: For MINNCOR and Minnesota State Industries' products and general services that **are not** on current State contracts, ALP certified buyers must obtain written approval from the MMD **acquisitions manager** to exceed their delegated authority.

1.6.5 MINNCOR Products and General Services on Current State Contract(s). State agencies should follow the policies and procedures set forth in **Section 2.3** when purchasing MINNCOR products and general services that are on a current State contract. State agency buyers may procure goods and general services from MINNCOR directly without obtaining competitive responses. However, if an agency chooses to solicit responses from other vendors for items available from MINNCOR, the solicitation must also be forwarded to MINNCOR to ensure that MINNCOR has an opportunity to submit a response, unless a written exception is granted by MMD. Information on where to submit a

solicitation to MINNCOR is available on the MMD website www.mmd.admin.state.mn.us, MINNCOR Industries. If an ALP certified buyer chooses to solicit responses from other vendors, the estimated value of the solicitation must be within his/her delegated purchasing authority.

NOTE: For MINNCOR and Minnesota State Industries' products and general services that **are not** on current State contracts, ALP certified buyers must obtain written approval from the MMD **acquisitions manager** to exceed their delegated authority.

1.6.6 Products and General Services from Vendors Licensed or Certified by State Agencies. ALP certified buyers purchasing products and general services from vendors licensed or certified by the following State agencies may exceed their delegated authority.

1.6.6.1 Department of Employment and Economic Development (DEED) Certified Providers and Department of Human Services (DHS) Licensed Providers.

Pursuant to Minn. Stat. § 16C.10, subd. 5(4), buyers may procure goods and services directly from rehabilitation facilities and extended employment providers that are certified by the commissioner of Employment and Economic Development and day services licensed under Minn. Stat. chapter 245D. For a complete list of DEED certified providers and DHS licensed providers see **Appendix J, Vendor Information**, DEED Certified Providers and DHS Licensed Providers. Also see **Section 3**, Exceptions to the Solicitation Process.

If an agency chooses to solicit responses from other vendors for items available from DEED certified providers and DHS licensed providers, the estimated value of the solicitation must be within the ALP certified buyer's delegated authority and the solicitation must be forwarded to DEED certified providers and DHS licensed providers to ensure that DEED certified providers and DHS licensed providers have an opportunity to submit a response, unless a written exception is granted by MMD.

NOTE: DEED certified providers and DHS licensed providers responding to a solicitation for janitorial services, document imaging services, document shredding services, and mailing, collating, and sorting services are eligible for a six (6%) preference. See **Section 1.10**, Preferences, **Section 2.11**, Vendor Preferences, **Section 2.24**, Determining Preference Eligibility and Preference Percent, **Appendix N, Policy 29** Purchasing from DEED Certified and DHS Licensed Providers, and **Policy 35**, Revised Instructions for Applying Preferences.

1.6.7 One-Time Delegations of Authority. An ALP certified buyer may call the MMD **acquisition management specialist (AMS)** assigned to a commodity for a one-time delegation to exceed his/her delegated authority if the need arises for an acquisition of goods or general services where time constraints do not permit the normal purchasing process for a SWIFT requisition or Request for Bid. If the MMD **AMS** agrees there is a special need, the ALP certified buyer must submit a written request by fax or email to the MMD **AMS**. If the written request is approved, it will be approved in writing by the MMD **AMS** granting the ALP certified buyer a one-time special delegation of authority. The written approval must be kept in the State agency's purchasing file. Special delegations of authority will only be made in writing. See **Appendix N, Policy 6**, Purchasing Policy on Special Delegation to ALP Authority.

LAWS AND RULES GOVERNING PURCHASING

1.7 Intentionally left blank.

1.8 Building Construction. Building construction acquisitions are governed by Minn. Stat. §§ 16C.03, subd. 3a, and 16C.25-.28, and other applicable laws.

1.9 Records Retention. All responses and all documents pertaining to the award of the solicitation, such as responses, envelopes or other time-stamped documents, shall be kept on file in accordance with Minn. Stat. §§ 138.163 and 138.17, governing the preservation and disposal of public records. Also see **Section 2.15**, Documentation for Solicitation File.

1.10 Vendor Preferences and Made/Manufactured In Minnesota Requirements. Below is a list of preferences and made/manufactured in Minnesota requirements. For assistance in identifying businesses eligible for preference(s) and determining preference percent, see **Section 2.11**, Vendor Preferences, **Section 2.24**, Determining Preference Eligibility and Preference Percent, **Section 4**, Vendor Information, **Appendix J**, Vendor Information, and **Appendix N, Policy 35**, Revised Instructions for Applying Preferences.

1.10.1 Targeted Group and Economically Disadvantaged Preference. Minn. Stat. § 16C.16 authorizes a program for vendors to be certified as targeted group and/or economically disadvantaged. Utilization of these vendors at the local purchasing level is strongly encouraged. The preference is applied only to the first \$1,000,000.00 of the response. A directory of certified businesses is available in **Appendix J**, Vendor Information. Additional information about the program is available on the MMD website [www.mmd.admin.state.mn.us/Vendor Information](http://www.mmd.admin.state.mn.us/Vendor%20Information) or through the MMD Helpline by calling 651.296.2600.

1.10.2 Veteran-Owned Preference. Minn. Stat. § 16C.16, subd. 6a, provides:

(a) except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference, but no less than the percentage awarded to any other group under this section, in the amount bid on state procurement to certified small businesses that are majority-owned and operated by veterans.

Minn. Stat. § 16C.19 provides:

(d) . . . a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

(e) . . . In addition to the documentation required in Minnesota Rules, part 1230.1700, the veteran-owner must have been discharged under honorable conditions from active service, as indicated by the veteran owner's most current United States of Defense form DD-214.

The preference is applied only to the first \$1,000,000.00 of the response. Also see **Appendix D**, Veteran-Owned Preference Form, **Appendix J, Vendor Information**, Revised Instructions for Applying Preferences and Guide to Verify US Veterans Affairs' Center for Veterans Enterprise Certification.

1.10.3 Environmental Preference. Minn. Stat. § 16C.0725 requires buyers consider the recycled content of the commodities to be purchased in solicitation specifications. The solicitation document must state what preference will be given for the level of recycled content up to the maximum of a 10 percent preference. The ALP certified buyer should contact the MMD **AMS** or MMD **acquisitions manager** for assistance in preparing the solicitation document. See also **Section 1.13**, Environmentally Preferable Purchasing, **Section 2.6**, Environmental Issues, and **Section 2.7**, Environmental References.

1.10.4 Department of Employment and Economic Development (DEED) Certified Providers and Department of Human Services (DHS) Licensed Providers Preference. Minn. Stat. § 16C.155 authorizes a six percent (6%) preference for rehabilitation programs and extended employment providers that are certified by the commissioner of Employment and Economic Development and day services licensed under Minn. Stat. chapter 245D for the following services:

- Janitorial services,
- Document imaging services,
- Document shredding services, and
- Mailing, collating, and sorting services.

For a list of DEED certified providers and DHS licensed providers, see **Appendix J, Vendor Information**, DEED Certified Providers and DHS Licensed Providers. For additional information, see **Section 2.11**, Vendor Preferences, and **Appendix N, Policy 29**, Purchasing from DEED Certified and DHS Licensed Providers.

1.10.5 Other States with Residence Preference. Minn. Stat. § 16C.06, subd. 7, provides a resident vendor shall be allowed a preference over a non-resident vendor from a state that gives or requires a preference to vendors from that state. This is called a reciprocal preference, or reciprocity.

Minn. Stat. § 16C.02, subd. 13, provides a “resident vendor” means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
- (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
- (3) has a business address in the state; and
- (4) has affirmatively claimed that status in the bid or proposal submission.

For assistance in determining and applying a reciprocal preference, contact the **AMS** responsible for the solicitation’s product and/or service. Also see **Section 2.24.5**, Other States with Residence Preference, **Appendix G, States with Resident Bidder and Reciprocal Preferences**, Instructions for Determining Eligibility for Reciprocal Preferences and State by State Reciprocal Preference Data, and **Appendix N, Policy 35**, Revised Instructions for Applying Preferences.

1.10.6 Minnesota Firm Preference. Minn. Rules § 1230.0900 provides whenever a tie involves a Minnesota firm and one whose place of business is outside the state of Minnesota, preference shall be given to the Minnesota firm.

1.10.7 All-Terrain Vehicles Manufactured in Minnesota. Minn. Stat. § 84.025, subd. 10 requires all all-terrain vehicles purchased by the commissioner of natural resources be manufactured in the state of Minnesota.

1.10.8 Paper/Printing Made in Minnesota. Effective August 1, 2013, Minn. Stat. § 16C.073, subd. 2(a)(9), requires, whenever practicable, State agencies purchase paper made on a paper machine located in Minnesota. State agencies must review Minn. Stat. § 16C.073, subd. 2(a), for additional requirements prior to purchasing paper/printing.

1.10.9 Solar Photovoltaic Modules Made in Minnesota. Laws of Minnesota 2013, Chapter 137, Article 5, Section 2, provides that no solar photovoltaic module may be installed that is financed directly or indirectly, wholly or in part, with money appropriated in this act, unless the solar photovoltaic module is made in Minnesota as defined in Minn. Stat. § 216C.411(a).

1.11 Conflict of Interest/Ethics in Purchasing. Agency buyers must comply with all statutes that deal with Ethical Practices and Conflict of Interest, including but not limited to Minn. Stat. §§ 15.43, 16C.04, and 43A.38. All employees involved in any phase of the purchasing process should review these statutes regularly to ensure understanding and compliance as they shall be held accountable to the highest standard. The State agency is responsible for reporting, in writing with detailed information, to the MMD **director** or MMD **acquisitions manager** when a conflict of interest (actual, potential, and/or appearance) exists in the purchasing process. MMD will review and issue a written determination. The State agency must keep a copy of the written determination in the purchasing file for audit purposes. Also see **Section 1.17**, Purchasing Violations and Unlawful Conduct, and **Appendix N, Policy 4**, Code of Ethics Policy.

1.12 Misconduct of Public Officer or Employee and Reporting. As stated in the excerpt below from Minn. Stat. § 609.43, a public officer or employee who does any of the following, for which no other sentence is specifically provided by law, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both:

“(2) In the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity; . . . ”

For requirements for reporting the incident to the State Auditor and the Legislative Auditor, see **Section 1.17**, Purchasing Violations and Unlawful Conduct, and **Appendix H**, Laws and Rule Governing State Purchasing & Contracting.

1.13 Environmentally Preferable Purchasing. Certain federal and State laws support or require environmentally preferable purchasing by the public sector. These laws are designed to show that government can lead by example and help pave the way for more environmentally preferable options in the marketplace for consumers and businesses. In addition to the information below on procuring and reporting goods and general services that reduce energy use and the environmental impact of State government, see **Section 2.24.3**, Environmental Preference, **Appendix H**, Laws and Rule Governing State Purchasing & Contracting, **Appendix L**, Environmental Information, and **Appendix O**, Executive Orders.

1.13.1 Prevent Pollution Through Specifications. Minnesota Executive Order 11-13, Strengthening State Agency Environmental, Energy and Transportation Sustainability, dated April 8, 2011, directs State agencies, in cooperation with the Department of Administration, to encourage pollution prevention through their purchasing policies and specifications.

On February 28, 2013, the Inter-Agency Pollution Prevention Advisory Team (IPPAT) adopted the Updated Model Sustainability Plan Targets, which include the elimination of triclosan-containing products. State agencies are prohibited from purchasing hand soap, dishwashing, or laundry products containing triclosan, effective June 30, 2013. For more information, contact Minnesota Pollution Control Agency at 651.296.6300.

1.13.2 Purchases Utilizing Federal Funds. State agencies utilizing federal funds are responsible for complying with all federal laws, rules, policies, and procedures. State agencies that are not required to comply with the federal laws, rules, policies and procedures related to purchasing environmentally preferable products and general services are encouraged to use them as guidelines when purchasing.

ALP certified buyers are required to report to the MMD **AMS** when federal funds are being used on requisitions submitted to MMD, notifying MMD of all federal requirements that must be met, and providing the MMD **AMS** with the language that needs to be included in the solicitation documents. Also, the State agency must include a note in the requisition Header Comments box advising MMD of the federal funding. Also see **Section 2.9**, Terms and Conditions.

1.13.3 Recycled Products. Pursuant to Minn. Stat. § 16C.0725, State agencies must purchase products made with recycled material when the price does not exceed comparable nonrecycled products by more than 10 percent.

1.13.4 Recycled Copy Paper. Pursuant to Minn. Stat. 16C.073, all copier paper purchased by agencies must contain at least 10 percent post-consumer recycled material by fiber content. The 1999 federal standard is a minimum of 30 percent post-consumer recycled material. The Department of Administration supports the federal standard and encourages meeting that standard when practicable. Agencies must purchase their paper from Contract Release O-86(5) or Contract Release P-942(5), unless a written exemption has been granted by MMD. Also see **Section 1.10.8** for additional requirements.

1.13.5 Less-Toxic, More-Durable, or Reusable Products. Pursuant to Minn. Stat. § 16C.0725, State agencies are required to place special emphasis on reducing the quantity and toxicity of materials in waste. Solicitation specifications should consider the extent to which a commodity or product is durable, reusable, or recyclable and the extent to which the commodity or product contains post-consumer material.

1.13.6 Environmental Printing Guidelines. All printing requirements must comply with Minn. Stat. § 16C.073, subd. 2(a), which states:

- (a) Whenever practicable, a public entity shall:
 - (1) purchase uncoated office paper and printing paper;
 - (2) purchase recycled content paper with at least ten percent post-consumer material by weight;
 - (3) purchase paper which has not been dyed with colors, excluding pastel colors;
 - (4) purchase recycled content paper that is manufactured using little or no chlorine bleach or chlorine derivatives;
 - (5) use no more than two colored inks, standard or processed, except in formats where they are necessary to convey meaning;
 - (6) use reusable binding materials or staples and bind documents by methods that do not use glue;
 - (7) use soy-based inks;
 - (8) produce reports, publications, and periodicals that are readily recyclable within the State resource recovery program; and
 - (9) purchase paper which has been made on a paper machine located in Minnesota.

Minn. Stat. § 16C.073, subd. 1(d), defines “practicable” as “capable of being used, consistent with performance, in accordance with applicable specifications, and availability within a reasonable time.”

1.13.7 Products Containing Certain Polybrominated Diphenyl Ethers Banned.

Minn. Stat. § 325E.387, subd. 2, requires “the commissioner of administration shall make available for purchase and use by all State agencies equipment, supplies, and other products that do not contain polybrominated diphenyl ethers, unless exempted under section 325E.386, subdivision 2.”

1.14 Intentionally left blank.

1.15 Human Rights Compliance. The amended Minnesota Human Rights Act (Minn. Stat. § 363A.36) divides the contract compliance program into two categories. Both categories apply to any contract(s) for goods or services estimated to exceed \$100,000.00.

The first category applies to businesses that have had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months. The businesses in this category must have submitted an affirmative action plan to the commissioner of Human Rights by the time responses are due and must have received a Certificate of Compliance prior to the execution of the contract or agreement.

The second category applies to businesses that have had more than 40 full-time employees on a single working day in the previous 12 months in the state in which they have their primary place of business, if not in Minnesota. The businesses in this category must have either a current Certificate of Compliance previously issued by the Department of Human Rights, or certify to the contracting agency that they are in compliance with federal affirmative action requirements before execution of the contract. See **Appendix F**, SWIFT Special Terms and Conditions, AMPGHR.

REVIEW OF DEPARTMENT PURCHASING ACTIVITY

1.16 Site Visit Audits. Agencies will be visited periodically by a representative of MMD and/or the Office of the Legislative Auditor to review purchasing activity.

1.16.1 The review provides the agency personnel an opportunity to make comments, express concerns and ask questions. However, agency personnel are strongly encouraged to contact MMD any time questions or concerns arise.

1.16.2 A number of solicitations, orders and payments will be reviewed by MMD to ensure knowledge of, and compliance with, existing laws, rules, policies, and procedures.

1.16.3 Based on the results of this review, further training may be required, an additional review may be scheduled, or rescission of the ALP certified buyer's delegated authority may occur.

REPORTING REQUIREMENTS

1.17 Purchasing Violations and Unlawful Conduct.

1.17.1 Violations of Minn. Stat. § 16A.15, subd. 3, and Minn. Stat. § 16C.05, subd. 2(3).

Minn. Stat. § 16A.15, subd. 3, provides in part:

Allotment and encumbrance. (a) A payment may not be made without prior obligation. An obligation may not be incurred against any fund, allotment, or appropriation unless the commissioner has certified a sufficient unencumbered balance or the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it. The commissioner [of Minnesota Management and Budget] shall determine when the accounting system may be used to incur obligations without the commissioner's certification of a sufficient unencumbered balance.

Minn. Stat. § 16C.05, subd. 2(a), provides a contract is not valid and the state is not bound by it and no agency, without the prior written approval of the commissioner [of administration] granted pursuant to subdivision 2a, may authorize work to begin on it unless:

(3) the accounting system shows an encumbrance for the amount of the contract liability, except as allowed by policy approved by the commissioner [of administration] and commissioner of management and budget for routine, low-dollar procurements.

The SWIFT system is the State's accounting and procurement system.

If a violation of Minn. Stat. § 16A.15, subd. 3, and Minn. Stat. § 16C.05, subd. 2(a)(3), occurs, the agency must complete a 16A.15/16C.05 form. For instructions on how to proceed, see **Appendix N, Policy 14**, Instructions for Reporting of Purchasing Violations, Vendor Protests, and Mis-Awards. Also see **Appendix D**, Forms, 16A.15/16C.05 Form, **Appendix H**, Laws & Rules Governing State Purchasing & Contracting, and **Appendix S**, SWIFT Information.

1.17.2 Violation of Minn. Stat. § 16C.05, subd. 2(a)(1)-(2).

Minn. Stat. § 16C.05, subd. 2(a), provides:

Creation and validity of contracts. (a) A contract is not valid and the state is not bound by it and no agency, without the prior written approval of the commissioner granted pursuant to subdivision 2a, may authorize work to begin on it unless:

- (1) it has first been executed by the head of the agency or a delegate who is a party to the contract;
- (2) it has been approved by the commissioner; and
- (3) the accounting system shows an encumbrance for the amount of the contract liability, except as allowed by policy approved by the commissioner and commissioner of management and budget for routine, low-dollar procurements.

If a violation of Minn. Stat. § 16C.05, subd. 2, occurs, the agency must complete a 16A.15/16C.05 form. For instructions on how to proceed, see **Appendix N, Policy 14**, Instructions for Reporting of Purchasing Violations, Vendor Protests, and Mis-Awards. Also see **Appendix D**, Forms, 16A.15/16C.05 Form, **Appendix H**, Laws & Rules Governing State Purchasing & Contracting, and **Appendix S**, SWIFT Information.

1.17.3 Other Purchasing Violations. If a buyer has or may have violated other laws, rules, policies, or procedures, which includes Minn. Stat. chapters 16B and 16C, the agency must call the **MMD acquisitions manager** (651.201.2402) or **MMD director** (651.201.2400) for guidance on how to proceed before taking any action. See **Appendix N, Policy 14**, Instructions for Reporting of Purchasing Violations, Vendor Protests, and Mis-Awards.

1.17.4 Purchasing Card Violations or Fraud. If a card is used in violation of the Purchasing Card Use Policy **1b**, the authorized card user shall report the matter to the agency purchasing card coordinator no later than the next business day. This requirement includes those instances when the State-owned purchasing card account number has been compromised and unauthorized use of the account is discovered either by the servicing contract vendor or a State employee. Violations of this policy could result in discipline up to and including discharge. In the case of a prohibited purchase, the authorized user may be required to immediately reimburse the agency for the prohibited purchase. There may be situations where such reimbursement may not be warranted, in which case the agency will assess and resolve such matters on a case-by-case basis. See **Appendix N, Policy 1**, Statewide Policy on Expenditures by State Employees and Authorized Users, and **Policy 1b**, Purchasing Card Use Policy.

Also, pursuant to Minn. Stat. § 3.971 and Minn. Stat. § 609.456, subd.2, State agencies must notify the Office of Legislative Auditor (OLA) of all suspected fraud by completing an Allegation Form and mailing to OLA. This requirement includes those instances when the State-owned purchasing card account number has been compromised and/or unauthorized use of the account is discovered either by the servicing contract vendor or a State employee. For a copy of the OLA Allegation Form, see OLA's website <http://www.auditor.leg.state.mn.us/reporting.htm>. Also see **Appendix H**, Laws & Rules Governing State Purchasing & Contracting.

1.17.5 Violations of Code of Ethics by State Employee. Minn. Stat. § 43A.39, subd. 2, provides that all **suspected** violations of the code of ethics by a State employee must, except when to do so would knowingly impede or otherwise interfere with an ongoing criminal investigation, be promptly reported in writing to the **legislative auditor**. For a copy of the OLA Allegation Form, see OLA website <http://www.auditor.leg.state.mn.us/reporting.htm>. Also see **Appendix H**, Laws & Rules Governing State Purchasing & Contracting.

1.17.6 Theft, Embezzlement, or Unlawful Use of Public Funds or Property by State Employee. Minn. Stat. § 609.456, subd. 2, provides that all suspected theft, embezzlement, or unlawful use of public funds or property by a State employee must, except when to do so would knowingly impede or otherwise interfere with an ongoing criminal investigation, be promptly reported in writing to the **legislative auditor**. For a copy of the OLA Allegation Form, see OLA website <http://www.auditor.leg.state.mn.us/reporting.htm>. Also see **Appendix H**, Laws & Rules Governing State Purchasing & Contracting.

1.17.7 Unlawful Use or Access to Nonpublic Data. Minn. Stat. § 3.971, subd. 9, **provides** that State agencies must promptly notify the **legislative auditor** when the State agency obtains information indicating that government data classified by Minn. Stat. chapter 13 as not public may have been accessed or used unlawfully. For a copy of the Allegation Form, see OLA's website <http://www.auditor.leg.state.mn.us/reporting.htm>. Also see **Appendix H**, Laws & Rules Governing State Purchasing & Contracting.

RESPONSIBLE VENDOR

1.18 Responsible Vendor. Minn. Rules § 1230.0150, subp. 20, "Responsible vendor" means a vendor who:

- A. is a manufacturer of, deals in, but is not a broker of, or is an agent of a manufacturer with full knowledge of the products to be furnished; and
- B. if services are to be provided, has the necessary skills or is in the business of supplying these services; and
- C. can demonstrate a satisfactory credit standing, lack of delinquent tax liability, and the financial capability to perform a contract as evidenced by the ability to obtain bonding when required; and
- D. has no unresolved record of failure to perform, or of unsatisfactory performance of, contracts for the State or other customers; and
- E. is not currently debarred by another government entity for any cause including defaults on contracts, late deliveries, products not meeting specifications, substandard installation, or service; and
- F. is otherwise qualified under rule and law, including incorporation in or registration to do business in Minnesota; and
- G. has not engaged in unlawful practices, associated with organized crime, or operated under false names or fronts as a small business or a socially or economically disadvantaged small business; and

- H. is in compliance with all the tax laws of Minnesota, as evidenced by timely filing of all required returns, reports, payments, and possession of all applicable stamps, licenses, or other permits, and freedom from any judgment, lien, or seizure of assets or property to satisfy tax payments or duties; and
- I. is willing to furnish all information necessary to determine responsibility as outlined in items A to H within 30 calendar days or less or within a reasonable amount of time determined by prior consensus between the bidder and the division [MMD].

Section 2: General Purchasing Policies and Procedures

For the purposes of this document, the word “solicitation” refers to any Request for Bid (RFB), Request for Proposal (RFP), Telephone Quotes or SWIFT Events that are issued by an ALP certified buyer.

GENERAL PROVISIONS

2.1 Overview of Policy for Purchases

2.1.1 Purchases must be made in accordance with all state of Minnesota (State) laws, including but not limited to Minnesota Statutes Chapters 16A, 16B, and 16C, and all rules, policies and procedures adopted by the commissioner of Administration. See **Appendix H, Laws & Rules Governing State Purchasing and Contracting**. Agency ALP certified buyers are responsible for ensuring agency purchasing is in compliance with all procurement laws, rules, policies, and procedures. If an agency ALP certified buyer is in a situation where he/she has been asked to make a purchase in violation of procurement laws, rules, policies, and procedures, the ALP certified buyer must contact the MMD **acquisitions manager** for advice on how to proceed prior to making the purchase. Also see **Section 1.17, Purchasing Violations, Appendix H, Laws & Rules Governing State Purchasing & Contracting**, Minn. Stat. § 609.43, Misconduct of public officer or employee, and **Appendix R, Ethics and Conflict of Interest (Including Organizational Conflict of Interest)**.

2.1.2 MMD delegates authority for local purchase (ALP) to agency staff (ALP certified buyers). Delegated ALP dollar limits are for the total purchase amount including, but not limited to, installation, maintenance, nonprofessional or technical training, freight, etc., excluding tax. The ALP dollar limits are not for individual items on a purchase order. Agency staff that split awards to stay under their purchasing limit are in violation of their purchasing authority.

2.1.3 Each level of purchasing authority is granted to the **individual** who is MMD-certified, **not to the agency** or to the position. The delegation of purchasing authority may be rescinded at any time.

2.1.4 All purchases except FPOs and emergencies must be encumbered prior to placing an order with the vendor, unless a written exception is approved by MMD and/or Minnesota Management & Budget (MMB).

2.1.5 State agencies must pay State and local sales and use taxes in accordance with its Direct Pay Permit and the Department of Revenue laws and rules. For a copy of the State's Direct Pay Permit, see website www.mmd.admin.state.mn.us/salestax.htm.

State agencies are also responsible for ensuring the correct amount of State and local sales and use taxes is paid when processing through SWIFT Procurement (SWIFT). If a State agency determines that State and/or local sales and use taxes are due and have not been paid to a vendor or the Department of Revenue, the State agency is responsible for paying the sales and use taxes directly to the Department of Revenue. For information regarding sales and use taxes, see Department of Revenue's website www.revenue.state.mn.us. Also see **Appendix H**, Laws and Rules Governing State Purchasing and Contracting, and **Appendix N, Policy 15**, Instructions for Sales Tax Paid Directly to Vendor as an Exception to Direct Pay.

PRELIMINARY CONSIDERATIONS

2.2 Do I need to purchase "new" products? Prior to making a purchase of new products, an agency should determine if a used, recycled, repaired, refurbished, or remanufactured product would fulfill the needs of the agency. If the product can be "used," contact Department of Administration's Fleet and Surplus Services Division for information about State and federal surplus property. See **Appendix I, Fleet and Surplus Services**, for information on available surplus property and a link to A User's Guide to State Property Management.

2.3 Is my purchase available from a State agency or on a State contract? If the item to be purchased must be new, the next step is to determine whether the item or general service needed is currently available from a State agency or on a State contract. To search for a product or general service on a State contract, go to the MMD website www.mmd.admin.state.mn.us, log into the **secure area** and click on Contract Search Page.

2.3.1 Purchasing from a State Agency. For assistance in determining if a product and/or general service is available from a State agency, contact the MMD **acquisition management specialist (AMS)** assigned to the product/ general service or the MMD **acquisitions manager**.

2.3.1.1 General Services. Pursuant to Minn. Stat. § 16C.09, before purchasing general services, the State agency must certify that no current State employee is able and available to perform the general services by completing a Service Certification Form, unless exempt below.

A Service Certification Form is not required if the procurement is:

- a general service provided by State agencies, or
- a single procurement for a general service up to \$5,000.00 that will not be repeated in the fiscal year, or
- multiple procurements for the same general service with a cumulative total no more than \$5,000.00 in a fiscal.

See **Section 1.6.4**, Products and General Services from State Agencies, **Section 2.44**, General Service Contracts, and **Appendix D, Forms**, Service Certification Form.

2.3.1.2 Goods. State agencies are encouraged to purchase goods from State agencies.

2.3.2 Purchasing from State Contracts. All goods and general services that are on State contracts must be purchased from the contract vendor, unless specifically stated otherwise in the contract release. For example, some State contracts are available only to specified State agencies and/or the contract release may specifically state that the contract does not prohibit State agencies from using their delegated local purchasing authority to procure similar goods and general services from other vendors. If the contract release does not provide for firm pricing for a product and/or a general service on the contract, State agencies are responsible for contacting the contract vendor for pricing and providing the contract vendor with the contract number prior to issuing the purchase order to ensure the vendor is aware of the contract and provides only the products, general services, and pricing available on the State contract.

Under certain circumstances, exceptions to using a State contract may be granted by MMD. Any exceptions to using a State contract when required to be used must be approved in writing by the MMD **AMS** or MMD **acquisitions manager**. Also see **Section 2.3.2.2** for instructions for a large dollar or large quantity purchase.

When an item is on a State contract, there is no need to go through the solicitation process because that process has already been performed by MMD. Also, as stated in **Section 1.6.3**, MMD Contract Items, ALP certified buyers are not required to stay within their delegated ALP authority limits, unless restricted by their agency or the State contract, when making purchases from State contracts established by MMD.

When purchasing goods or general services on a State contract, an ALP certified buyer must proceed as follows:

2.3.2.1 Read the contract release carefully. Before purchasing from the contract:

- determine if the item (goods and/or general service) is part of the contract,
- determine if the State agency is eligible to purchase from the State contract,
- review all contract terms and conditions, ordering procedures, and minimum or maximum order volumes,
- review contract exceptions, and
- review other requirements.

2.3.2.2 If the request is for a large dollar or large quantity purchase, contact the MMD **AMS** to determine if better pricing than the pricing on the contract may be obtained through negotiations or by issuing a separate solicitation for the agency's need. To issue a solicitation, the agency must obtain written approval from the MMD **AMS**.

2.3.2.3 If the State agency is eligible to purchase from the State contract, issue a Contract Release Order (CRO) or Blanket Purchase against a contract (BPC), unless otherwise directed in the contract release. State agencies must list the contract number on the order document.

2.4 If goods and general services are not on State contract, does the purchase exceed my delegated authority? If yes, determine whether the purchase is authorized as an exception to the ALP certified buyer's delegated authority or if approval is required to exceed the buyer's delegated authority. See **Section 1.6**, Exceptions to Levels of Delegated Authority. If none of the exceptions apply, an ALP certified buyer must proceed as follows.

2.4.1 Prepare an Open Market Requisition (OMR) in SWIFT and submit it to MMD through SWIFT. The requisitions are assigned to a specific MMD **AMS** responsible for the respective product lines and general service lines. For complex purchases, agencies are encouraged to contact the MMD **AMS**, prior to entering the requisitions, for assistance in determining special considerations. Agency buyers are responsible for reporting to the MMD **AMS** when federal funds are being used on requisitions submitted to MMD, notifying MMD of all federal requirements that must be met, and providing the MMD **AMS** with the language that needs to be included in the solicitation documents. If federal money is being used for the purchase, the State agency must include a note in the requisition Header Comments box advising MMD of the federal funding. See **Section 2.9**, Terms and Conditions, Purchases Above ALP Authority with Federal Funding.

2.4.2 Use your SWIFT training materials for more information about entering the requisition in the SWIFT. See **Appendix S**, SWIFT Information. Assistance is also available through the SWIFT Help Desk at 651.201.8100, Option 2 or www.swift.state.mn.us/training-home.

2.4.3 Attachments for a requisition should be uploaded to the requisition using the requisition Header Comments box, or if the attachment applies only to some of the lines, the attachment should be uploaded on each applicable line using the requisition Line Comments box.

COMPETITIVE PURCHASING REQUIREMENTS

2.5 Competitive Requirements. Unless specifically exempted by law, all purchases exceeding \$5,000.00 must be based on competitive responses. The following procedures must be followed in order to ensure competition. **Note: An invoice does not meet the definition of a solicitation response or a written confirmation and cannot be used to satisfy this requirement. See Section 2.15**, Documentation for Solicitation File, **for examples of documentation to be kept in the purchasing file. Also see Appendix N, Policy 23**, ALP Policy and Procedures Overview.

2.5.1 At or Below \$5,000.00. Price quotes may be obtained by any authorized State agency employee. Price quotes obtained by a State agency employee who is not certified by MMD must be reviewed and approved by the State agency's ALP certified buyer.

A minimum of one price quote is required for purchases at or below \$5,000.00. More than one price quote is encouraged so the State benefits from competition in bidding. When practical, contact a targeted group or economically disadvantaged vendor if one is available. Price quotes can be obtained via telephone, facsimile, in writing, email, website, or at the transaction in a retail store. The buyer or end user must obtain a firm price prior to issuing an order.

Before purchasing, authorized State agency employees and the State agency's ALP certified buyer must review **Purchasing Policy 23** for additional requirements and

limitations. All price quotes and other pertinent information must be documented in the procurement file, and it must be reviewed and approved by an ALP certified buyer. The procurement file must be maintained for auditing purposes.

2.5.2 \$5,000.01 to \$10,000.00. Purchases must be made by an ALP certified buyer and the purchase must stay within his/her delegated ALP authority limit. A minimum of two vendors must be sent the solicitation, with a minimum of one solicitation sent to a targeted group or economically disadvantaged vendor if one is reasonably available. Prices can be obtained via telephone, facsimile, email, website, or in writing. The successful response must be confirmed in writing. The Request for Bid form (solicitation up to \$10,000) in **Appendix D**, Forms, may be used for written confirmation. (NOTE: an invoice does not meet the requirement for a response confirmed in writing).

Before purchasing, ALP certified buyers must review **Purchasing Policy 23** for additional requirements and limitations. The responses must be documented in SWIFT on the Response Documentation field on the Purchase Order. All price quotes and other pertinent information must be documented in the procurement file. The procurement file must be maintained for auditing purposes.

2.5.3 \$10,000.01 to \$25,000 and \$50,000.00. Purchases must be made by an ALP certified buyer and the purchase must stay within his/her delegated ALP authority limit. A minimum of three vendors must be sent the solicitation, with a minimum of one solicitation sent to a targeted group or economically disadvantaged vendor if one is available. The solicitation must be processed in the SWIFT system unless an exception is approved in writing by the MMD **acquisitions manager**. The solicitation must be advertised on the MMD's website to ensure the inclusion of all possible vendors and to promote open and fair competition, unless otherwise provided by law or approved in writing by the MMD **acquisitions manager**.

In order to be considered, a response to a solicitation processed in SWIFT must be submitted electronically in SWIFT unless otherwise stated in the solicitation. When the solicitation allows a nonelectronic response, the response must be signed by the vendor.

Before purchasing, ALP certified buyers must review **Purchasing Policy 23** for additional requirements and limitations. All responses and other pertinent information must be documented in the procurement file. The procurement file must be maintained or auditing purposes.

BEFORE PREPARING THE SOLICITATION

2.6 Environmental Issues. Evaluate the product or general service for environmental considerations prior to preparing a solicitation. See **Appendix L**, Environmental Information, and **Appendix O**, Executive Orders, for information on procuring goods and general services to reduce energy use and the environmental impact of state government.

2.6.1 Reduce. Is there any way to reduce the quantity, weight, or toxicity of the product or general service? Can the item be lighter weight or smaller in size without losing quality or performance characteristics?

2.6.2 Reuse. Can you buy rebuilt, remanufactured or refurbished products? Some examples of such products include rebuilt auto shop parts, remanufactured laser toner cartridges, re-inked printer ribbons, refurbished office partitions and furniture, and rebuilt copy machines. Can products be purchased in refillable or returnable containers? For

example, you can receive deliveries in totes that can be sent back with the vendor for reuse.

2.6.3 Recycled Material. Can the product contain recycled material? If it is made with paper, plastic, or rubber, the answer is probably yes. Recycled oil, solvents, paints, and many construction products are also available. Avoid focusing on metal products since most contain the maximum practical level of recycled material.

2.6.4 Recyclability. Is the product recyclable in your local recycling system, such as through the Recycling Services Contract? If not, there may be a substitute product that is, or perhaps the manufacturer will take the product back.

2.6.5 Plant Matter-Based (or Bio-Based). Is the product made from plant matter-based raw materials? Some examples of these products include paper made from kenaf, cleaners made from corn alcohol, and inks made from soybean oil.

2.6.6 Energy and Water Conservation. Consider if using one product over another conserves energy or water.

2.7 Environmental References. For information on environmentally responsible purchasing and examples of environmental products and general services, go to MMD's website www.mmd.admin.state.mn.us, **Acquisitions, Environmental Purchasing**. The Minnesota Pollution Control Agency (PCA) website www.pca.state.mn.us/oea provides information on the performance and availability of environmentally preferable products and provides for searching by key words such as "environmental purchasing." Bookmark the MMD and PCA websites to conveniently visit the web pages. Also see **Appendix L**, Environmental Information, and **Appendix O**, Executive Orders.

PREPARING THE SOLICITATION (Informal and Formal Solicitations)

2.8 Prepare the Specifications. A detailed description of how to prepare effective specifications is set forth in **Sections 2.16**, Good Specifications, and **2.17**, Specification Criteria.

2.9 Terms and Conditions. Determine the "general" and "special" terms and conditions of the solicitation. You must state all terms and conditions in both informal solicitations and formal solicitations. Be sure all vendors receive the same information. All solicitations must have an award statement. See **Section 2.5.3**, Competitive Requirements.

MMD has created "general" terms and conditions which will apply to most solicitations. Any changes to MMD's "general" terms and conditions must be submitted to MMD and approved in writing by the MMD **acquisitions manager**. See **Appendix E**, SWIFT General Terms and Conditions.

In addition, MMD has created several "special" terms and conditions, including award statements, which may be more appropriate for some solicitations. Special terms and conditions are determined by the agency based on the agency's requirements for a specific product or general service. See **Appendix F**, SWIFT Special Terms and Conditions.

When creating a requisition in SWIFT, the "general" terms, conditions, and award statement automatically defaults in a requisition. If a State agency determines that the solicitation requires special terms and conditions, the agency must add the special terms and conditions to the

requisition in SWIFT. See **Sections 2.5**, Competitive Requirements, **2.38**, Solicitations, and **Section 2.39**, Informal and Formal Solicitation Requirements, **Sections 2.40 through 2.49**, Special Considerations, **Appendix D, Forms**, Request for Bid (solicitation up to \$10,000.00), **Appendix E**, SWIFT General Terms and Conditions, **Appendix F**, Special Terms and Conditions, and **Appendix S**, SWIFT Information.

If federal funds are used for all or part of the purchase, State agencies must include the appropriate general and special terms and conditions in the solicitation and document the file as noted below:

(a) **Purchases Within ALP Authority with Federal Funding.** Agency ALP certified buyers are responsible for incorporating all applicable federal requirements in their solicitation documents and are responsible for complying with applicable federal procedures.

(b) **Purchases Above ALP Authority with Federal Funding.** Agency ALP certified buyers are responsible for reporting to the MMD **AMS** when federal funds are being used on requisitions submitted to MMD and notifying MMD of all federal requirements that must be met and providing the MMD **AMS** with the language that needs to be included in the solicitation documents. When federal money is being used for all or a portion of the purchase, the State agency must include a note in the requisition on the requisition Header Comments box advising MMD that federal funding will be used to purchase the goods and/or general services.

2.10 Freight and Shipping Requirements. Specify shipping requirements and all special delivery requirements. It is generally recommended that the solicitation terms state FOB destination, prepaid and allowed, or FOB destination, prepaid and added. For each term, below is an explanation of the vendor's pricing for shipping/freight costs:

(a) FOB Destination, Prepaid and Allowed – The vendor includes the cost of shipping in the product cost in its solicitation response.

(b) FOB Destination, Prepaid and Added – The vendor itemizes shipping cost separately from product cost in its solicitation response.

However, individual circumstances may call for alternative shipping terms. See **Appendix M**, FOB Shipping Terms Chart, for freight and shipping terms and meanings.

When establishing shipping requirements for packaging in the solicitation, explore opportunities for recycled material, reusable, or source-reduced packaging.

2.11 Vendor Preferences and Made/Manufactured in Minnesota Requirements. The agency must include in its solicitations the MMD-approved language for the preferences below unless otherwise approved in writing by the MMD **director** or MMD **acquisitions manager**. See **Appendix D, Forms**, Request for Bid, and **Appendix E**, SWIFT General Terms and Conditions. Also see **Section 1.10**, Preferences and Made/Manufactured in Minnesota Requirements, **Section 2.24**, Determining Preference Eligibility and Preference Percent, and **Appendix N, Policy 35**, Revised Instructions for Applying Preferences.

2.11.1 Targeted Group/Economically Disadvantaged (TG/ED) Small Business Program. All solicitations must contain the MMD-approved language for the following preferences for the TG/ED Program:

- six percent (6%) preference for certified and eligible Targeted Group Businesses;
- six percent (6%) preference for businesses that are certified as Economically Disadvantaged Businesses for non-construction solicitations; and
- four percent (4%) preference for businesses that are certified as Economically Disadvantaged Businesses for construction solicitations.

Also see **Section 1.10**, Preferences.

2.11.2 Veteran-Owned (VO) Small Businesses. All solicitations must contain the MMD-approved six percent (6%) preference language for veteran-owned small businesses. Also see **Section 1.10**, Preferences.

2.11.3 Departments of Employment and Economic Development (DEED) Certified Providers and Human Services (DHS) Licensed Providers. Solicitations for the following general services should contain the MMD-approved six percent (6%) preference language for DEED/DHS certified/licensed providers.

- janitorial services;
- document imaging services;
- document shredding services; and
- mailing, collating, and sorting services.

See **Appendix N, Policy 29**, Preference for DEED Certified Providers and DHS Licensed Providers, and **Appendix J, Vendor Information**, DEED Certified Providers (Community Rehabilitation Providers/Limited Use Vendors) and DHS Licensed Providers, and **Appendix N, Policy 35**, Revised Instructions for Applying Preferences.

2.11.4 All-Terrain Vehicles Manufactured in Minnesota. Solicitations for all-terrain vehicles purchased by the commissioner of natural resources must contain a special term and condition regarding the requirement for manufactured in the state of Minnesota.

2.11.5 Paper/Printing Made in Minnesota. Solicitations for paper and printing, whenever practicable, should contain a special term and condition regarding recycled content and the requirement that uncoated office paper and printing paper be made on a paper machine located in Minnesota. State agencies must review Minn. Stat. § 16C.073, subd. 2, subparagraphs (1) through (9) for additional requirements prior to purchasing paper/printing.

2.11.6 Solar Photovoltaic Modules Made in Minnesota. Solicitations covered by Laws of Minnesota 2013, Chapter 137, Article 5, Section 2, must contain a special term and condition providing that no solar photovoltaic module may be installed that is financed directly or indirectly, wholly or in part, with money appropriated in this act, unless the solar photovoltaic module is made in Minnesota as defined in Minn. Stat. § 216C.411, paragraph (a).

2.12 Bonding. Minnesota Statutes § 574.26 requires payment and performance bonds on all public works over \$75,000. For construction projects, see **Appendix Q**. The current use of performance bonds and payment bonds on construction projects “Public Works” shall continue because these bonds protect the State from damage and loss, as well as serve to protect many small businesses acting as subcontractors from the default of the prime contractor.

The use of response security/bonds, annual response and performance bonds, supply bonds, and performance bonds on contracts and individual purchases of supplies, equipment, and general services may be considered, when appropriate. The protection afforded by these types of bonds can also be attained through the enforcement of the Uniform Commercial Code and the penalties prescribed therein. If a State agency is interested in requiring a response security/bond, annual response and performance bond, supply bond, or performance bond on a contract or on the purchase of supplies, equipment, and/or general services, contact the MMD **AMS** assigned to the UNSPSC category code for the goods and/or services to obtain assistance.

2.13 Vendor Selection. Ensure that all vendors are treated fairly when making the vendor selection. The vendor list should be rotated to ensure fair treatment to all vendors. See **Section 4**, Vendor Information.

2.14 Solicitation Response Due Date and Time, Response Method, Vendor Questions, and Vendor Withdrawal of Response.

2.14.1 Due Date and Time. Inform all vendors of the due date and time that their responses must be submitted. If a response is submitted after the due date and time, it must be rejected.

2.14.2 Response Method. Inform all vendors of the required response method: telephone, facsimile, email, in writing and/or electronically in SWIFT and if the response must be a sealed response. If a response is required to be in writing and sealed, the response must be rejected if it is submitted by telephone, facsimile, or email. If a response is required to be submitted only electronically in SWIFT, the response must be rejected if it is submitted in any other manner. All formal solicitations must be a sealed response. Responses submitted electronically in SWIFT meet the “sealed response” requirement. See **Section 2.39**, Informal and Formal Solicitation Requirements.

2.14.3 Vendor Questions. All solicitations should include the name and contact information for the State agency person authorized to respond to questions. If the answer to a question requires clarification or additional information not in the solicitation, the response must be in writing by addendum and made available to all potential responders. If the answer to the question is in the solicitation, a response may be given without issuing an addendum.

2.14.4 Vendor Withdrawal of Response. Minn. Rules § 1230.0600, Responder Errors, provides:

Prior to the date and time responses are due, any person may withdraw a response or any part of a bid by notifying the [MMD] **director** in writing of the desire to withdraw, by appearing in person at the [MMD] office and withdrawing the response, or by an electronic writing or facsimile received by the [MMD] **director** requesting withdrawal of the response.

Subsequent to the date and time responses are due, a person may withdraw a response or any part of a bid only upon a showing that an

obvious error exists in the response. The showing and request for withdrawal must be made in writing to the [MMD] **director** within a reasonable time after the opening of the responses and prior to the State's detrimental reliance on the response.

If the ALP certified buyer notices an obvious error in price, contact the vendor to verify the price. Although the vendor cannot change the price, the vendor may honor the price or, in writing, request to withdraw the response. Contact the MMD **acquisitions manager** for assistance.

2.15 Documentation for Solicitation File. For auditing purposes, and in the event any issues arise concerning the solicitation and/or award, include a copy of the following documentation in the purchasing file for all informal and formal solicitations:

2.15.1 Solicitation document and all addenda, including attachments, such as specifications, insurance requirements, price sheet, etc.

2.15.2 Advertisement/solicitation announcement on the MMD website (as required).

2.15.3 List of company names and persons who were sent a solicitation. For additional information, see **Appendix N, Policy 23**, ALP Policy and Procedure Overview.

2.15.4 Documentation for receipt of verbal quotes (when authorized), including delivery information, and the time and date vendors called in their responses.

2.15.5 All written responses received. Include response delivery information. If a response is completed in pencil, also include a photocopy of the response. **An invoice does not meet the requirements for a written response.**

2.15.6 Tabulation of all responses. Include preferences and terms that apply to each company. Attach a written explanation if the contract is not awarded to the low responder or if the response is rejected. For an example of a tabulation format, see **Appendix D, Forms**, Tabulation Sheet.

2.15.7 Signed purchase order or contract, addenda, and all attachments.

2.15.8 All correspondence and other critical documentation pertaining to the award of the solicitation, such as response envelopes or other time-stamped documents, certified mail receipts, recommendation for award from agency's user, bonds, certificate(s) of insurance, etc.

2.15.9 Any special authority granted by MMD, including the date authorized and by whom, and the written approval. See **Appendix N, Policy 6**, Purchasing Policy on Special Delegation to ALP Authority.

2.15.10 Written documentation/justification, when applicable. Below are examples of written documentation/justification that is required for single source purchases, general and construction services, no substitute requirements, and cancellation of purchase order or contract. Also see **Section 2.39.6**, Purchasing File Documentation.

2.15.10.1 Single Source Justification Form. A completed and approved Single Source Justification form is required when an agency believes an acquisition is a single source and the acquisition dollar amount is above \$5,000.00. See **Section 3**, Exceptions to the Solicitation Process, **Appendix D, Forms**, Single Source Justification Form (includes instructions), and **Appendix N, Policy 19**, Single Source Procurement Policy.

2.15.10.2 Service Certification Form. For general services, a completed and approved Service Certification Form is required, unless exempt. Exemptions are services provided by State agencies, a single procurement for general services up to \$5,000.00 that will not be repeated in the fiscal year, and multiple procurements for the same general services with a cumulative total no more than \$5,000.00 in a fiscal year. See **Section 1.6.4**, Products and General Services from State Agencies, **Section 2.44**, General Service Contracts, and **Appendix D, Forms**, Service Certification Form (includes instructions).

2.15.10.3 No Substitute Justification Form. When solicitations do not allow an approved equal, a completed and approved No Substitute Justification Form is required when the acquisition dollar amount is above \$5,000.00. See **Section 2.16**, Good Specifications, **Section 2.17**, Specification Criteria, and **Appendix D, Forms**, No Substitution Justification Form (includes instructions).

2.15.10.4 Purchase Order/Contract Cancellation. If a purchase order or contract award needs to be cancelled, the ALP certified buyers must seek written approval from MMD **acquisitions manager** before cancelling it. See **Section 2.37**, Conditions for Canceling, and **Appendix N, Policy 17**, Requirements for Signing Documents and Canceling Contracts.

2.15.11 Copies of letters notifying unsuccessful responders of award, when applicable.

2.15.12 Documentation for reason for rejection of any response and notice to vendor. See **Sections 2.31-2.33** and **Appendix D, Forms**, Rejection Letter Example.

2.15.13 If an emergency is declared, include MMD's approval, or the agency head or delegate approval if applicable, and the agency's final report that was submitted to MMD as required in **Section 1.6.1**, Emergencies.

2.15.14 State agency written documentation and MMD written determination regarding conflicts of interest (actual, potential or appearance) related to the purchasing process.

2.15.15 If purchasing violations occurred during the purchasing process, fill out the Purchasing Violation Form, place the original form in the file, and send a copy to the MMD **acquisitions manager**. See **Appendix N, Policy 14**, Instructions for Reporting Purchasing Violations, Vendor Protests, and Mis-awards and **Appendix D, Forms**, Purchasing Violation Form.

2.15.16 Vendor performance reports and vendor responses. See **Section 4**, Vendor Information and **Appendix D, Forms**, Vendor Performance Report.

HOW TO WRITE SPECIFICATIONS

2.16 Good Specifications. Regardless of the type of specification developed, some factors are common in the planning process. The specifications writer has a tremendous responsibility. Properly designed and used specifications are a powerful tool. **Note: Always include, “or approved equal” unless there is a written justification of why an alternate will not be accepted. The written justification must be done on the No Substitute Justification Form (for exceptions, see Appendix D, Forms, No Substitute Justification Form). When justified, and written approval is granted by MMD, state “no substitute will be accepted” in the solicitation.**

A good specification should:

2.16.1 Meet agency’s business needs.

2.16.2 Identify all requirements, including environmental requirements (e.g., recycled content level, energy rating, etc.).

2.16.3 Be measurable and verifiable.

2.16.4 Provide for an equitable award.

2.16.5 Allow fair and open competition.

2.17 Specification Criteria. To see if the specifications meet the five criteria in **Section 2.16**, use the following guidelines.

2.17.1 Simple Language. Keep the language simple, but exact and understandable. The language should be specific to not allow a responder to evade any of the provisions and take advantage of competitors or of the ALP certified buyer.

2.17.2 Identify Other Specifications. Identify, when appropriate, a brand name, make, and model or other specification already on the market. Be sure to include in the specification “or approved equal” or include in the file a completed and approved No Substitute Justification Form documenting/justifying no substitution. See **Appendix D, Forms, No Substitute Justification Form.**

2.17.3 Verification. The specifications should describe the verification method that will govern acceptance or rejection of responses. A specification that cannot be verified is of little value. Verification methods must be consistently applied. Avoid using vague requirements such as “must be of good quality.” Use measurable specifications.

2.17.4 Fairness. The specifications should be fair to all vendors.

2.17.5 Competition. For the sake of competition, the specification should be able to be met by more than one vendor. If this is not possible, make sure that the specification is required to meet the agency’s business need. If the specification is necessary, the following documents may be required:

2.17.5.1 Single Source Justification Form. If only one vendor can meet the specification, the buyer must complete a Single Source Justification Form and

obtain the required approval(s). See **Appendix D, Forms**, Single Source Justification Form.

2.17.5.2 No Substitute Justification Form. If a specific make and model is required to meet the agency's business need, the buyer must complete a No Substitute Justification Form and obtain the required approval(s). See **Appendix D, Forms**, No Substitute -Justification Form.

2.17.6 Clear and Understandable. Specifications should be clear and understandable to both the vendor and to the ALP certified buyer. Make sure specifications include everything you expect the vendor to do and all requirements you expect them to meet.

RECEIVING RESPONSES

2.18 Informal Solicitations: Telephone, Facsimile, in Writing, Website, Transaction in a Retail Store, and Email Responses.

2.18.1 Telephone Responses. See **Appendix N, Policy 23**, Acquisitions ALP Policy and Procedures Overview, for information on when a price quote can be obtained via telephone. Always document the source of the pricing, the date and time received, the company representative's name, price, delivery, etc., when receiving telephone responses.

2.18.2 Facsimile Responses. See **Appendix N, Policy 23**, Acquisitions ALP Policy and Procedures Overview, for information on when a response can be obtained by facsimile. For informal solicitations between \$10,000.01 \$50,000.00, facsimile responses are not acceptable unless the state agency adds a special term and condition in the solicitation that allows facsimile responses.

If allowed in the solicitation, faxed responses must be **received** at the location and by the due date and time stated in the solicitation in order to be accepted. The date and time a faxed response is received must be documented by a time-stamp machine or other mechanism. The date/time stamp of the sender's fax machine is not adequate documentation of the time received.

2.18.3 Written Responses. See **Appendix N, Policy 23**, Acquisitions ALP Policy and Procedures Overview, for information on when written responses may be accepted. For informal solicitations between \$10,000.01 and \$50,000.00, the solicitation must be processed in SWIFT and written responses are not acceptable unless the state agency adds a special term and condition in the solicitation that allows written responses. The following procedures must be followed when opening written responses to solicitations.

2.18.3.1 Time-Stamping. The date and time a response is received must be documented by a time-stamp machine or other mechanism. Responses received after the time set forth in the solicitation will be rejected.

2.18.4 Website Responses. See **Appendix N, Policy 23**, Acquisitions ALP Policy and Procedures Overview, for information on when a response can be obtained via website. Always document the source of the pricing, the date and time received, the company representative's name, price, delivery, etc. Documentation includes a screen print of website pricing, etc.

2.18.5 Transaction in a Retail Store. See **Appendix N, Policy 23**, Acquisitions ALP Policy and Procedures Overview, for information on when a response can be obtained in a retail store. Always document the source of the pricing, the date and time received, the company representative's name, price, delivery, etc. Documentation includes the original transaction receipt issued by the retail store.

2.18.6 Email Responses. See **Appendix N, Policy 23**, Acquisitions ALP Policy and Procedures Overview, for information on when email responses may be accepted. NOTE: If an agency would like to receive responses by email, the agency must submit a plan describing its process to MMD for approval by the MMD **acquisitions manager**.

2.18.7 SWIFT Electronic Responses. See **Appendix N, Policy 23**, Acquisitions ALP Policy and Procedures Overview, for information on when solicitations must be processed in SWIFT, unless an exception is approved by the MMD **acquisitions manager**.

2.19 Intentionally left blank.

2.20 Formal Solicitations (Greater than \$50,000.00): The ALP certified buyer must be delegated authority by MMD to make purchases greater than \$50,000.00. See **Section 1.5.4**, Memorandum of Understanding (MOU) Delegations.

If delegated, formal solicitations must be processed in SWIFT, unless an exception is approved in writing by MMD **acquisitions manager**. If the formal solicitation allows "written" responses, the procedure below must be followed when receiving and opening written responses to formal solicitations.

2.20.1 Time-Stamping. The date and time a response is received must be documented by a time-stamp machine or other mechanism. Responses received after the time set forth in the solicitation will be rejected.

2.20.2 Public Reading of Responses to Formal Solicitations (Solicitations Estimated to be Greater Than \$50,000.00). Pursuant to Minn. Stat. § 16C.06, subd. 2, and Minn. Rules § 1230.0700, the procedure set forth in **Appendix N, Policy 10**, Status of Information in Bids and Proposals Submitted to the State of MN (MMD E-001-01), shall be used for the public reading of responses for all formal solicitations (estimated over \$50,000.00).

CONSIDERING THE RESPONSES

2.21 Late Responses. Check to see that the responses were received by the due date and time. Responses received after the due date and time cannot be considered.

2.22 Qualified Vendor. Check the vendor's status in SWIFT or **Appendix J, Vendor Information**, Suspended/Debarred Vendors, to make sure the vendor is not suspended or debarred from doing business with the State.

2.23 Specifications, Terms, and Conditions. Review the responses that were received on time from qualified vendors and determine which responses meet all of the specifications, terms and conditions.

Note: Informalities or Minor Deficiencies. Pursuant to Minn. Rules § 1230.0700, subp. 4, the State reserves the right to waive minor deficiencies or informalities in responses. Questions should be referred to the MMD **AMS** or MMD **acquisitions manager**. Examples of minor deficiencies may include, but are not limited to: omission of the signatory's title, failure to furnish descriptive literature, minor detail omissions, and failure to return the correct number of response copies.

APPLYING A PREFERENCE

2.24 Determining Preference Eligibility and Preference Percent. When determining the successful response, make sure to identify all preferences for which each responder qualifies (Targeted Group, Economically Disadvantaged, Veteran-Owned, Environmental, DEED/DHS Certified/Licensed Providers, and Reciprocal); then select the highest preference that applies to each response (see **Section 2.24.1 to 2.24.5**). Only one preference can be applied to each vendor. **If multiple preferences apply, contact the MMD AMS for assistance.** For detailed information and examples of how to apply preferences and how to determine eligibility, see **Appendix N, Policy 35**, Revised Instructions for Applying a Preference.

Note: Prompt payment discount terms are not considered a preference but must be applied prior to applying a preference. Only prompt payment discounts that are for 30 days (i.e., 2%-30) or longer may be considered in the evaluation process. See **Appendix N, Policy 35**, Revised Instructions for Applying a Preference.

2.24.1 TG/ED Preference. Determine if the vendor is certified and eligible as a Targeted Group (TG) business or certified as an Economically Disadvantaged (ED) business for the product or general service offered in the response. The law provides for up to a six percent (6%) preference to certified and eligible Targeted Group (TG) vendors and for up to a six percent (6%) preference to certified Economically Disadvantaged (ED) vendors [except for construction, which remains at four percent (4%)]. The agency's solicitation must include language providing for a TG/ED vendor preference unless otherwise approved in writing by the MMD **acquisitions manager**. The preference is applied only to the first \$1,000,000.00 of the response. For a directory of certified TG/ED vendors, see **Appendix J, Vendor Information**, Directory of Certified TG/ED Vendors.

2.24.2 Veteran-Owned (VO) Preference. Determine if the vendor is a veteran-owned small business as defined by law. Minn. Stat. § 16C.16, subd. 6a, provides:

(a) except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference, but no less than the percentage awarded to any other group under this section, in the amount bid on state procurement to certified small businesses that are majority-owned and operated by veterans.

Minn. Stat. § 16C.19 provides:

(d) a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

The preference is applied only to the first \$1,000,000.00 of the response. Contact the MMD **AMS** or MMD **acquisitions manager** regarding a veteran preference question. Information about the preference is available on the MMD website www.mmd.admin.state.mn.us, **Vendor Information**, Veterans Preference. Also see **Appendix D**, Veteran-Owned Preference Form, and **Appendix J, Vendor Information**, Revised Instructions for Applying Preferences and Guide to Verify US Veterans Affairs' Center for Veterans Enterprise Certification. Also see CVE website www.vip.vetbiz.gov.

2.24.3 Environmental Preference. Buyers must consider the recycled content of the commodities to be purchased in solicitation specifications. When feasible and when the price of recycled materials does not exceed the price of nonrecycled materials by more than 10 percent, the buyer must purchase recycled materials. To maximize the quantity and quality of recycled materials purchased, buyers may also use other appropriate procedures to acquire these materials at the most economical cost to the State. The solicitation document must include MMD's approved language for the environmental preference unless otherwise approved in writing by the MMD **acquisitions manager**. The environmental preference is a proportional preference up to ten percent (10%). For an example of solicitation language, see **Appendix D, Forms**, Request for Bid. Also see **Section 1.13**, Environmentally Preferable Purchasing, **Appendix L**, Environmental Information, and **Appendix O**, Executive Orders.

2.24.4 Department of Employment and Economic Development (DEED) Certified Providers and Department of Human Services (DHS) Licensed Providers. Rehabilitation programs and extended employment providers that are certified by the commissioner of Employment and Economic Development and day services licensed under Minn. Stat. chapter 245D and offer the following general services are eligible for a six percent (6%) preference:

- janitorial services,
- document imaging services,
- document shredding services, and
- mailing, collating, and sorting services.

For a list of eligible providers, see **Appendix J, Vendor Information**, DEED Certified Providers and DHS Licensed Providers. Also see **Section 1.10**, Preferences, **Section 2.11**, Vendor Preferences, **Appendix N, Policy 29**, Purchasing from DEED Certified and DHS Licensed Providers, and **Policy 35**, Revised Instructions on Applying Preferences.

2.24.5 Other States with Residence Preference. In accordance with Minn. Stat. § 16C.06, subd. 7, a resident vendor shall be allowed a preference over a non-resident vendor from a state that gives or requires a preference to vendors from that state. This is called a reciprocal preference, or reciprocity.

Minn. Stat. § 16C.02, subd. 13 provides a “resident vendor” means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
- (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
- (3) has a business address in the state; and
- (4) has affirmatively claimed that status in the bid or proposal submission.

For assistance in determining and applying a reciprocal preference, contact the **AMS** responsible for the solicitation’s product and/or general service. Also see **Section 2.24.5**, Other States with Residence Preference, **Appendix G, States with Resident Bidder and Reciprocal Preferences**, Instructions for Determining Eligibility for Reciprocal Preferences and State by State Reciprocal Preference Data, and **Appendix N, Policy 35**, Revised Instructions for Applying Preferences.

MAKING AWARDS

2.25 Statutes and Rules. Awards shall be made in conformity with all applicable laws, including, but not limited to, Minnesota Statutes Chapters 16A, 16B, and 16C and Minnesota Rules Chapter 1230, with no material deviation from the terms and conditions of the solicitation. Refer to **Appendix N, Policy 14**, Instructions for Reporting Purchasing Violations, Vendor Protests, and Mis-awards, for the process to follow if a mistake was made in the award, and see **Appendix D, Forms**, Purchasing Violation Form, for the form which must be completed and filed with the MMD **acquisitions manager**.

2.26 Verify Required Documents have been Received. Verify all documents required in the solicitation have been received before issuing a purchase order or contract documents. Below are examples.

2.26.1 Certificate of Insurance. If the solicitation requires insurance, a vendor must supply the agency with a certificate of insurance before the purchase order is issued or the contract is executed and work begins. If you have any questions about insurance, contact the Risk Management Division of the Department of Administration. See **Section 2.40**, Insurance, and **Appendix C**, Insurance.

2.26.2 Supply Contract Bond. If the solicitation requires a bond, verify a properly completed bond has been received before the contract is executed.

2.26.3 Licensing/Certification/Training. If the solicitation requires the vendor be licensed, and/or certified and/or trained, verify the vendor has met the requirements before the contract is executed.

TIED RESPONSES

2.27 Minnesota Vendor. Whenever a tie involves a Minnesota firm and a firm whose place of business is outside the state of Minnesota, the award shall be given to the Minnesota firm. This is not a preference. See **Appendix H**, Minn. Rules § 1230.0900, subp. 2.

2.28 Less Than \$2,500.00. Except as provided in **Section 2.27**, Minnesota Vendor, tied responses (tied low bids) for less than \$2,500.00 must be resolved by a coin toss among the responses. ALP certified buyers should have a witness present and document the process in the purchasing file. See **Appendix H**, Minn. Rules § 1230.0900, subp. 1.

2.29 \$2,500.00 and More. Except as provided in **Section 2.27**, Minnesota Vendor, tied responses (tied low bids) for \$2,500.00 and more shall be resolved by requesting a new price in writing from the tied responders, which will be used to break the tie. Responders are not allowed to increase their price but may lower it. See **Appendix H**, Minn. Rules § 1230.0900, subp. 1.

2.30 Antitrust. Tied responses may also be subject to investigation or inquiry by the Attorney General's office to ensure that no collusion has taken place between or among vendors. A copy of tied responses over \$2,500.00 must be submitted to the Attorney General's office, but the ALP certified buyer should proceed with the award.

REJECTING A RESPONSE

2.31 Best Interest of the State of Minnesota. The State may reject any or all responses or portions thereof when in the best interest of the State. Responses shall be rejected for good and sufficient cause, including, but not limited to, abandonment of the project by the State, insufficient State funds, or correction of a process error. Pursuant to Minn. Rules § 1230.0700, subp. 3, rejected vendors must be notified of the rejection and the reason why the response was rejected.

2.32 Noncompliant Responses. Responses must be reviewed to ensure that they are signed and all required information has been submitted. Responses filled out in pencil are no longer rejected. Responses received in pencil are to be photocopied and date/time stamped as a record of what was received at the opening. Contact the MMD **acquisitions manager** to determine if an incomplete submittal is cause for rejection or if missing information is an informality or minor deficiency. Also see **Sections 2.21-2.23**.

2.33 Alterations in Price.

2.33.1 Response to Non-Construction Work Solicitations. A response containing an alteration or erasure of any price contained in the response that is used in determining the successful response may be rejected, unless the price figure is crossed out and the correction is adjacent thereto and initialed by the person signing the response. This includes, but is not limited to, correction fluid and typewriter correction tape. This requirement must be stated in the solicitation document. If an agency receives a response containing an alteration or erasure of any price, contact the MMD **acquisitions manager** for assistance. See **Appendix E**, SWIFT General Terms and Conditions

2.33.2 Response to Construction Work Solicitations. See **Appendix Q**, Instructions for Construction Solicitations.

PREPARING A PURCHASE ORDER

2.34 Detailed Description of Item(s) and Encumbrance of Funds. The description of the item(s) purchased should be sufficiently detailed to describe grade, quality, and type. For example, do not state "one saw," but indicate the saw's specification requirements and vendor's response. SWIFT requires entry of a Category for each item. Product and general services must be entered on separate lines. State agency staff entering purchase orders should review the Category for correctness prior to completing the purchase order.

Minn. Stat. § 16A.15, subd. 3, and Minn. Stat. § 16C.05, subd. 2, require State agencies to encumber funds prior to incurring an obligation to the State, unless otherwise provided by Minnesota laws, rules, and policies.

2.35 Multiple Purchases. ALP certified buyers should carefully review and consolidate purchase requirements. ALP certified buyers may not issue multiple purchase orders nor make multiple purchases under a blanket purchase order to circumvent buying authority or contract limits. Such practices are subject to the cancellation of the ALP certified buyer's authority for local purchase.

2.35.1 Blanket Purchase Orders (BPO). A blanket purchase order's aggregate (total) value may not exceed the buyer's ALP authority for the term of the blanket order. Agency staff who issue blanket purchase orders that exceed their purchasing limit are in violation of their purchasing authority **unless otherwise allowed in Exceptions to the Solicitation Process in Section 3 of the ALP Manual or written approval is granted by the MMD acquisitions manager.**

2.35.2 Blanket Purchase Contract (BPC). Agency staff who issue blanket purchase contract orders against a State contract number may exceed their ALP authority level if allowed **in the contract terms and** by their agency. A BPC may only be issued for the term of the State contract. A BPC may not be used to purchase goods or general services that are not covered and **stated in** the State contract.

2.36 Proper Forms and Signatures. Use the proper purchasing forms and obtain the necessary signatures. Make certain the vendor receives the original copy of the signed purchase order. This is the contract between your agency and the awarded vendor, which obligates both parties to the terms and conditions of the contract. A State agency must not sign a vendor's contract document unless the contract form has been approved by the agency's Attorney General representative and the MMD **AMS**. See **Section 2.46**, Contract Forms.

CANCELING A PURCHASE ORDER

2.37 Conditions for Canceling. Conditions for canceling a purchase order include, but are not limited to the situations identified in Sections 2.37.1 – 2.37.4. The reason for canceling the purchase order must be documented on the change order canceling the purchase order and a copy kept in the purchasing file. The ALP certified buyer must request written approval from the MMD **acquisitions manager** before canceling any purchase order. Also see **Appendix N, Policy 17**, Requirements for Signing Documents and Canceling Contracts.

2.37.1 Mutual Agreement. When appropriate, a purchase order/contract may be cancelled when the vendor and the State agree to the cancellation in writing. Consult with the MMD **acquisitions manager** for assistance.

2.37.2 Fraud, Collusion, Conspiracy, Statutory or Constitutional Conflict. A purchase order/contract may be cancelled when the vendor obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the state of Minnesota. Contact the MMD **acquisitions manager** in the event this occurs. The MMD **acquisitions manager** will work with Vendor Management in MMD to determine action to be taken. Also see **Appendix H**, Minn. Rules § 1230.1150.

State agencies must also notify the Office of Legislative Auditor (OLA) by completing an Allegation Form and mailing to OLA. For additional information and a copy of the reporting form, see Office of Legislative Auditor's website <http://www.auditor.leg.state.mn.us/reporting.htm>.

2.37.3 Failure to Perform. A purchase order/contract may be cancelled when the vendor fails to perform. Types of failure to perform include, but are not limited to, failure by the vendor to deliver as agreed or delivery of goods and general services that do not meet the solicitation specifications. In the event the vendor fails to perform, review **Section 4**, Vendor Information, complete a Vendor Performance Report (see **Appendix D, Forms**), and send the original Vendor Performance Report to the vendor with a copy to Vendor Management in MMD. Also see **Appendix H**, Minn. Rules § 1230.1100.

2.37.4 Canceled Funding. A purchase order/contract may be cancelled when the funding for the project is canceled by legislative action. In this event, contact the MMD **acquisitions manager** for assistance.

INFORMAL AND FORMAL SOLICITATIONS

2.38 Solicitations. Informal solicitations are solicitations with an estimated value up to \$50,000.00. Formal solicitations are solicitations with an estimated value of greater than \$50,000.00. There are different requirements for informal solicitations and formal solicitations; such as, formal solicitations require a sealed response and a public bid opening. See **Section 2.5**, Competitive Requirements, for solicitations up to \$50,000.00, **Section 1.6.7**, One-Time Delegations of Authority, for solicitations *greater* than \$50,000.00, and **Section 1.5.4**, Memorandum of Understanding (MOU) Delegations.

2.38.1 Informal Solicitations. Also see **Section 2.5**, Competitive Requirements, and **Appendix N, Purchasing Policy 23**, ALP Policy and Procedures Overview.

Purchases up to \$5,000.00. For solicitations estimated to be no more than \$5,000.00, the ALP certified buyer may accept price quotes via telephone, facsimile, email, website, in writing, in a retail store, or processed in SWIFT. A minimum of one price quote is acceptable. Contact a TG/ED vendor when practical. Buyer or end user must obtain a firm price prior to issuing an order.

Purchases between \$5,000.01 and \$10,000.00. For solicitations estimated to be between \$5,000.01 and \$10,000.00, the ALP certified buyer may accept price quotes by telephone, facsimile, email, website, in writing, or processed in SWIFT. The solicitation must be sent to a minimum of two vendors with a minimum of one solicitation sent to a TG/ED vendor if one is reasonably available. The number of solicitations sent must be documented in the SWIFT in the purchase order Header Comments box.

Purchases between \$10,000.01 and \$50,000.00. A solicitation estimated to be between \$10,000.01 and \$50,000.00 must be processed in SWIFT (except as provided for in **Section 2.44**, General Service Contracts, or **Section 2.51**, Price Contracts) and advertised on the MMD's website, unless otherwise provided for by law or approved in writing by the MMD **AMS** or MMD **acquisitions manager**. A notice of the solicitation must be published on the MMD website for a minimum of seven (7) days, unless approved in writing by the MMD **acquisitions manager**. In addition to providing public notice, the solicitation must be sent to a minimum of three vendors with a minimum of one solicitation sent to a TG/ED vendor if one is available.

2.38.2 Formal Solicitations - Purchases \$50,000.01 or More. A solicitation estimated at \$50,000.01 or above must be processed in SWIFT (except as provided for in **Section 2.44**, General Service Contracts, or **Section 2.52**, Price Contracts), advertised, and require responders to submit a sealed response, unless otherwise provided for by law or approved in writing by the MMD **acquisitions manager**. A notice of the solicitation must be published on the MMD website for a minimum of seven (7) days, unless otherwise provided by law or approved in writing by the MMD **acquisitions manager**. MMD recommends a solicitation be advertised a minimum of 10 to 14 days prior to the response opening date. In addition to providing public notice, the solicitation must be sent to a minimum of three vendors with a minimum of one solicitation sent to a TG/ED vendor if one is available.

2.39 Informal and Formal Solicitation Requirements

2.39.1 Solicitation Specifications. Each solicitation shall include detailed specifications and any other relevant information required. See **Sections 2.8 to 2.12**, Preparing a Solicitation, **Section 2.16**, Good Specifications, and **Section 2.17**, Specification Criteria.

2.39.2 General Terms and Conditions. The “boiler plate” terms and conditions that are applicable to all State purchases shall be included in the solicitation. See **Section 2.9**, Terms and Conditions, and **Appendix D, Forms**, Request for Bid, and **Appendix E**, SWIFT General Terms and Conditions.

2.39.3 Special Terms and Conditions. The terms and conditions applicable to specific commodities or types of purchases shall be stated in the solicitation. Special conditions supersede general conditions, if conflicting. Also see **Appendix D, Forms**, Service Contracts Special Terms and Conditions, Conferences, and MnDOT Materials, and **Appendix F**, SWIFT Special Terms and Conditions.

2.39.4 Informal Solicitation Responses (Up to \$50,000.00). A solicitation greater than \$10,000.00 must be processed in SWIFT, unless an exception is approved in writing by the MMD **acquisitions manager**. All solicitations must state the acceptable method(s) of response, such as via facsimile and/or in writing and/or electronic in SWIFT. Responses shall be complete, signed (written or electronic as required in solicitation), and submitted in accordance with the instructions contained in the solicitation. Responses shall be delivered as required in the solicitation and they should be submitted on the solicitation form provided. Also see **Section 2.5**, Competitive Requirements.

State agencies may prepare an informal solicitation up to \$10,000.00 in SWIFT or use the MMD approved form available on MMD’s website. Except for Requests for Proposals for Conference Facilities, State agencies must obtain written approval from the MMD **acquisitions manager** to issue a request for proposal and/or to include a “negotiations” award requirement in any solicitation. See **Appendix D, Forms**, Request for Bid (solicitation up to \$10,000), RFB Conference Facilities, RFP Conference Facilities, and Conference Pricing Sheets.

2.39.5 Formal Solicitation Responses (Estimated to be \$50,000.01 or more). The solicitation must be processed in SWIFT, state that all responses must be sealed to prevent the contents from being revealed or known before the deadline for submission. Responses shall be complete, signed (written and/or electronic as required in the solicitation) and submitted in accordance with the instructions contained in the solicitation. Responses shall be delivered as required in the solicitation and they should be submitted on the solicitation form provided.

2.39.6 Purchasing File Documentation. See **Section 2.15**, Documentation for Solicitation File, for documents to be maintained in the purchasing file for each solicitation. Agencies shall keep all purchasing documents secure and maintain the purchasing file for auditing purposes in accordance with Minn. Stat. § 16C.05, subd. 5, Contract Management; Validity and Review, Minn. Stat. § 138.163, Preservation and Disposal of Public Records, and all applicable agency retention schedules and other applicable laws. See Appendix H, Laws & Rules Governing State Purchasing & Contracting.

2.39.7 Late Responses. Responses received and time-stamped later than the opening date and time set for an informal or formal solicitation must be rejected. Late formal solicitation responses are recorded via a photocopy of the response envelope and the original response is returned unopened to the vendor. Late informal solicitation responses are kept with the file. If a formal solicitation response had to be opened to identify the solicitation, document why it was opened and identify the person opening it, reseal the response, and return it to the vendor.

SPECIAL CONSIDERATIONS

2.40 Insurance. Insurance is required for **State contracted services** which includes purchase orders for general services and **construction work**; however, certain insurance coverages may not be required. Below are some examples of when insurance is not required or when certain insurance coverages are not required.

- A. Insurance is not required for:
 - Conferences and related general services held at a vendor's facility. See **Section 2.44.1**.
 - Commodity purchases when the State is purchasing an off-the-shelf product and there is no installation.
 - General services provided by the Federal Government.
- B. Automobile liability insurance is not required if the vendor/contractor, its employees, and/or its subcontractors will not be driving on State property or will not be using owned, hired, or non-owned vehicles to conduct business on behalf of the State.
- C. Workers' compensation insurance is not required if Minn. Stat. § 176.041 exempts the vendor/contractor from workers' compensation insurance coverage. Note: The vendor/contractor must provide a written statement, signed by an authorized signer, stating the qualifying exemption that excludes the vendor/contractor from Minnesota Workers' Compensation requirements. See **Appendix H, Laws & Rules Governing State Purchasing & Contracting**.

For information on deviating from standard insurance provisions/requirements for general services and for construction work when written approval has been granted by the agency head, assistant commissioner or deputy commissioner, see **Section 2.40.3** and **Section 2.40.4**.

Based on the nature of the general services and the construction work and depending on where they are provided, the agency 1) will determine if insurance is required and 2) will determine the appropriate insurance provisions for the solicitation. **Proof of insurance is required prior to the issuance of a purchase order or contract.** For more information, see **Appendix C**, Insurance (which includes Insurance Coverage for Contract Situations and Risk Management Division Training Material), **Appendix Q**, Construction Solicitations, and **Class Material**. For

assistance in determining the appropriate insurance provisions, contact the **Risk Management Division** at 651.201.2591.

2.40.1 Standard Insurance Provisions/Requirements. Risk Management Division has provided insurance provisions/requirements for frequently used general services. If a solicitation includes general services, the State agency is required to select the appropriate insurance provisions/requirements and include them in the solicitation.

Below is a list of the standard insurance provisions/requirements. (Also see **Section 2.40.2**, Special Insurance Requirements.) Contact **Risk Management Division** if assistance is needed in selecting the appropriate insurance provisions/requirements.

2.40.1.1 General Liability Insurance – For most general services not covered in **Sections 2.40.1.2, 2.40.1.3, and 2.40.1.4**, use these insurance provisions. Examples of general services include janitorial, rubbish removal and snow removal. See **Appendix C**, Insurance, and **Appendix D, Forms**, General Liability Insurance.

2.40.1.2 Equipment Liability Insurance – Use these insurance provisions for onsite and/or offsite equipment repairs and preventative maintenance services, and warranty work, such as oil changes for snowmobiles. See **Appendix C**, Insurance, and **Appendix D, Forms**, Equipment Liability Insurance.

2.40.1.3 Aviation Liability Insurance – Use these insurance provisions for onsite and/or offsite aircraft repairs, preventative maintenance services, and warranty work, such as oil changes and inspections on aircraft. See **Appendix C**, Insurance, and **Appendix D, Forms**, Aviation Liability Insurance.

2.40.1.4 Construction Insurance Requirements – Use these insurance provisions for construction work. See **Appendix Q**, Construction Solicitations, and **Appendix D, Forms**, Construction Insurance Requirements.

2.40.2 Special Insurance Provisions/Requirements. If special insurance provisions are needed, contact the **Risk Management Division** at 651.201.2591. Examples of special insurance provisions include but are not limited to:

- crime insurance (e.g., employee dishonesty),
- fire legal liability insurance,
- installation floater insurance,
- pollution liability insurance,
- property of others insurance which covers State property in contract vendor's or subcontractor's possession (e.g., garagekeepers insurance for vehicles, property of others coverage for mobile equipment, cargo insurance for freight in transit),
- security and privacy insurance,
- sexual molestation liability insurance,
- watercraft liability insurance, and
- professional/technical errors and omissions.

2.40.3 Deviation from Minimum Limits in the Standard Insurance

Provisions/Requirements. State agencies should use one of the standard insurance provisions/requirements in **Sections 2.40.1.1, 2.40.1.2, 2.40.1.3 or 2.40.1.4**. However, if a State agency can justify that the benefit to the State exceeds the risk, the State agency may deviate from the minimum insurance limits normally required in a solicitation for general services or construction work. A previously approved deviation may not be automatically used on future solicitations for the general service; each solicitation requires its own justification and written approval by the agency head, assistant commissioner or deputy commissioner.

2.40.3.1 State Agency Justification. Examples of a State agency's justification for deviating from the standard insurance requirements are in **Sections 2.40.3.1.1 and 2.40.3.1.2**.

2.40.3.1.1 The ALP certified buyer has reason to believe the State agency will receive more competitive responses if the solicitation provides pricing options for lower minimum limits for general liability and/or automobile liability insurance for services; or lower minimum limits for commercial general liability and/or automobile liability for construction work; and/or

2.40.3.1.1 The ALP certified buyer has reason to believe that the State agency could realize a substantial savings if the solicitation offered pricing options for lower minimum limits for general liability and/or automobile liability insurance for services; or lower minimum limits for commercial general liability and/or automobile liability for construction work.

2.40.3.2 Solicitation/Award Requirements. To deviate from the minimum limits in the standard insurance provisions/requirements, the ALP certified buyer must issue a solicitation with an award statement of "The State reserves the right to award to Option 1, Option 2, or Option 3 pricing" and the solicitation must request pricing for insurance limits of \$2,000,000, \$1,500,000, and \$1,000,000. The solicitation must include 3 pricing options:

Option 1 Pricing: A price for services that requires the standard insurance minimum limits at \$2,000,000 (attach copy of Option 1 insurance requirements to the solicitation).

Option 2 Pricing: A price for services that requires insurance with minimum limits at \$1,500,000 (attach copy of Option 2 insurance requirements to the solicitation).

Option 3 Pricing: A price for services that requires insurance with minimum limits at \$1,000,000 (attach copy of Option 3 insurance requirements to the solicitation).

Before making an award to a vendor offering a price for a lower insurance minimum, the ALP certified buyer must obtain written approval from the agency head, assistant commissioner or deputy commissioner.

The written documentation supporting the benefit to the State is greater than the risk when accepting a price with a lower insurance minimum and the written approval from the agency head, assistant commissioner, or deputy commissioner must be maintained in the purchasing file for audit.

2.40.3.3 Deviation Limit for Services. An agency head may approve a deviation from the minimum limits in the General Insurance Requirements, Equipment Insurance Requirements, and Aviation Insurance Requirements for the purchase of services up to the ALP certified buyer's delegated authority.

2.40.3.4 Deviation Limit for Construction Work. An agency head may approve a deviation from the minimum limits in the Construction Insurance Requirements up to the ALP certified buyer's delegated authority but not to exceed \$50,000.00.

2.40.4 Deviation from Any Other Insurance Requirements. Deviation from insurance requirements other than the deviations in **Section 2.40.3** must be discussed with the Risk Management Division and approved in writing by the agency head, assistant commissioner or deputy commissioner. A previously approved deviation may not be automatically used on future solicitations for the service; each solicitation requires its own justification and written approval by the agency head, assistant commissioner or deputy commissioner.

The documentation justifying a deviation from insurance provisions/requirements covered by **Section 2.40.4** and the written approval from the agency head, assistant commissioner, or deputy commissioner must be maintained in the purchasing file for audit.

2.40.5 Proof of Insurance. If the solicitation requires insurance, the agency must obtain proof of insurance from the awarded vendor and verify the insurance on the insurance certificate(s) meets all of the insurance requirements in the solicitation **prior to the issuance of a purchase order or contract.** The insurance certificate(s) must be maintained in the purchasing file for audit.

An example of an acceptable form of proof of insurance is in **Appendix C**, ACORD form titled "Certificate of Liability Insurance." If you have questions regarding proof of insurance, contact the Risk Management Division at 651.201.2591.

2.41 State Property Accountability. Agency heads are responsible for the State personal property acquired by their agency based on Minn. Stat. § 15.06, subd. 6 (3) and (4). Each agency must establish and publish departmental policies on how to account for property acquired by the agency. At a minimum, each agency should include any item having a normal life expectancy of more than two years and an acquisition value of \$5,000.00 or more as a fixed asset non-expendable property. Consult the Department of Administration's Informational Bulletin 03.19 "Property Management Reporting and Accountability" and "A User's Guide to State Personal Property Management" for the current policy on the State's fixed assets. See **Appendix N, Policy 21**, Property Management Reporting & Accountability (Admin 03-19), and **Appendix I, Fleet and Surplus Services**, A User's Guide to State Property Management.

2.42 Rental or Lease of Equipment. Equipment may be rented or leased directly when the total cost does not exceed the ALP certified buyer's local purchase authority and the duration of the rental or lease period will not exceed two years unless approved in writing by the MMD **acquisitions manager**. Total cost includes the cost for the entire length of time the rental/lease will be in place. If the total cost does exceed the ALP certified buyer's local purchasing authority or exceeds two years' duration, a purchase request must be entered into SWIFT as a requisition for processing by MMD. All ALP certified buyer solicitations for rentals or leases that exceed \$5,000.00 for the total rental/lease period must comply with the requirements in **Section 2.5**, Competitive Requirements. Agencies must not sign a vendor's form unless it has been reviewed either by the Materials Management Division who will consult with the Attorney General (AG), or the AG representative assigned to your department. The ALP certified buyer must maintain documentation that the AG approved the vendor's form. See **Section 2.46**, Contract Forms, and **Appendix N, Policy 17**, Requirements for Signing Documents and Cancelling Contracts.

2.43 Employee Moves. Agency buyers may issue a purchase order for employee moves, per the terms and conditions of each employee's labor contract or plan. Employee moves no longer need to go through MMD.

2.44 General Service Contracts. Minn. Stat. § 16C.02, subd.7a, provides "General services" means any nonprofessional or technical services. General services does not include construction.

Prior to purchasing general services, State agencies must obtain prior approval by completing a Service Certification Form, unless exempt below.

A Service Certification form is not required if the procurement is:

- a general service provided by State agencies, or
- a single procurement for a general service up to \$5,000.00 that will not be repeated in the fiscal year, or
- multiple procurements for the same general service with a cumulative total no more than \$5,000.00 in a fiscal.

See **Section 1.6.5**, Products and General Services from State Agencies, and **Appendix D, Forms**, Service Certification Form.

An ALP certified buyer may enter into general service contracts with a total value not to exceed the ALP certified buyer's delegated level of authority for the entire duration of the contract, not to exceed two years unless a longer contract term is approved in writing by the MMD **acquisitions manager**. For example, an ALP certified buyer with authority up to \$10,000.00 may enter into a general service contract with a total value not to exceed \$10,000.00 based on the total cost of the general service contract for the entire duration of the contract, not to exceed two years.

If the total cost of the contract exceeds the ALP certified buyer's delegated authority or the duration of the contract exceeds two years, a requisition must be entered into SWIFT for processing by MMD, unless a one-time delegation has been approved in writing by the MMD **AMS** (see **Section 1.6.7**, One-Time Delegations of Authority) or unless the MMD **AMS** provides other instructions.

Insurance is required for **State contracted general services** which includes purchase orders for general services; however, certain insurance coverages may not be required. For some examples of when insurance is not required or when certain insurance coverages are not required, see **Section 2.40, Insurance**. Based on the nature of the general services and depending on where they are provided, the agency 1) will determine if insurance is required and 2) will determine the appropriate insurance provisions for the solicitation. See **Section 2.40.3**

and **Section 2.40.4** for information on deviating from standard insurance provisions/requirements for general services when written approval has been granted by the agency head, assistant commissioner or deputy commissioner. For more information on insurance requirements, see **Section 2.40**, Insurance, **Appendix C**, Insurance (which includes Insurance Coverage for Contract Situations and Risk Management Division Training Material), **Appendix D**, Forms, and **Class Material**. For assistance in determining the appropriate insurance provisions, contact the **Risk Management Division** at 651.201.2591.

State agencies must use the MMD-approved solicitation and contract documents for all general services. See **Appendix D, Forms**, Contract Forms, for solicitation special terms and conditions for the general services below. For all other general services, contact the MMD **AMS** for assistance in developing special terms and conditions for the solicitation general services.

2.44.1 Conferences and Related General Services. The procurement of conferences, meetings, training and similar events, and related purchases, including but not limited to facilities, lodging, meeting rooms, food and beverages, and audio-visual equipment rental and general services (collectively referred to as “conferences and related services”), must be performed by an agency ALP certified buyer when the total purchase price is within the ALP certified buyer’s delegated authority or reviewed and approved by an ALP certified buyer when the total purchase price is less than \$2,500.00. Conferences and related services held at a vendor’s facility generally do not require insurance. See **Appendix N, Policy 33**, Procuring Conferences, Meetings and Events, and Related Goods and Services, and **Appendix D, Forms**, RFB Conference Facilities, RFP Conference Facilities, and Conference Pricing Sheets.

2.44.2 Janitorial Services. For solicitation special terms and conditions, see **Appendix D, Forms**, Janitorial Service Terms and Conditions. Also see **Section 1.10**, Preferences, **Section 2.11**, Vendor Preferences, **Section 2.24**, Determining Preference Eligibility and Preference Percent, and **Appendix N, Policy 29**, Preference for DEED Certified and DHS Licensed Providers.

2.44.3 Rubbish Disposal Services. For solicitation special terms and conditions, see **Appendix D, Forms**, Rubbish Disposal Terms and Conditions.

2.44.4 Window Washing Services. For solicitation special terms and conditions, see **Appendix D, Forms**, Window Washing Terms and Conditions.

2.44.5 MnDOT Materials. For solicitation general and special terms and conditions, see **Appendix D, Forms**, RFB and Contract Document for Bituminous Materials, Aggregates, Ready Mix and Sand, and **Appendix N, Policy 34**, Bituminous Materials, Aggregates, Ready Mix, and Sand for MnDOT.

2.45 Contract Period. The original length of any contract for goods or general services cannot exceed two years, unless special approval has been received in writing from the MMD **acquisitions manager**.

2.46 Contract Forms.

2.46.1 MMD-Approved Forms. All ALP certified buyers are required to use MMD approved contracting forms. Exceptions to using MMD-approved solicitation and contracting forms will be made only if the agency has presented the **documents** to the appropriate Attorney General (“AG”) representative and the MMD **acquisitions manager** or MMD **AMS** for review and approval. A price contract (not a purchase order) for the purchase of goods, general services, or utilities is not valid without the signatures of the vendor, the designated agency representative, and MMD. See **Appendix N, Policy 17**, Requirements for Signing Documents and Cancelling Contracts.

2.46.2 Vendor Contract Forms. Agencies are not to sign vendor forms unless the form has been reviewed either by the Materials Management Division who will consult with the Attorney General (AG), or the AG representative assigned to your department. The ALP certified buyer must maintain documentation that the AG approved the vendor’s form. See **Appendix N, Policy 17**, Requirements for Signing Documents and Cancelling Contracts.

2.47 New Hire Reporting System/Independent Contractor Information. State agencies are required by Minn. Stat. § 256.998 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to submit information on independent contractors when they are awarded a contract. Independent contractors, by rule, are those who furnish services or construction to the State and are a sole proprietorship. The agency completes the form from information furnished by the independent contractor on the Taxpayer Information page submitted in the vendor’s response. See **Appendix D, Forms**, Request for Bid.

The Minnesota New Hire Reporting Form is due 20 days after the “Date of Hire” reported on the form. State agencies may complete and mail or fax the Minnesota New Hire Reporting Form (see **Appendix D, Forms**, New Hire Reporting Form) or submit the information online at Department of Human Services website www.mn-newhire.com. For additional information, contact the Minnesota New Hire Reporting Center at 651.227.4661 or 800.672.4477.

2.48 Technology Purchases. The MN-IT Services (formerly Office of Enterprise Technology [OET]) is required by statute to review and approve information technology (IT) purchases for hardware, software and professional services, unless exempted by law. See **Appendix N, Policy 24**, MN.IT Services - Review of IT Purchases.

All information technology procured or developed must adhere to the MN.IT Services State of Minnesota Accessibility Standards and associated process. For more information, see MMD’s website http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf.

2.49 World Trade Organization (WTO) Government Procurement Agreement (GPA). Minnesota is a party to the World Trade Organization Government Procurement Agreement. The procurement of commodities, general services, and construction that may meet the Government Procurement Agreement criteria is announced for competitive response on MMD’s website. For the period January 1, 2014 through December 31, 2015, if an agency’s solicitation is estimated to be **over** \$558,000.00 for the life of the contract for goods and general services or \$7,864,000.00 for construction services, the solicitation must be published on the MMD’s website www.mmd.admin.state.mn.us/mn08000.htm for at least 40 days prior to the opening date. For the current year dollar thresholds, see USTR website <http://www.ustr.gov/trade-topics/government-procurement/thresholds>. For instructions on publishing solicitations, contact the MMD **AMS**.

AMENDING PURCHASE ORDERS/CONTRACTS

2.50 Amending Purchase Orders/Contracts. The ALP certified buyer must contact the MMD **AMS** for instructions. See **Appendix N, Policy 25**, Amending Contracts.

EXCEPTIONS TO USING SWIFT FOR SOLICITATION PROCESS

2.51 Price Contracts. A price contract is a contract award that has been competitively bid using a request for bid (RFB) solicitation and it provides for a firm fixed price. It may or may not provide for a fixed quantity and the contract term may be for up to two years, unless a longer period of time has been approved in writing by MMD **acquisitions manager**. The request for bid is an MMD-approved form. The contract is an MMD-approved form that requires the signature of the vendor, the designated agency representative, and MMD **AMS** or MMD delegate. See **Section 2.44**, General Service Contracts, **Section 2.46**, Contract Forms, and **Appendix D, Forms**, Request for Bid and Contract Award Document, and **Appendix N, Policy 17**, Requirements for Signing Documents and Cancelling Contracts.

The ALP certified buyer must contact the MMD **AMS** for instructions before issuing a solicitation that will result in the issuance of a price contract.

APPEAL OF PROCUREMENT MATTERS BY STATE AGENCIES

2.52 Appeal Process. If an agency is dissatisfied with a decision made by MMD, an appeal process is provided in **Appendix N, Policy 18**, Escalation and Appeal of Procurement Matters by State Agencies.

Section 3: Exceptions to the Solicitation Process

GENERAL INFORMATION

The following transactions are not subject to the standard solicitation process, nor the competitive bidding process. The procedures set forth in **Section 2.5, Competitive Requirements**, must be followed unless otherwise provided for by law or by this manual.

Note: Generally all single source purchases must fall within the certified purchaser's delegated authority. Single source procurements must follow the definitions and instructions listed below.

Also, see **Section 1.6**, Exceptions to Levels of Delegated Authority, to determine if the certified purchaser may exceed his/her delegated authority for purchases that are exempt from the solicitation process.

SINGLE SOURCE PROCUREMENT

3.1 Single Source Procurements. As defined in Minn. Stat. § 16C.02, subd. 18, "single source" means "an acquisition where, **after a search**, only one supplier is determined to be reasonably available for the required product, service, or construction item." In purchasing, a single source item is literally the only item that *can perform a desired function and/or satisfy a need*, and that can only be purchased from one source. There are some "single source" items, but they are few and far between. If the item is declared single source, purchasers run the risk of having a supplier, at a later date, inform them that like-items are available from more than one source. See **Appendix N, Policy 19**, Single Source Procurement Policy. Questions regarding single source should be directed to the appropriate MMD **acquisition management specialist (AMS)** for that product or service line.

3.2 Processing Single Source Procurements. If a certified purchaser believes that an item is single source, after the required search has been conducted, the certified purchaser must complete the MMD Goods and Services Single Source Justification Form. The form provides the information required to qualify an item as single source. See **Section 3.2.1 to 3.3.4** and **Appendix N, Policy 19**, Single Source Procurement Policy, for additional information on single source purchases and approval.

3.2.1 Purchases within Delegated Authority. A certified purchaser may purchase single source products and services without MMD's approval up to the certified purchaser's delegated authority or \$50,000, whichever is less. A certified purchaser with authority greater than \$50,000 can purchase up to their delegated authority with MMD's approval on the Single Source Justification Form. When single source has been approved by the certified purchaser, the agency prepares a solicitation, obtains a firm price quote, and issues a purchase order. If the value of the purchase exceeds \$10,000, the solicitation must be advertised on the MMD's website to ensure the inclusion of all possible vendors and to promote open and fair competition, unless written approval is received from the appropriate MMD **AMS** or the MMD **acquisitions manager**. All documents associated with the purchase, including the approved single source document, shall be marked as "single source" and filed in the purchasing file.

3.2.2 Purchases Greater than Delegated Authority or \$50,000, Whichever is Less. If the total value of the single source purchase exceeds the certified purchaser's delegated authority or \$50,000, whichever is less, the Single Source Justification Form must be submitted to MMD for approval. When the purchase has been approved as a single source, the agency enters a requisition in the SWIFT Procurement Component, unless the certified purchaser has been given a written one-time delegation of authority to conduct the purchase (see **Section 1.6.7, One-Time Delegations of Authority**). If the MMD **AMS** is going to purchase the product and/or service, the agency must forward to the MMD **AMS** an approved Single Source Justification Form. The MMD **AMS** will prepare a solicitation, obtain a firm quote or advertise, and issue a purchase order. All documents associated with the purchase, including the approved single source document, shall be marked as "single source" and filed in the purchasing file in MMD.

3.2.3 Licensing or Maintenance Agreement Signature Requirements. When any type of vendor licensing or maintenance agreements are involved, the respective agency's representative from the Attorney General's (AG) office must review and approve the documents before any vendor agreement is signed by the Agency. **License and maintenance agreements must also be reviewed, approved, and signed by MMD.** See **Appendix N, Policy 17, Requirements for Signing Documents and Cancelling Contracts.**

3.2.4 Renewal of Licensing or Maintenance Agreement. Once a purchase has been approved as a single source and there is no change in the license or maintenance agreement, a renewal may be processed using the SWIFT Procurement Component Single Source Order (SSO) document type. All renewal licensing or maintenance agreement documents must be signed by the contract vendor, the designated agency representative, and MMD.

3.3. Examples of Single Source Items. **Note:** *The following are intended to act as examples only.* Certified purchasers must make certain, in every case, that the item in question meets the definition set forth in **Section 3.1, Single Source Procurements**, and that the procedures in **Section 3.2, Processing Single Source Procurements**, are followed.

3.3.1 Repair Parts. Repair parts that are not on a contract, that are proprietary, and that are available from only one source may be purchased directly from the vendor. See the procedures in **Section 3.2, Processing Single Source Procurements**. In such cases, mark the purchase order copy "single source" and file a copy in the purchasing file along with the approved single source documentation. **Note: Repair parts covered by a contract must be purchased using the contract, unless otherwise approved by the MMD AMS. (See Section 2.3, Is my purchase available from a State agency or on a State contract?)**

3.3.2 Educational Supplies. Educational supplies, such as prepared instructional multimedia products, printed text books, and printed test forms, which are available from only one source, may be purchased directly from that vendor. See the procedures in **Section 3.2, Processing Single Source Procurements**. In such cases, mark the copy of the purchase order "single source" and file a copy in the purchasing file along with the approved single source document.

3.3.3 Equipment Maintenance. Equipment maintenance that is available from only one source may be purchased directly from that vendor. See the procedures in **Section 3.2**, Processing Single Source Procurements. In such cases, mark the copy of the purchase order “single source” and file in the purchasing file along with the approved single source document. Also see **Section 3.2.3**, Licensing or Maintenance Agreement Signature Requirements, and **Section 3.2.4**, Renewal of Licensing or Maintenance Agreement.

3.3.4 Computer Software. See **Appendix N, Policy 24**, Office of Enterprise Technology (OET) Review of IT Purchases, for requirements for OET approval. Computer software licenses, which are available from only one source, may be purchased, or subscribed, directly from that vendor. See the procedures in **Section 3.2**, Processing Single Source Procurements. In such cases, mark the copy of the purchase order “single source” and file in the purchasing file along with the approved single source document and any required approvals from OET. Also see **Section 3.2.3**, Licensing or Maintenance Agreement Signature Requirements, and **Section 3.2.4**, Renewal of Licensing or Maintenance Agreement.

OTHER EXCEPTIONS TO THE SOLICITATION PROCESS

3.4 Emergencies. Purchases are not subject to the solicitation process when responding to an emergency as defined in Minn. Stat. § 16C.10, subd. 2, and approved in writing by the MMD director or MMD **acquisitions manager**. The certified purchaser may exceed his/her delegated authority when an emergency is declared. See **Section 1.6.1**, Emergencies, for the definition of an emergency and procedures, and **Appendix H**, Minn. Stat. § 16C.10, subd. 2.

3.5 Using a Previous Quote. A previous quote may be used if the purchase meets the following criteria:

- The same ordering entity,
- Total dollar value of the original purchase order does not exceed the certified purchaser’s delegated authority or \$50,000, whichever is less,
- Re-order is issued within six (6) months of the original purchase order date,
- Agency need is for the exact same items and quantities,
- Shipping location and costs are the same,
- Terms and conditions remain the same as the original purchase order, and
- Prices remain the same, or lower, than the original purchase order.

The certified purchaser who initiated the original solicitation may contact the contract vendor to request pricing, terms, and conditions information. If the purchase meets all of the above criteria, the certified purchaser may issue a purchase order without obtaining additional quotes. This reordering option may occur once in relation to an original order. The original order number should be referenced on the reorder.

3.6 Purchases from State Agencies. Certified purchasers may buy goods and services directly from State agencies without obtaining competitive responses. See **Section 1.6**, Exceptions to Levels of Delegated Authority.

3.7 Purchases from Minnesota Correctional Facilities (MINNCOR). Goods and services from Minnesota correctional facilities are not subject to the solicitation process. See **Section 1.6**, Exceptions to Levels of Delegated Authority, and **Appendix H**, Minn. Stat. § 16C.10, subd. 5(3).

3.8 Purchases from Minnesota Sex Offender Program Facilities (Minnesota State Industries). Goods and services from Minnesota sex offender program facilities are not subject to the solicitation process. See **Section 1.6**, Exceptions to Levels of Delegated Authority, and **Appendix H**, Minn. Stat. § 16C.10, subd. 5(8).

3.9 Purchases from Rehabilitation Facilities and Extended Employment Providers (DEED Certified Providers). Goods and services from rehabilitation facilities and extended employment providers that are certified by the commissioner of Employment and Economic Development (DEED) are not subject to the solicitation process. For a list of certified providers, see **Appendix J, Vendor Information**, DEED Certified Providers (Community Rehabilitations Providers/Limited Use Vendors). Also see **Section 1.6**, Exceptions to Levels of Delegated Authority, and **Appendix H**, Minn. Stat. § 16C.10, subd. 5(4).

A completed Service Contract Certification form is required for services (see Appendix D, Forms).

3.10 Purchases from Day Services Providers (DHS Licensed Providers). Day services licensed under Minnesota Statutes Chapter 245D by the Department of Human Services (DHS) are not subject to the solicitation process. For a list of certified providers, see **Appendix J, Vendor Information**, DHS Licensed Providers. Also see **Section 1.6**, Exceptions to Levels of Delegated Authority, and **Appendix H**, Minn. Stat. § 16C.10, subd. 5(4).

A completed Service Contract Certification form is required for services (see **Appendix D**, Forms).

3.11 Purchases for Community-Based Residential Facilities. Goods and services for use by a community-based residential facility operated by the commissioner of Human Services are not subject to the solicitation process. See **Appendix H**, Minn. Stat. 16C.10, subd 5(5).

3.12 Utility Services. Utility services where no competition exists or where rates are fixed by law or ordinance are not subject to the solicitation process. State agencies must document the purchasing file. See **Appendix H**, Minn. Stat. 16C.10, subd 5(7).

3.13 Merchandise for Resale. Transactions under this category must adhere to policies determined by the commissioner of Administration. Each agency that has a resale activity shall provide the MMD **acquisitions manager** with the following:

- (a) A list of programs and usual commodities purchased.
- (b) A list of individuals who have authority to “approve” expenditures and at what level.
- (c) A copy of agency specific policies and procedures on purchasing resale goods which should address the internal process to be used to make, monitor, and account for the purchases.

See **Appendix H**, Minn. Stat. 16C.10, subd 5(1).

3.14 Farm and Garden Products. Farm and garden products may be purchased at or below the prevailing market price on the date of sale. Farm and garden products are defined as perishables, such as fresh fruit and vegetables, or other items approved in writing by the MMD **acquisitions manager**. See **Appendix H**, Minn. Stat. 16C.10, subd 5(2).

3.15 Goods Purchased at Auction. Goods purchased at auction or when submitting a sealed bid at auction are exempt from the solicitation process provided that before authorizing such an action, the requesting State agency has consulted with the MMD **acquisitions manager** to determine a fair and reasonable value for the goods considering factors including, but not limited to, costs associated with submitting a bid, travel, transportation, and storage. This fair and reasonable value must represent the limit of the state's bid. See **Appendix H**, Minn. Stat. 16C.10, subd 5(6).

Section 4: Vendor Information

IDENTIFYING VENDORS

4.1 Vendor Information. Below are some of the resources available to assist purchasers with identifying vendors available to provide products and/or services. Also review **Section 1.10**, Preferences, **Section 2.5**, Competitive Requirements, **Section 2.11**, Vendor Preferences, **Section 2.24**, Determining Preference Eligibility and Preference Percent, and **Appendix J**, Vendor Information, **Section 4.20**, Minnesota Suspended/Debarred Vendors, and **Section 4.21**, Federally Debarred Vendors.

4.1.1 Vendor List in Statewide Integrated Financial Tools (SWIFT) system Procurement Component. A list of vendors interested in doing business with the state of Minnesota (State) is maintained by the Materials Management Division (MMD) for various categories in the SWIFT Procurement Component. Any vendor desiring to sell to the State and be formally registered for the products they sell or the services they provide, can register online on the MMD website at <https://www.mmd.admin.state.mn.us/webven>. The registration requires the vendor's name, business address, contact person, phone number, federal and state tax identification numbers, and detailed information regarding the commodities they desire to sell. A vendor who fails to respond to three consecutive solicitations may be removed from the list of vendors. An indication of intent not to bid is considered a response.

4.1.2 Targeted Group/Economically Disadvantaged (TG/ED) Vendors. Only vendors certified, eligible, and registered in the SWIFT Procurement Component as a Targeted Group (TG) vendor are qualified as a TG vendor. Only vendors certified and registered in SWIFT Procurement Component as an Economically Disadvantaged (ED) vendor are qualified as an ED vendor. A list of certified, eligible, and registered TG and ED vendors is available in Appendix J, Vendor Information. See **Appendix J, Vendor Information**, for the following information: Targeted Group and Economically Disadvantaged Small Business Procurement Program, Economically Disadvantaged Counties in Minnesota, Table of Groups Experiencing Disparity, and Directory of Certified TG/ED Small Businesses, and **Appendix N, Policy 23**, ALP Policy and Procedures Overview.

4.1.3 Veteran-Owned (VO) Small Businesses. Only vendors that are verified as veteran-owned small businesses by the US Veterans Affairs' Center for Veterans Enterprise (CVE) and with their principal place of business in Minnesota are qualified as a VO vendor. A list of certified veteran-owned small businesses is available on the CVE website www.vip.vetbiz.gov. See **Appendix J, Vendor Information**, Revised Instructions on Applying Preferences and Guide to Verify US Veterans Affairs' Center for Veterans Enterprise (CVE) Certification.

4.1.4 Department of Employment and Economic Development (DEED) Certified Providers and Department of Human Services (DHS) Licensed Providers. Only rehabilitation programs and extended employment providers that are certified by the commissioner of Employment and Economic Development and day services licensed under Minnesota Statutes Chapter 245D by the Department of Human Services are qualified as DEED certified providers and DHS licensed providers. For a list of providers, see **Appendix J, Vendor Information**, DEED Certified Providers (Community Rehabilitation Providers/Limited Use Vendors) and DHS Licensed Providers. For additional information, see **Section 2.11**, Vendor Preferences, **Appendix J, Vendor Information**, Revised Instructions on Applying Preferences, and **Appendix N, Policy 29**, Preference for DEED Certified and DHS Licensed Providers.

4.1.5 Other Sources for Vendor Information. Examples of other sources for obtaining vendor information are internet searches, telephone directory yellow pages, industry publications, and industry organizations.

VENDOR PERFORMANCE

4.2 Delivery Instructions. Shipment shall be made in accordance with the delivery instructions in the solicitation and as referenced on the purchase order. Failure to meet delivery requirements may be cause for cancellation of the contract or purchase order.

4.3 Delivery Conformance. All deliveries shall conform to the specifications and all terms and conditions of the solicitation. Failure to meet solicitation requirements shall be cause for rejection of the goods.

4.4 Damaged Shipments. Notice of rejection, based upon apparent deficiencies disclosed by ordinary methods of inspection, shall be given by the receiving agency to both the vendor and the carrier within a reasonable time after delivery. (A copy of this notice should be sent to Vendor Management in MMD.) Revocation of acceptance for latent deficiencies or concealed damages that would make the items unsatisfactory for the purpose intended shall be given by the agency to the contract vendor, and to MMD when appropriate, within a reasonable time after discovery. The vendor shall satisfactorily repair or replace such items within a reasonable period of time at no additional cost to the agency.

4.5 Nonconformance. Commodities that fail to comply with specifications, fail to conform to the vendor's sample, are not as stated on the purchase order, or arrive in an unsatisfactory condition, shall be rejected except as provided in **Section 4.8.2**.

4.6 Inspection Prior to Shipment. The agency may require that the vendor permit inspection of the commodities prior to shipment at the factory, plant, or establishment where produced, manufactured, or stored. Unless a provision covering the cost of inspection is made in the solicitation, costs thereby incurred will be paid by the agency.

4.7 Removal of Rejected Merchandise. Consult with MMD before pursuing any action pursuant to Minn. Stat. § 336.2-603 below, or any other applicable law.

MINN. STAT. § 336.2-603 MERCHANT BUYER'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

- (1) Subject to any security interest in the buyer (subsection (3) of section [336.2-711](#)), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in the merchant buyer's possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.
- (2) When the buyer sells goods under subsection (1), the buyer is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent on the gross proceeds.
- (3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

4.8 Replacement of Rejected Merchandise. If the needs of an agency do not allow time to replace rejected merchandise or if deliveries are not made within the time specified in the contract, the agency may:

4.8.1 Buy the needed supplies on the open market. The contract vendor whose goods were properly and justifiably rejected shall be liable for additional default costs and expenses incurred; or

4.8.2 If it is determined that an item does not conform strictly to specifications, but can be used satisfactorily, the certified purchaser may adjust the price with written acquiescence of the contract vendor and use such part of the order when such action is required to sustain continued operation.

4.8.3 A Vendor Performance Report should be completed and the original mailed to the contract vendor with a copy submitted to Vendor Management in MMD in both instances listed above.

4.9 Testing. The certified purchaser may direct that a laboratory analysis or other tests be made to determine the acceptability of the delivered products and to ensure that the products meet specifications. In these instances, acceptance by the agency shall not occur, nor be deemed to have been made, and the discount time for payment shall not begin until testing is completed and affirmative results are obtained. Vendors shall be notified of test results. Certified purchasers should indicate in the solicitation document when testing will occur.

4.10 Other Situations. Any situation not addressed above will be handled in accordance with guidelines and rules as set forth in statutes, rules, policies and the Uniform Commercial Code (UCC) as adopted by the state of Minnesota (Minnesota Statutes Chapter 336).

FAILURE TO PERFORM

4.11 Failure to Enter into a Contract. If a vendor fails to enter into a contract or fails to perform the contract as specified, the agency shall take action against the security provided (where applicable). In the case of a certified check, the agency shall deposit it with the Department of Finance, Treasury Division. In the case of a bond, the agency shall notify the bonding company, in writing, of the default. Consult with MMD before pursuing any action.

4.12 After Award. After the award, if the contract vendor fails to furnish satisfactory performance security, if required, the contract vendor shall be deemed in default and subject to the above provisions.

4.13 Default. A contract vendor shall be held in default for failure to conform to the solicitation specifications or to standard commercial practices, including but not limited to the following:

4.13.1 Failure to make deliveries within the time specified in the contract; or

4.13.2 Deliveries of commodities or materials that do not conform to samples or specifications, and are not promptly replaced; or

4.13.3 Delivery of commodities or materials that are repeatedly rejected; or

4.13.4 Misbranding or materially misrepresenting goods or materials purchased under the contract; or

4.13.5 Delivering demo or used goods and materials instead of new.

4.14 Not Responsible Contract Vendor. In all cases of default, the contract vendor may be determined not to be a responsible vendor as defined in **Section 1.18**, Responsible Vendor, and is subject to the default costs as set forth in **Section 4.8.1**.

VENDOR SERVICE CONCERNS AND PERFORMANCE REPORTS

4.15 Problems with Contract Vendors. When an agency experiences a problem with a contract vendor, the following process shall occur:

4.15.1 The agency will make the first attempt to resolve the problem with the vendor.

4.15.2 Whether the problem is resolved at this point or not, the agency should complete a Vendor Performance Report form (see **Appendix D, Forms**). The completed form should be sent to the contract vendor and to Vendor Management in MMD to be maintained in a file on that contract vendor.

4.16 Necessary Intervention. If intervention is necessary, contact the MMD **AMS** assigned to the commodity/service and Vendor Management in MMD to assist in whatever manner is appropriate, including but not limited to investigation of the situation, meetings with the vendor, and meetings with agency personnel.

4.17 Course of Action. Any course of action permissible under law will be pursued to resolve the situation, including but not limited to suspension and/or debarment.

4.18 Cancellation of Order. The agency must obtain approval from the MMD **acquisitions manager** before canceling a purchase order. See **Section 2.37**, Conditions for Canceling.

VENDOR PROTESTS

4.19 Vendor Protest Procedures. For procedures on handling vendor protests, see **Appendix N, Policy 14**, Instructions for Reporting Purchasing Violations, Vendor Protests, and Mis-awards.

SUSPENDED/DEBARRED VENDORS

4.20 Minnesota Suspended/Debarred Vendors. For a list of vendors that have been suspended or debarred by MMD, see Appendix J, Vendor Information, Suspended/Debarred Vendors. Agencies cannot do business with a vendor who has been suspended or debarred by the State or the Federal government unless a specific exemption has been granted by the commissioner of Administration.

4.21 Federally Debarred Vendors. For a list of vendors that have been suspended or debarred by the Federal Government, see Excluded Parties List System at www.epls.gov.

CONTRACT VENDOR EXCEPTIONAL PERFORMANCE

4.22 Contract Vendor Exceptional Performance. Complete a Vendor Performance Report to report exceptional performance by a contract vendor. Forward the report to Vendor Management in MMD. The report will be maintained in a file on that contract vendor. The agency may also forward a copy of the report to the contract vendor. For a copy of the Vendor Performance Report form, see **Appendix D, Forms**.