



KDADS' CENTRAL OFFICE CONTRACT/RFP GRANT PROCESS¹

I. INTRODUCTION

The purpose of this document is to document KDADS' Central Office contract/grant/RFP process. The intent is to create a "user-friendly" process for preparing contracts, obtaining the requisite approvals and tracking KDADS' contracts. With the following three rules in mind, the process is as follows:

RULE 1. Some agency "enabling statutes" include language that allows the agency head to enter into contracts; however, unless there is a specific statement exempting transactions from the procurement process, the expectation is that the procurement will be competitively bid subject to K.S.A. 75-3739;

RULE 2. Unless specifically allowed by statute and/or regulation, no one at KDADS has the authority to bind the agency other than the Secretary or his designee; and

RULE 3. All agreements, i.e., contracts, grants, RFP's or the like, must go through the electronic "Concurrence" process, as described below. No agreement should be forwarded beyond the originator for signatures without the required electronic advance approvals.

II. CATEGORIES OF AGREEMENTS AS DEFINED BY THE DEPARTMENT OF ADMINISTRATION - DIVISION OF PURCHASES ("DoA").

General Rule: Pursuant to K.S.A. 75-3739(a), all contracts for construction and repairs, and all purchase of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competition bids need not be required for the following: (i) Inter/Intra Governmental Purchase; (ii) Grants/Subrecipients; (iii) OKP (only known provider); (iv) Statutorily Exempt; (v) "Delegated Authority," and (vi) RFP (Request for Proposal). A one page document describing categories (i) through (iv) is posted and may be reviewed on-line at <https://intra.aging.ks.gov/Procedures/ProcedureInfo.htm>. Generically and collectively, these are termed "prior authorizations."

Note: It is absolutely critical that the program staff select the correct "category" in order for KDADS' procurement to obtain the DoA's approval. Failure to do so will likely result in a delay in getting the document approved.

¹ The KDADS' Secretary and/or Legal Division reserve the right to amend or modify this Process.

OKP: Only Known Provider

Pursuant to K.S.A. 75-3739(a)(1), an agency does not need to use the bid process if “for contractual services, supplies, materials or equipment when, in the judgment of the director of purchases, no competition exists.” In this situation, it is imperative that the program staff provide detailed and concise documentation to support their prior authorization request for a non-competitive procurement. This category was formally known as “sole source.”

A. IGP: Inter/Intra Governmental Purchase

Pursuant to K.S.A. 75-3739(h), the director of purchases may authorize state agencies to contract for services and materials with other state agencies, or with federal agencies, political subdivisions of Kansas, agencies of other states or subdivisions thereof, or private nonprofit educational institutions, without competitive bids. For IGP transactions, the program staff does **NOT** need to complete a Prior Authorization form.

B. Grants/Sub-Recipients

Pursuant to K.S.A. 75-3739(j) the director of purchases may delegate authority to any state agency to make purchases under certain prescribed conditions and procedures when the acquisition is funded, in whole or in part, from a grant. A “grant” means a disbursement made from federal or private funds, or a combination of these sources, to a state agency.

C. Statutorily Exempt

Pursuant to K.S.A. 75-3739(a)(4), an agency need not use the competitive bid process when “any statute authorizes another procedure or provides an exemption from the provisions of this section.”

D. Delegated Authority

In addition to the above, KDADS has specific permission or “delegated authority” from the DoA to purchase goods and/or services, without DoA approval if the amount of such purchase is less than \$5,000. An example of a delegated authority would be contracting a speaker or consultant for the amount of \$2,500. Even if this agreement category is used, the initial approval process identified herein would still need to be followed.

E. RFP: Request for Proposal

In the event that either none of the above categories are applicable, or if the agency simply wants to employ the bidding process, the program staff would use the request for proposal or “RFP” process. In lay terms, this simply means that the proposed agreement gets put out for bid. Once the “Scope of Work” has been prepared and

approved, the PNC letter will be sent to DoA through the KDADS' procurement department. For RFP transactions, the program staff does NOT need to complete a Prior Authorization form, and does not need to create a contract. However, the Scope of Work and the initial information page will need to be completed using the electronic process. Once the contract has been signed, it will then be placed into the system as an attachment. DoA will usually post for 30 days. Thereafter, bids will be reviewed, negotiations may occur, if required, with a contract prepared by DoA and agreed by the KDADS will ultimately be signed. This process takes about 60-90 days to complete following the initial posting of the agreement so timing needs to be reviewed up front.

G. DOP

Not in the 'States' best interest to put out for bid.

III. INITIATING THE PROCESS

After KDADS' program staff identifies a need for a contract, certain provisions of the contract need to be determined before moving forward. These include, but may not be limited to:

- Contract name;
- Term, including possible renewal options;
- Amount-budget;
- Billing-invoice required, etc.;
- Payment-monthly, quarterly, etc.;
- Reporting-monthly, quarterly and final report;
- Scope of Work (this is the document that will be incorporated by reference in the contract and is the soul of the agreement as it provides the details/outcomes of what the contracting party will accomplish); and
- Prior Authorization form completed (depending on the type of approval required from DoA).

Once this information is known, the program staff will then prepare the contract using the Contract Maintenance Web Application discussed below.

IV. CONTRACT MAINTENANCE WEB APPLICATION

After a need for a contract is identified, and the program staff has gathered the information outlined in Section III above, the Contract Maintenance Web Application (Contract App) will be utilized to create the contract, obtain the required approvals and sign the contract. In order to gain access to the Contract App, you must complete the Contract App training.

The Contract App will walk each user step-by-step through the creation of the contract. (See the Contract Maintenance Manual for detailed instructions on operating the application, https://intra.aging.ks.gov/Manuals/Contract_Maintenance_Manual.pdf). After a vendor (the other party to the contract) is created or selected and its information entered, choose the template that most closely accommodates the identified need. The templates consist of various types of

contracts, grants, extensions, and amendments that have been created or vetted by the Legal Division. Examples of such templates include the following: Medicaid University Agreement, Grant, Contract Extension, Independent Contractor Agreement, Memorandum of Understanding, Generic Agreement, Speaker Agreement, Intern Agreement, and Contract Amendment. New templates may be created if a need for a unique template is identified, if none of the templates accommodate the need, it is the program staff's responsibility to schedule a meeting with the Legal Division.

After a template has been selected, the Contract App will require the "Scope of Work" be completed and all other information required for that specific template be entered. Once the "Scope of Work" and all other required information is entered, the Contract App will generate the contract based on the template and entered information. The final contract should be carefully reviewed for accuracy. If for some reason the "Scope of Work" and the information required by the template do not sufficiently address an issue, each template will have an optional "Miscellaneous Provision." In this section, program staff can create a provision to address an unaddressed issue in the template or "Scope of Work."

A copy of the most current DA-146a form will be automatically attached to every contract.

NOTE: The electronic creation and concurrence process shall be used to renew or otherwise modify an existing agreement.

V. CONCURRENCE PROCESS

After the contract has been reviewed for accuracy and completeness, the program staff person who created the contract will change its "status" to "ready for approval." The Contract App will then send an e-mail to every individual who must approve it in the following order: Commissioner, Budget, Purchasing, and then Legal. If one of the approvers does not approve the contract, an e-mail will be sent to the person who created the contract. For contracts that are funded with Medicaid certified match, Brad Ridley, Director of Fiscal and Program Analysis, shall approve these agreements.

VI. SIGNATURE PROCESS

Once all approvals have been obtained, the Contract App will send an e-mail to the vendor and all its listed signatories. The e-mail will provide a link where the vendor can view the contract. The vendor will then sign the contract electronically. All KDADS contracts will be signed electronically within the Contract App. If the vendor does not approve and sign, the contract's originator will be notified via e-mail. After the vendor has approved and signed the contract, it will automatically be e-mailed to the Secretary for approval/signature. If the other party has questions and/or changes, program staff should contact the Legal Division for assistance. Once a contract has been fully executed, it will be up to the originator to email a copy to the vendor.

VII. FILING, STORAGE, AND RETENTION

All executed contracts are automatically stored and organized within the Contract App and no paper copies will be kept.

VIII. NON-ACCEPTABLE PROVISIONS

While there is a “Miscellaneous Provision” section to create an additional provision, if necessary, if it is used to create one or more of the following terms the contract will likely be rejected. Note, that this list is not exhaustive, but simply provides some of the more common unacceptable provisions:

- Indemnification provision;
- Arbitration provision;
- Liquidated damages provision;
- Venue outside of the state of Kansas provision;
- Applicable law other than the State of Kansas provision; or
- Automatic renewal provision.

IX. Miscellaneous

Should you have technical issues, please contact the KDADS’ Help Desk at 785-296-4987. If you have a legal question, please contact Greg Wright at 785-296-0768, Susan Andrews at 785-296-0237 or Chris Napolitano at 785-296-0382.