

STATE CONTROLLER POLICY

MIXED PROCUREMENTS

- 1) **Definition.** Mixed procurements are purchases of both goods (including products, commodities, and supplies under the State Procurement Code R-24-101-301(a & b) and services.
- 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 the personal services 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 it is in the State's best interest regardless of total price, including procurements of \$100,000 or less,. Examples include:
 - i. Complex transactions involving milestones
 - ii. Incremental payments tied to progress
 - iii. Complex data/document delivery requirements
 - iv. Intellectual property rights allocations
- 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. Is there an expectation that the personal services component will be separately invoiced? If so, they shall be, and if such invoice exceeds \$100,000, then a State contract shall be used. An expectation can arise from common practice, industry standard, routine performance offered by the vendor, prior course-of-conduct between the parties, or specific agreement.
 - ii. Were the elements of service performance were subject to considerable negotiation? If so, a State Contract should be used. Use of a State Contract is optional if the service performance terms were not the subject of much negotiation but largely defined by common practice, industry standard, or routine performance offered by the vendor.
 - iii. Is the predominate value of the service in the labor, skill, creativity, specialized knowledge, or judgment the vendor supplies for preliminary work? If so, a State contract should be used. 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.** Procurement officers and staff shall document the reasons for using a Purchase Order or other commitment voucher in place of a State Contract for purchase involving mixed procurements.

David J. McDermott, CPA
State Controller