

Purchasing Policy 18 - Revised

Original: July 31, 2003

Revised: June 11, 2015

TO: Agency Heads

FROM: Brian J. Lamb Commissioner

SUBJECT: Escalation and Appeal of Procurement Matters by State Agencies

Policy objectives:

The primary objective of this policy is to create a clear, consistent, and well-documented decision process within the Minnesota Department of Administration (Admin) regarding procurement matters in instances when state agencies are dissatisfied with decisions made by the department's classified employees.

Background information:

Procurement decisions are made on the basis of statutes, rules, precedent, and public policy. But sometimes procurement decisions are not entirely black and white and involve an element of subjectivity. When an agency is dissatisfied with a staff decision, they will sometimes seek a different answer from someone else – most frequently someone higher – in the organization. Historically, this has been done informally through the chain of command.

A Management Analysis Division (MAD) study of the professional/technical contracting process (“An Analysis of the Office of State Procurement’s Review and Approval of Professional and Technical Contracts,” December 2002) identified the informal appeals process as an area for improvement.

Specifically:

“The department must anticipate and plan for conflict with agencies under its review. The differing demands and pressures of the agencies and the department create the conditions for strong differences of opinion. The department needs an established procedure for how conflicts will be addressed. This process should be written and shared with agencies. The department should document controversial decisions so that criteria and rationale for the decision are explicit and applied rationally. By rule (Minn. Rules 1230.1150) decisions regarding the suspension or debarment of vendors and would-be vendors may be appealed from the director of OSP to the commissioner of Administration. By policy, rejection of contract moratorium waivers may also be appealed. Perhaps this more formal process would also be appropriate for agencies in other situations when a procurement-related decision moves from OSP to the commissioner’s office.

Minimally, it would create a clear paper trail with respect to responsibility for controversial decisions and would make all parties more intentional with respect to any issues they take above OSP for an executive decision.”

A subsequent Office of the Legislative Auditor report (“Professional/Technical Contracting,” January 2003) concluded that differing philosophies within Administration contributed to substandard performance from a regulatory perspective. Implementation of the MAD proposal should be helpful to the department in documenting and reconciling such differences in a constructive manner.

Authority:

The commissioner of Administration has broad authority with respect to state procurement (Minn. Stat. § 16C.03). The commissioner’s authority is exercised through delegations to staff of the Office of State Procurement. The director of OSP has several specific authorities cited in Minn. Rules 1230, but his/her independent authority can be appealed to the commissioner. Policy and procedure:

1. This policy will be communicated to state agencies along with an expectation that agencies develop a corresponding internal escalation policy. Individuals in agencies are generally encouraged to be identifying and working through problems with colleagues at comparable levels in Admin. When such efforts fail, appeals to the commissioner of Admin should be coming from another commissioner or deputy, not from lower-level professional or managerial staff.
2. Ideally, issues will be resolved on the front lines of Administration. OSP staff members are expected to explain the law and/or rationale behind their decisions to affected agencies. OSP staff members are encouraged to be creative and flexible in exploring options within the constraints of the law and responsible public procurement policy.
3. When an OSP manager is contacted by an agency asking for reconsideration of a previous decision, the manager will investigate the issues and determine whether the decision was appropriate.

4. No formal documentation is required for decisions made by MAPE employees or their direct managers.

5. When the OSP director or assistant director are contacted by an agency asking for reconsideration of a previous decision, the following documentation will be created and maintained on file:

- A memo or e-mail from the affected agency explaining the basis of its request, or alternatively, a memo or e-mail from the director or assistant director restating the issue raised by phone or in person and a confirmation from the agency of its accuracy.
- A memo or e-mail containing a proposed recommendation from the manager of the involved area, or alternatively, a memo or e-mail from the involved staff member and initialed/supported by the relevant manager.
- Within five working days of receipt of both documents, the director or assistant director shall request additional information, schedule a fact-finding discussion among the affected parties, or issue a final decision on behalf of OSP. If more data is requested or a discussion is scheduled, the director or assistant director shall make OSP's decision within five working days of receipt of the information or completion of the fact-finding process.
- The director may, but is not required to, review decisions of the assistant director. Either individual may make the administrative decision for OSP.

6. When the commissioner of Administration receives a request from an agency to reconsider a decision made within OSP, the following actions will be taken:

- The commissioner will request documentation of the OSP decision. The director will provide a file containing hard copies of the materials described above, plus a written statement of the decision. The written statement will cite any statutes, rules, case law, policy or precedent relied upon. The director will also provide any other documents relied upon in reaching the OSP decision.
- If a decision has not already been made by either the director or assistant director, the commissioner shall request one. The process described in #4 above will be followed to the point where the file described in the previous bullet can be supplied to the commissioner.
- Regardless of whether the decision is made personally by the commissioner or made in consultation with others, the commissioner of Administration is the final authority with respect to procurement issues and is responsible for the decision regardless of where it was made within Admin.
- The commissioner's final decision on behalf of Admin shall be in writing and indicate the reasons for affirming or reversing the previous decision.
- A copy of the commissioner's final decision shall be forwarded to the director of OSP for implementation. OSP will retain a complete set of files of all decisions made through this process.

Revised 6/11/2015: Questions concerning this policy may be addressed to the Commissioner of Administration, at 651.201-2555 or the Office of State Procurement Director, at 651.201.2400.