CIRCULAR

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY

NO.: 16-02-DPP	ORIGINATING AGENCY: DIVISION OF PURCHASE AND PROPERTY	PAGE 1 OF 6
EFFECTIVE DATE: 7/6/15	EXPIRATION DATE: INDEFINITE	SUPERSEDES: 11-10-DPP
SUBJECT: DELEGATED PURCHASING AUTHORITY (DPA)		
ATTENTION: DIRECTORS OF ADMINISTRATION AND EXECUTIVE BRANCH PROCUREMENT OFFICERS		
FOR INFORMATION CONTACT: ASSISTANT DIRECTOR, CONTRACT COMPLIANCE AND AUDIT UNIT	PHONE: (609) 292-5400 E-MAIL: ccau@treas.state.nj.us	

I. PURPOSE

Pursuant to N.J.S.A. 52:25-23, the Director, Division of Purchase and Property ("DPP") may delegate certain purchases to State agencies. The purpose of this Circular is to establish the policies and procedures for agencies to follow in utilizing their Delegated Purchasing Authority.

This Circular is to be used in conjunction with the other Treasury Circulars and policy directives referenced herein.

II. POLICY

Effective July 1, 2015, the DPA threshold was increased from $36,000 to $40,000. However, in the event the Governor declares an emergency through Executive Order, the DPA threshold will increase to $50,000 for necessary supplies and services purchased during the declared emergency period. A DPA purchase is defined as a transaction that cannot be procured through one of the following four primary contracting methods:

1) a current State contract, including contracts acquired through Waivers of Advertising;
2) the State Distribution and Support Services Center ("DSS");
3) the Bureau of State Use Industries ("DEPTCOR"); or
4) the Central Non-profit Agency CNA/ACCSES NJ ("CNA").

AND

is within the DPA threshold, which is currently $40,000.

Pursuant to N.J.S.A. 52:25-23(a), purchases or contracts exceeding the DPA threshold **shall not** be divided by vendor, dollar amount, supplies or services to circumvent the dollar limit imposed. Similar supplies and services as defined by the three-digit commodity class code (http://www.nj.gov/cgi-bin/treas/purchase/commcodes.pl) should be combined, where possible, as one quote to increase purchasing volume, leading the way to potentially lower prices.

Agencies may not circumvent any one of the four primary contracting methods identified above. If a similar supply or service is available under State contract or available from DSS, DEPTCOR or CNA, AND the similar supply or service addresses the primary performance and/or functionality requirements, then DPA should not be utilized. **Minor differences in functionality and/or performance between the desired supply or service and a similar supply or service under State contract or available from DSS, DEPTCOR or CNA are not valid reasons for purchasing such supply or service via DPA.**

For supplies or services that are not covered by one of these primary contracting methods, an agency should review its requirements for supplies or services against its anticipated fiscal year needs by reviewing its purchase history. If the anticipated fiscal year volume for a supply or service exceeds the DPA threshold, the agency must develop a scope of work for the Procurement Bureau to conduct an advertised procurement. However, if the ANTICIPATED FISCAL YEAR NEED for a supply or service does not exceed the DPA threshold, the agency can properly utilize DPA for the purchase of that supply or service.

Prior to issuing purchase orders, it will be the agency's responsibility to verify the availability of funding for the purchase and to verify that the supply or service is not available under a State contract or from DSS, DEPTCOR, CNA, or annual Statewide waiver.

III. PROCEDURES

A. $1,000 or LESS: A limited dollar order ("LDO") can be issued without price competition for a purchase less than or equal to $1,000, i.e., no competitive quotes or vendor forms are required. Note: Agencies are encouraged to use the State's Purchasing Card ("P-Card") to process transactions for $1,000 or less. When a P-Card is not accepted by a vendor, the agency should use the LDO document type in MACS-E for such purchases.

B. OVER $1,000 to $17,500: Three quotations (using Form PB-119 or equivalent) are required for all transactions over $1,000 and up to $17,500.

1. Record quotations on Form PB-119 or on an equivalent document and include the completed PB-119 Form in the agency DPA file along with a copy of the DPA-agency purchase order.

2. For all such solicitations, it is the responsibility of the agency to ensure that competition is conducted in a fair and even manner. All vendors shall be provided with the same terms and conditions, including the same information on the proposed service or supply needed, to submit quotes.

3. Internet pricing should, whenever possible, utilize a pricing comparison engine that lists costs by vendor in ascending order. If the agency does not utilize Form PB-119 to record internet pricing, then all the information required on the PB-119 must also be detailed on the received quotation. In addition, for internet pricing or quotations, the agency must print out and retain in its file the quote or pricing obtained from each vendor site solicited. The agency procurement officer shall also note on the printed quote the time and date such pricing was obtained and shall sign off on the printed quote to verify the date and time.

4. For services, including consulting services, the agency must secure written verification from the selected vendor, prior to the start of the contract, as to total cost, the deliverable(s) and timeframe(s) for the delivery of the deliverable(s). Such verification must be included in the agency's DPA file.

C. OVER $17,500 to $40,000: Solicit a minimum of three written quotes for purchases greater than $17,500 but less than $40,000 using Form PB-120 or an equivalent form, "Agency Request for Proposal." Telephone quotes shall not be accepted for such purchases. Each agency is encouraged to place agency-solicited requests on its website to increase competition for needed supplies and services. The agency must obtain, process, and file quotes as follows:

1. Forward "Agency Request for Proposal" simultaneously to a minimum of three vendors. Allow sufficient time from the forwarding date of the Agency Request for Proposal to the vendors for the review, completion and return of proposals by the vendors. The return date and hour should be clearly shown in the Agency Request for Proposal. No quotes can be accepted if received by the agency after the return date and hour noted on the Agency Request for Proposal.

2. It is the responsibility of the agency to establish internal control procedures for the acceptance, security, review and evaluation of quotes for competitive purchases conducted pursuant to this Circular. Such procedures must include time stamping of quotes; maintaining quotes in a secure location; no review of quotes until the time specified for submittal has passed; and no acceptance of quotes after the time specified for submittal has passed. For e-mailed quotes, the agency shall immediately print a copy of the received e-mail quote, which will include the date and time of receipt.

3. All quotes should be opened and reviewed at the time specified in the Agency Request for Proposal for submission of sealed quotes.

4. In the event a signature is required, unsigned quotes shall be rejected.

5. Agencies shall not alter any quotes.

IV. GENERAL POLICIES AND PROCEDURES

A. ONE RESPONSE TO A SOLICITATION: A single response to a DPA solicitation for a purchase of greater than $1,000 but less than $40,000 does not preclude the issuance of a purchase order to the single respondent. A DPA agency purchase order may be issued to a single respondent provided the agency has contacted the appropriate number of bona fide vendors as previously outlined and the quote received from the single respondent is responsive, i.e., fully complies with the agency's specifications and the State of New Jersey Terms and Conditions. The Agency Approval Officer must prepare a memorandum to the DPA file to this effect.

B. QUOTE EVALUATION: Generally, the vendor with the lowest price is entitled to the award, provided the lowest vendor's quote fully conforms to the terms and conditions of the agency's specifications and the State of New Jersey Terms and Conditions. Should the lowest quote fail to fully conform, the quote shall be deemed "non-responsive" and shall be ineligible for award. Award can be made only to a "responsive" vendor, i.e., a vendor whose quote fully complies with the terms and the conditions of the agency's specifications and the State of New Jersey Terms and Conditions. However, an agency can "bypass" the lowest responsive vendor in favor of a higher priced responsive vendor, if the agency determines that the higher priced responsive vendor's quote better serves the State's interest. If the agency makes an award to a vendor other than the low cost responsive vendor, the agency must document with substantive justification the selection of the selected vendor. In the event of either a finding that a vendor's quote is non-responsive or a bypass, the Agency Approval Officer must notify the non-responsive vendor and/or any bypassed vendor in writing of the reason for the non-responsive determination or bypass determination.

C. AGENCY DEBARMENT, SUSPENSION AND DISQUALIFICATION ACTIONS: Pursuant to Executive Orders #34 (1976) and #189 (1988), debarment, suspension and disqualification are measures which shall be invoked by the State to exclude or render ineligible certain persons from participation in contracts and subcontracts with the State. Prior to award, it is the agency's responsibility to review the State of New Jersey Consolidated Debarment Report at http://www.state.nj.us/treasury/revenue/debarment/index.shtml. The agency should also consider reviewing other State's debarment lists as well as the Federal debarment list, when federal funds are utilized in the purchase.

D. TIE QUOTES: Should identical pricing be offered by more than one responsive vendor, and the quality of the supply or service offered is identical, the agency shall, with full documentation of its actions, apply the following factors, listed in order of priority, in determining the vendor to which the award will be made:

1. Tie-breaking provision(s) set forth in the quote;

2. A usable cash- or volume-based discount that renders one quote more favorably priced;

3. Delivery advantage, specifically shorter proposed timeframes for delivery and/or closer proximity to the point of delivery;

4. Active registration as a small business at the time of quote opening as an approved small business with the Department of the Treasury unit responsible for administering the State's small business registration program, or Veteran-owned business as defined in N.J.S.A. 52:32-49, and;

5. In-State location.

E. SOLE SOURCE: If only one source can provide the supply or service, a memorandum of sole source justification must be written and signed by the Agency Approval Officer. The determination is relatively simple: a demonstrable need which can be satisfied by only one vendor. **A vendor that is "best qualified" is not the only vendor who can provide the supply or service.** An accompanying letter from the vendor must also be placed in the DPA file indicating why (s)he is the only vendor that can provide the supplies or services.

F. BRAND NAMES: Any reference to a brand name must be followed by the language "or functional equivalent". The agency must provide relevant and appropriate specifications to all vendors to permit the submission of competitive proposals. It is essential that all vendors be given the same information to maintain an equal competitive footing among vendors.

G. EMERGENCY DPA PURCHASES: In cases of life, safety and health emergencies, when the public exigency requires the immediate delivery of the supply or service and time does not permit competitive prices to be obtained from the required number of vendors, a single quotation is permitted. Telephone quotations are also acceptable for emergency purchases. A memorandum of the particular public exigency that precluded the solicitation of quotations from the required number of vendors must be prepared and signed by the Agency Approval Officer and made part of the DPA file.

H. RECORD RETENTION/AUDIT: Pursuant to N.J.S.A. 52:25-23(c), records of all purchases made shall be maintained by the agency and shall include proper documentation that the purchase was competitively awarded, where required. The agency shall make available to the Director, DPP, upon request, all documents relating to the solicitation and award of the purchase, including but not limited to, all quotations and purchase orders. Files must be made available for public inspection upon request (under the supervision of a responsible agency employee) and retained for a period of seven years. Files are also subject to audit by Treasury's Office of Management and Budget ("OMB"), the Office of Legislative Services ("OLS") and DPP's Contract Compliance and Audit Unit ("CCAU"). Agencies must maintain records showing that price competition was solicited from the required number of vendors for all DPAs exceeding $1,000, except those verified and documented as either emergencies or sole source by the agency.

I. AGENCY/VENDOR DISPUTE: In the event of a protest or dispute between an agency and a vendor regarding a DPA selection, the vendor shall be provided due process via review by the agency Director of Administration or Fiscal Officer. If the matter cannot be resolved by the agency, the Assistant Director, CCAU will conduct a review and make a determination in accordance with N.J.A.C. 17:12-3.

The State Contract Manager or Fiscal Officer is also responsible to formally report, to the Assistant Director of CCAU, using the CC-36 Formal Complaint form, all instances when deliverables, i.e. supplies and/or services, do not comply with the contract specifications or scope of work contained in the quote request. Variances from contract pricing shall be reported in this same manner to ensure that State and other using agencies receive the supplies and/or services at the pricing established at the time of contract award.

J. FORMS: All forms, except Business Registration Certificates, are available on the DPP website including the Consolidated DPA Forms Packet located at http://www.state.nj.us/treasury/purchase/forms.shtml. The agency must review all forms for completeness and acceptability. Questions relating to the acceptability of completed forms can be directed to the DPA contact identified within this Circular. All original forms, with the exception of the Affirmative Action Employee Information Report, shall be made part of the agency's DPA file for the particular purchase. The agency shall forward the original of the completed Affirmative Action Employee Information Report to the Department of the Treasury, Division of Purchase and Property, CCAU, P.O. Box 206, 33 W. State Street, Trenton, New Jersey, 08625-0206. A copy of the vendor's Certificate of Employee Information Report or Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action Program, or a screen print of the VINF screen indicating the vendor has a valid Certificate of Employee Information Report, shall be made part of the agency's DPA file for the particular purchase.

Prior to finalization of a DPA purchase from a vendor, the vendor must complete:

1. Consolidated DPA Forms Packet, which consists of:
   - Information Sheet and Certification for DPA Transactions
   - Ownership Disclosure Form
   - Disclosure of Investigations and Other Actions Involving Bidder Form
   - Disclosure of Investment Activities in Iran Form. Pursuant to N.J.S.A. 52:32-55, contractor must attest that the contractor, or any of its parents, subsidiaries, and/or affiliates, is neither engaged in certain investment activities in Iran nor identified on a list created and maintained by the Department of the Treasury as a person or entity engaging in investment activities in Iran.
   - Source Disclosure Certification Form - For all purchases that exceed $17,500 and are primarily for services, the vendors must comply with N.J.S.A. 52:34-13.2 (also known as EO 129) and file a source disclosure certification with the agency. It is the agency's responsibility to determine if the vendor complies with N.J.S.A. 52:34-13.2, i.e., that the vendor will provide the services within the United States.
   - MacBride Principles Certification Form
   - Vendor Certification and Political Disclosure Form/Two Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contribution Form - In addition, for all purchases exceeding $17,500, whether singly or in the aggregate, the vendor must comply with N.J.S.A. 19:44A-20.13 *et seq.*

(formerly known as Executive Order (EO) 134). If this provision is applicable to the purchase, the agency shall not issue a purchase order to the vendor until DPP apprises the agency that the vendor is in compliance with N.J.S.A. 19:44A-20.13 *et seq.*

- Affirmative Action Form - A New Jersey Certificate of Employee Information or a copy of the Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program (Verification of Affirmative Action compliance may also be obtained through the VINF screen on MACS-E.)
- Delegated Purchasing Authority Terms and Conditions

2. Proof of NJ Business Registration (https://www1.state.nj.us/TYTR_BRC/jsp/BRCLoginJsp.jsp) with the Division of Revenue and Enterprise Services (http://www.state.nj.us/treasury/revenue/) - Provide a copy of the vendor's Business Registration Certificate – Vendors must have a valid Business Registration Certification to be eligible to do business with the State of New Jersey.
3. Proof of Insurance (ACORD form) as indicated by the terms and conditions for DPAs.

In the alternate, the vendor may provide proof that such forms have been completed by the vendor and accepted by the State within six months of the purchase date, proof of which is a copy of the previously completed Consolidated DPA Forms Packet.

K. PAYMENT: It is the agency's responsibility to ensure that all supplies and services received from the contractor conform to the requirements of the DPA. The agency must not pay for supplies and services that are not delivered by the contractor or that fail to conform to the requirements of the DPA.

L. ORGAN AND TISSUE DONATIONS: Agencies must notify contractors of the requirements of N.J.S.A. 52:32-33, Organ and Tissue Donations. All contractors are encouraged to notify their employees, through information and materials or through an organ and tissue awareness program, of organ donation options.

M. VETERAN-OWNED BUSINESS CONSIDERATION – Per N.J.S.A. 52:32-52, agencies should give due consideration to veteran-owned businesses in awarding contracts.

N. RAISING DPA LIMIT: Requests to raise the limit under N.J.S.A. 52:25-23(d) to permit a Department to advertise for proposals, fairly evaluate and award a contract may be granted in exceptional circumstances. Such requests must be made and submitted by the Department's Chief Purchasing Officer to the Director of DPP through the Assistant Director of CCAU.

V. ADDITIONAL AGENCY-SPECIFIC LIMITATIONS:

The following list of supplies and services that utilize the DPA procedure are not administered by DPP. Questions regarding these supply and service limitations should be directed to the agency indicated below.

DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION ("DPMC") LIMITATIONS:

A. MOVING SERVICES: (1) For moving services available under an existing State contract and totaling $75,000 or less, the using agency must notify the Leasing Support Unit within the Division of Property Management and Construction ("DPMC") and DPMC will coordinate the purchase. (2) Specialized moving services not available under an existing State contract may be purchased via DPA. (3) Moving services exceeding the DPA threshold and not available under an existing State contract must be submitted to DPP as a requisition (PB-6), with prior written approval from DPMC, for advertisement. (4) Moving services available through the State contract but for more than $75,000 must be submitted to DPP as a requisition (PB-6), with prior written approval from DPMC, for advertisement as a public purchase.

B. PARKING SPACE RENTALS: All parking space rentals must receive prior written approval from DPMC's State Parking Coordinator and be included on the Statewide Parking waiver.

C. RENTAL OF SPACE: Office space rentals, with the approval of DPMC, may be purchased for a period up to 12 consecutive months. However, the total fiscal year purchase shall not exceed the DPA threshold.

D. SEASONAL RENTALS: Seasonal rentals may be acquired with approval by DPMC if the total fiscal year cost does not exceed $10,000. Examples are boat slip rentals, race track rentals for the Sire Stakes, and temporary

warehouse/storage space needs. Requests for approval for seasonal rentals exceeding the $10,000 limit must be submitted to and approved in writing by DPMC before the DPA purchase is executed.

E. RENTALS OF EQUIPMENT: Equipment rentals via DPA are permissible, with the exception of photocopiers and vehicles.

F. FURNITURE / CARPET: All furniture and carpet purchases $1,000 or above must be approved by DPMC. The agency must refer to the Circular entitled "Procedures for the Acquisition of Furniture and Carpeting".

OFFICE OF INFORMATION TECHNOLOGY ("OIT") LIMITATIONS:

A. INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS EQUIPMENT AND SERVICES: Information technology ("IT") and telecommunications equipment and services not covered by State contract may be purchased by DPA as provided in this Circular. However, system purchases which individually total less than $40,000 but in the aggregate total more than $40,000 cannot be purchased by DPA. All IT purchases must conform to the relevant IT Circulars.

B. CELLULAR PHONES: Cellular phone purchases must be made from existing State contracts. All cellular phone purchases are also governed by the provisions of the Circular entitled "Assignment and Use of Cellular Wireless Devices".

TREASURY ADMINISTRATION LIMITATIONS:

A. VEHICLE PURCHASES: All vehicle purchases are excluded from the provisions of this Circular.

B. PRINTING: Agencies are permitted to develop specifications and purchase printing services not currently available under State contract via DPA, with the following caveat. For such printing purchases up to the DPA threshold, the agency should first contact the Treasury Print Shop for pricing.

VI. VIOLATIONS

Should violations of this Circular be verified, pursuant to the authority of N.J.S.A. 52:25-23(c), the Director, DPP, may, by written order, rescind or reduce the level of purchasing authority delegated to the agency. In such event, the department's Executive Officer will be notified.

VII. TRAINING

At the request of the agency, DPA training will be made available by contacting the CCAU at (609) 292-5400 or ccau@treas.state.nj.us.

Jignasa Desai-McCleary
Director