

# Procurement Policy

## **Purpose:**

To ensure that Sourcewell's procurement of goods, services, and construction is performed in a way that ensures all acquisitions are made through, and contracts are created pursuant to, a process that enhances access, competition, and fairness; and results in optimal balance of overall benefits to Sourcewell and its members and participating entities.

Sourcewell's acquisitions and contracts should be performed in such a way as to stand the test of public scrutiny in matters of good judgment and integrity, open competition, and fairness in the spending of public funds.

## **Scope:**

This policy applies to all acquisitions made, and contracts entered into, by Sourcewell for goods or services for itself or its members and participating entities.

## **Procedure Objectives:**

### **A. Compliance**

Sourcewell procurements must comply with all applicable State of Minnesota and United States federal laws, with the goal of maintaining compliance with applicable provisions of the Canadian Free Trade Agreement (CFTA), Comprehensive Economic and Trade Agreement (CETA), and other applicable Canadian trade agreements.

### **B. Fair and Open Competition**

As a Minnesota local government agency and service cooperative, Sourcewell will encourage fair and open competition in its acquisitions. When competition is required by this policy the specifications should be written so that they are able to be met by more than one vendor, notice of the opportunity is posted so that it receives broad publication, and all responsible vendors are permitted to compete in the solicitation process.

### **C. Awards Considering Cost, Quality, and Ability**

Sourcewell will strive to procure goods and services that provide the most responsible use of resources for itself and its members and participating entities by evaluating quality, price, and the vendor's ability to provide the product or service. Sourcewell may also evaluate a responder's past performance; however, this may not be used to give one vendor an unfair advantage over others simply because a contract had been successfully performed previously.

Social and economic preferences will be implemented to the extent practicable and when required by Minnesota law. Members and participating entities accessing the resulting contracts are expected to enforce their own specific legal requirements.

### **D. Free from Conflicts of Interest**

#### **1. Individual Conflicts of Interest**

Sourcewell employees must not participate in any procurement in which the employee has an actual, potential, or appearance of conflict of interest. A conflict of interest is present in any situation in which the employee's judgment, actions, or non-action are, or may be, influenced by something that would benefit the employee, the employee's immediate family, or other personal relationship, or an organization with which the employee is associated.

Employees must disclose any conflict of interest prior to participating in any part of the procurement process; this includes drafting a solicitation and managing any resulting contract. Employees participating in the response evaluation process must sign the Evaluation Committee Member Agreement.

If at any time an employee believes an actual or potential conflict of interest exists, it is the employee's duty to avoid the situation and immediately declare the actual or potential conflict to their manager. The manager must then review the circumstances and make a determination as to existence of an actual or potential conflict of interest. If the manager determines that a conflict of interest does exist, the employee's responsibilities for that procurement must be assigned to an employee without such conflict of interest.

Any employee that participated in an acquisition that is later discovered to have had an undisclosed conflict of interest at the time of the acquisition, may be subject to discipline.

## **2. Organizational Conflict of Interest**

Sourcewell must do its best to identify, and then avoid or mitigate organizational conflicts of interest in all procurement transactions. An "organizational conflict of interest" is created when a vendor is unable, or potentially unable, to render impartial assistance or advice to Sourcewell due to the vendor's:

- existing or planned activities
- relationships with other persons creating an actual or perceived impairment to the vendor's objectivity in performing the contract work, or
- unfair competitive advantage (e.g., assisting with the development of specifications, requirements, statements of work for solicitations).

Examples include, but are not limited to:

- Unequal access to information whereby a vendor could receive a competitive advantage for a solicitation. To prevent this, Sourcewell will gather industry information from vendors in such a way as to not disclose what will or could be included in an upcoming solicitation. All conversations with industry partners for information gathering should stop a reasonable time prior to the issuance of a solicitation.
- Assisting in establishing the ground rules for a solicitation; such as drafting specifications or evaluation criteria.
- Impaired objectivity by a vendor being put in a position to provide assessment and evaluation findings over itself, another business division or subsidiary of the same corporation, or another entity with which it has a financial relationship.

## **PROCUREMENT AUTHORITY:**

### **A. Statutory Authority**

#### *1. Sourcewell-only Products and Services.*

The sale or purchase of supplies, materials, equipment, or the rental thereof, or the construction, alteration, repair, or maintenance of real or personal property are governed by Minnesota Statutes Section 471.345.

#### *2. Cooperative Purchasing*

Sourcewell cooperative purchasing is authorized by Minnesota Statutes Section 123A.21, subdivision 7(a)(1) through (23).

## **B. Sourcewell Bylaws**

The Sourcewell Board of Directors (Board) is responsible for approving the categories of products and services for which Sourcewell will issue solicitations for Sourcewell's cooperative purchasing and contracting program. A Board resolution approving the category is required prior to publication of the solicitation process.

Pursuant to the Sourcewell Bylaws (Article XV) and through this policy, the Board designates the Chief Procurement Officer to administer Sourcewell's Sourcewell-only products and services contracting and cooperative purchasing. The Chief Procurement Officer is designated as the party responsible for development, implementation, and operation of all processes necessary for effective procurement including contract category development, solicitation and evaluation, contract administration, and cooperative purchasing functions.

As delegated by the Sourcewell Bylaws (Article XV, Section 2) the Chief Procurement Officer is authorized to award all competitively solicited Sourcewell-only contracts and cooperative purchasing contracts, without limitation. While the awards made by the Chief Procurement Official are valid and binding, in support of some members and participating entities' legal requirements, the Chief Procurement Official will seek from the Board subsequent ratification of all cooperative purchasing awards.

## **GENERAL REQUIREMENTS:**

### **A. Solicitation Form and Management, and Templates**

As required by this policy, all solicitations, including all cooperative purchasing solicitations, will be issued as a Request for Proposals (RFP), Invitation for Bids (IFB), or other method that is as approved by the Chief Procurement Officer. RFP means a solicitation in which a responder's proposal may be negotiated so that it provides the best value to Sourcewell and its members and participating entities. IFB means a solicitation in which the terms, conditions, and specifications are fully described and responses are not subject to negotiation.

To ensure consistency in process and compliance, Sourcewell's objective is to have all solicitations managed by, and use the templates maintained by, the Procurement Department (e.g., RFP, IFB, indefinite quantity construction), unless an exception is granted by the Chief Procurement Officer.

### **B. Public Notice**

*1. Cooperative Purchasing.* At a minimum, public notice of all cooperative purchasing contracts will be posted for a minimum of 30 days on the Sourcewell website ([www.sourcewell-mn.gov](http://www.sourcewell-mn.gov)). Additional notification of solicitations may occur through alternative media locations as determined to be reasonable by the Chief Procurement Officer. At a minimum, public notice of all cooperative purchasing contracts will be posted for a minimum of 30 days on the Sourcewell website ([www.sourcewell-mn.gov](http://www.sourcewell-mn.gov)). Additional notification of solicitations may occur through alternative media locations as determined to be reasonable by the Chief Procurement Officer.

*2. Sourcewell-only contracts.*

When required by this Policy, public notice of Sourcewell-only contracting opportunities will be posted for a minimum of 30 days on the Sourcewell website ([www.sourcewellmn.gov](http://www.sourcewellmn.gov)).

### **C. Receipt of Responses**

Sourcewell will not evaluate any proposal, bid, or any other form of response to a solicitation, that was not received by the due date and time specified in the solicitation document.

### **D. Evaluation**

All proposals that are received timely will be evaluated for compliance with the evaluation criteria that have been clearly defined in the solicitation.

**E. Awards**

- a. Contract awards may only be made to “responsible” vendors as defined by Minnesota law and federal requirements.
- b. Sourcwell will not award a contract to a vendor that has been debarred, suspended, or otherwise excluded from or ineligible for participation by the State of Minnesota or from any federal assistance programs or activities.
- c. Unless approved in writing by the Chief Procurement Officer, the maximum term of any contract will be five years.

**F. Contract Execution Delegation**

*1. Cooperative Purchasing Contracts.*

The Board delegates to the Chief Procurement Officer the authority to execute all cooperative purchasing contracts on behalf of Sourcwell.

*2. Sourcwell-only Product and Service Contracts.*

The Board delegates to the Executive Director the authority to execute all Sourcwell-only purchasing contracts on behalf of Sourcwell.

**COOPERATIVE PURCHASING PROCUREMENT REQUIREMENTS:**

All cooperative purchasing solicitations, regardless of the department from which the contract(s) originate or the estimated total dollar value of the resulting contract, must follow the process outlined below.

**A. Board Approval**

The Board must approve all categories of products and services prior to posting public notice of a solicitation. The Board’s approval must ensure that the solicitation process is not unnecessary or duplicative.

**B. Awards**

- 1. Contract awards may only be made to “responsible” vendors as defined by Minnesota law and federal requirements.
- 2. Sourcwell’s goal is to award sufficient number of contracts to meet the needs of Sourcwell members and participating entities. Factors to be considered in determining the number of contracts to be awarded in any category may include the following:
  - The number and geographic location of vendors necessary to offer a comprehensive selection of products for use by members and participating entities.
  - The number and geographic locations of vendors, and their sales and service network, to assure availability of product supply and coverage to meet members’ and participating entities’ anticipated needs.
  - The attributes of vendors’ products and services that are necessary to assist Sourcwell and its members and participating entities with achieving environmental, sustainability, supplier diversity, and technological goals and objectives.
- 3. All cooperative purchasing contracts must contain a provision requiring the vendor to notify Sourcwell if its status changes regarding debarment and suspension.
- 4. Unless approved in writing by the Chief Procurement Officer and through written amendment, the maximum term of any cooperative contract will be five years.
- 5. Upon completion of the procurement process and contract award, at the next monthly meeting of the Board, the Chief Procurement Officer will present a resolution so that the Board may ratify the contract awards.

## **SOURCEWELL-ONLY PRODUCTS AND CONSTRUCTION-RELATED SERVICES AND PROFESSIONAL SERVICE CONTRACTING REQUIREMENTS**

For procurement of products and construction-related services that will be used by Sourcewell alone, Sourcewell must follow the requirements of Minnesota's Uniform Municipal Contracting Law, Minnesota Statutes Section 471.345, and when applicable the United States Uniform Guidance requirements.

Before making any purchase or creating a new contract, Sourcewell should look first to its own cooperative purchasing contracts to fulfill its needs.

After a determination that the solutions available on Sourcewell's cooperative purchasing contracts do not meet its needs, Sourcewell may enter into contract(s) to meet its needs for products, construction related services, and professional technical services by following the process outlined below.

### **A. Procurement of Supplies, Materials, Equipment or the Rental thereof, or the Construction, Alteration, Repair or Maintenance of Real or Personal Property**

#### ***1. Acquisitions of \$25,000 or less; best value alternative.***

If the amount of the resulting contract, including all foreseeable amendments, is estimated to be \$25,000 or less, in Sourcewell's discretion, the contract may be made either upon quotation or in the open market. If the contract is based upon quotation it must be based, so far as practicable, on at least two quotations. The quotations must be kept on file for a period of at least one year after their receipt (five years if federal money is used for the purchase).

Alternatively, Sourcewell may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). This means that the solicitation document must state the relative weight of price and other selection criteria. The award must be made to the vendor or contractor offering the best value applying the weighted selection criteria. If an interview of the vendor's or contractor's personnel is one of the selection criteria, the relative weight of the interview must be stated in the solicitation document and applied accordingly.

When making the selection, Sourcewell must comply with conflict of interest requirements and make an effort to ensure that the contract is based on best value to the best value organization to the organization.

#### ***2. Acquisitions exceeding \$25,000 but not \$175,000; best value alternative.***

If the amount of the resulting contract, including all foreseeable amendments, is estimated to exceed \$25,000 but not to exceed \$175,000, the contract may be made either: a) upon quotation or b) following Cooperative Purchasing requirements of Article VI. Sourcewell must obtain a minimum of two more quotations for the purchase or sale when possible. All quotations obtained must be kept on file for a period of at least one year after receipt thereof (five years if federal money is used for the purchase).

Alternatively, Sourcewell may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). This means that the solicitation document must state the relative weight of price and other selection criteria. The award must be made to the vendor or contractor offering the best value applying the weighted selection criteria. If an interview of the vendor's or contractor's personnel is one of the selection criteria, the relative weight of the interview shall be stated in the solicitation document and applied accordingly.

When making the selection, Sourcewell must comply with conflict of interest requirements and make an effort to ensure that the contract is based on the lowest acceptable price, or Best Value when it is the selected method of evaluation.

**3. Acquisitions exceeding \$175,000; best value alternative.**

For all resulting contracts with an estimated value, including all foreseeable amendment, exceeding \$175,000, Sourcewell will follow the policy set forth above for Cooperative Purchasing Services Procurement Requirements.

Sourcewell may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minnesota Statutes Section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). This means that the solicitation document must state the relative weight of price and other selection criteria. The award must be made to the vendor or contractor offering the best value applying the weighted selection criteria. If an interview of the vendor's or contractor's personnel is one of the selection criteria, the relative weight of the interview must be stated in the solicitation document and applied accordingly.

When making the selection, Sourcewell must comply with conflict of interest requirements and make an effort to ensure that the contract is based on the lowest acceptable price, or Best Value when it is the selected method of evaluation.

**B. Professional and Technical Services Contracts**

Professional and technical services are those that are intellectual in character, including consultation, analysis, evaluation, predication, planning, programming, or recommendation, and result in production of a report of the completion of a task. Sourcewell may meet its needs for professional and technical services by entering in to Professional and Technical Service Contract (PTSC) under the following requirements:

1. PTSC \$10,000 or less.

If the amount of the PTSC, including all foreseeable amendments, is estimated to be \$10,000 or less, Sourcewell may use its discretion in the selection of the vendor. However, when selecting the vendor, Sourcewell must consider the vendor's qualifications and proposed price.

The PTSC may not be broken into smaller pieces to circumvent this threshold. Sourcewell should be conscious of the number of times a vendor has been directly selected and attempt to find alternative vendors when a source is used too frequently. When selecting the vendor, Sourcewell must comply with conflict of interest requirements. Sourcewell will consider all factors that any reasonable purchaser would use in selecting the greatest value for cost that will achieve the desired outcomes in purchasing professional services. Sourcewell should attempt to begin all contracting using Sourcewell's PTSC template.

2. PTSC exceeding \$10,000 but not \$75,000.

If the amount of the PTSC, including all foreseeable amendments, is estimated to exceed \$10,000 but not to exceed \$75,000, Sourcewell should endeavor to obtain three written proposals from qualified vendors.

The PTSC may not be broken into smaller pieces to circumvent this threshold. When selecting the vendor, Sourcewell must comply with conflict of interest requirements. Sourcewell will consider all factors that any reasonable purchaser would use in selecting the greatest value for cost that will achieve the desired outcomes in purchasing professional services. Sourcewell should attempt to begin all contracting using Sourcewell's PTSC template.

3. PTSC Exceeding \$75,000.

If the amount of the PTSC, including all foreseeable amendment, is estimated to exceed \$75,000, Sourcewell must follow the policy set forth above for Cooperative Purchasing Services Procurement Requirements. Sourcewell should attempt to begin all contracting using Sourcewell's PTSC template.

### **C. Contracts using United States Federal Funding**

In the event Sourcewell uses federal funding for either direct or pass-through federal dollars, it will comply with the procurement requirements set forth in 2 C.F.R. 200.317 – 200.326, along with Sourcewell's procurement policies. In the event of a conflict between the federal requirements and Sourcewell's requirements, the most restrictive requirement will prevail.

### **SOFTWARE OR TECHNOLOGY**

When considering the purchase of software or technology, a department must consult with Information Technology (IT) as early in the process as feasible, in order to ensure the new software or technology is one that is able to be supported by Sourcewell. The department must also work with IT to consider any ongoing or future maintenance fees, license requirements and fees, etc.

Quotation and bid requirements for software or technology are the same as those for Professional and Technical Services.

### **EXCEPTIONS TO THE PROCUREMENT PROCESS**

#### **A. Cooperative Purchasing (Minnesota Statutes Section 471.345, subdivision 15)**

1. Sourcewell may contract for the purchase of supplies, materials, or equipment by utilizing contracts that are available through the State of Minnesota's cooperative purchasing venture (CPV), Cooperative Purchasing Connection (CPC), or other national municipal association's purchasing alliance or cooperative. If accepted by the State of Minnesota into the CPV program, for a contract estimated to exceed \$25,000, Sourcewell must consider the availability, price and quality of supplies, materials, or equipment available through CPV before purchasing through another source.
2. If Sourcewell does not use CPV, Sourcewell may contract for the purchase of supplies, materials, or equipment without regard to the competitive bidding requirements if the purchase is through a national municipal association's purchasing alliance or other qualifying cooperative created by a joint powers agreement that purchases items from more than one source on the basis of competitive bids or competitive quotations.
3. In the event Sourcewell accesses another entity's cooperative purchases, documentation of that entity's solicitation process must be contained within the procurement file maintained by Sourcewell.

#### **B. Single Source**

A single source acquisition is one where, after a search, only one supplier is determined to be reasonably available for the required product, service, or construction item.

Since single source eliminates competition and should be avoided whenever possible, single source contracts should only be awarded when Sourcewell is confident that it has performed sufficient research to ensure the awarded vendor meets the single source definition and the selection can withstand a possible audit or other public scrutiny.

Examples of appropriate single source awards:

- The item is legitimately only available from a single source (e.g., prescribed textbooks and printed test forms available only from a single publisher);
- An emergency that does not permit the delays required from issuing a competitive solicitation (see below);
- The United States federal awarding agency of pass-through money expressly authorizes noncompetitive proposals in response to a written request from Sourcewell (this applies to federal funds only).

The request for single source procurement, along with sufficient justification, should be presented to the Chief Procurement Officer who will make the final determination of whether a contract meets single source requirements.

### **C. Certain Marketing Agreements**

Sourcewell may enter into service contracts directly for marketing partnerships unique to a specific organization or association that include marketing promotion or revenue sharing agreements. The intent of the contract is to increase Sourcewell's exposure in that organization or association with the goal of increasing usage of Sourcewell's contracts and services. The contracts must be approved and executed by the Chief Procurement Officer.

### **D. Emergencies**

A valid emergency is one where the required product or service is *immediately* needed for continued operation of Sourcewell, or in limited circumstances for the continued operations of a member or participating entity. The need should be based on the preservation of life or property. An emergency need is a genuine surprise; one that could not have been foreseen. Failure to procure an item or service in a timely manner does not constitute a valid emergency.

The request for emergency procurement, along with sufficient justification, should be presented to the Chief Procurement Officer who will make the final determination of whether a contract meets the requirements for being classified as an emergency.

### **E. Unusual or Sensitive Matters**

In the event there is a need for an exception to the professional and technical service solicitation process, justification for the request must be presented to the Chief Procurement Officer, who in consultation with the Executive Director, will make the final determination of the process to be used.

## **PROCUREMENTS THAT MAY CONTAIN FEDERAL FUNDING**

**A. Cooperative Purchasing Contracts.** In order to comply with United States federal requirements regarding procurements (2 C.F.R. 200.317 – 200.326) all Sourcewell cooperative contracts will contain language putting members and participating entities on notice of federal requirements.

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**B. Sourcewell-only contracts.** In the event Sourcewell is using federal money in order to pay for any portion of the contracted products or services will comply with Uniform Guidance (2 C.F.R. Part 200) requirements and must contain current federally required language. Specifically, the procurement should reference:

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- Record retention (2 C.F.R. § 200.318(i))
- Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 C.F.R. § 200.321)
- Procurement of Recovered Materials, if applicable (2 C.F.R. § 200.322)
- Bonding Requirements – (2 C.F.R. § 200.325)
- Contact Provisions – Appendix II to 2 C.F.R. § 200

**DATA PRACTICES AND RECORDS RETENTION**

All data created and maintained during the procurement process, including detailed history of the procurement, must comply with the Minnesota Data Practices Act (Minnesota Statutes Chapter 13) and Sourcewell's Records Retention Policy.

**PROCUREMENT POLICY ADOPTION**

Sourcewell's Procurement Policy must be adopted by resolution of the Board. The policy must be reviewed on a biennial basis with any modifications approved by the Board.