

# STATE CONTROLLER POLICY

## MIXED PROCUREMENTS

- 1) **Definition.** Mixed procurements are purchases of both services and goods (including products, commodities, and supplies under the State Procurement Code R-24-101-301(a & b).
- 2) **Examples of Mixed Procurements:**
  - a. Buying a computer where a service agreement is included in the purchase price.
  - b. Buying printed materials where the total price includes printing design and layout services.
- 3) **State Contract Use Mandatory.** Fiscal Rule 2-2 requires a State Contract for personal service procurements in excess of \$100,000 or when it is in the State's best interest regardless of the total price. State Contracts are required for mixed procurements in the following circumstances:
  - a. **Separate Pricing.** If personal services are priced separately and they exceed \$100,000; or, if not separately priced, if a reasonable estimate for the personal services exceeds \$100,000.
  - b. **State's Best Interest.** If either the good or service is automatic high risk or it is in the State's best interest regardless of total price, including procurements of \$100,000 or less; for example:
    - i. Complex transactions involving milestones,
    - ii. Incremental payments tied to progress,
    - iii. Complex data/document delivery requirements,
    - iv. Intellectual property rights allocations,
    - v. Contracts exposing the State to substantial risk of incurring damages, monetary or otherwise.
- 4) **State Contract Use Permissive**
  - a. **Two Conditions.** State Contracts are not required for mixed procurements if both of the following two conditions are met:
    - i. Personal services are incidental to the total purchase, and
    - ii. The best interest of the State does not require use of a State Contract.
  - b. **Incidental.** Factors to consider in determining if services are "incidental" include:
    - i. If it is expected that the personal services component will be separately invoiced then they shall be, and if such invoice exceeds \$100,000, then a State Contract is required. Expectation may arise from common practice, industry standard, routine performance offered by the vendor, prior course-of-conduct between the parties, or specific agreement.
    - ii. State Contracts are required if the elements of service performance are subject to considerable negotiation. In the absence of other requirements to use a contract, a State Contract is optional if the service performance terms were not the subject of considerable negotiation but are largely defined by common practice, industry standard, or routine performance offered by the vendor.
    - iii. State Contracts are required if the predominate value of the service is the labor, skill, creativity, specialized knowledge, or judgment the vendor supplies for design or conceptual work. Examples are printing services requiring significant prepress setup, software design, and transactions where ownership of intellectual property rights is a significant issue. Conversely, situations involving delivery of end products meeting largely pre-established product specifications or design requirements do not require use of a State Contract.
  - c. **State's Best Interest.** A mixed procurement that does not involve a situation where a State Contract is in the best interest of the State includes those situations where, based on the judgment of the Agency or Institution of Higher Education, after evaluating program and risk factors, a Purchase Order adequately protects the State's interests.
  - d. **Documentation.** Contact administrators, procurement officers, or other involved staff shall document the reasons for using a Purchase Order or other commitment voucher in place of a State Contract for mixed procurements purchases.

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