



Exemptions to the Procurement Process



House Bill 1046 (2010)



- Sponsored by the House Committee on State Affairs at the request of the Bureau of Administration
- Repealed chapters 5-18, 5-19, 5-20, and 5-23, the original procurement code, in their entirety
 - BOA contended these chapters were poorly organized and hard to follow
- Added chapters 5-18A, 5-18B, 5-18C, and 5-18D
 - 5-18A contains the general provisions, which apply to all public entities
 - 5-18B covers public improvements, 5-18C covers local governments, and 5-18D covers state agencies

5-18A-1: Selected Definition of Terms



- "**Purchasing agency**," any governmental body or officer authorized by law, administrative rule, or delegated authority, to enter into *contracts*
- "**Contract**," any type of agreement, regardless of what the agreement may be called, for the procurement of *supplies, services, or construction*
- "**Supplies**," any property, including equipment, materials, and printing
- "**Services**," furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance
 - "**Professional services**," services arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual
- "**Construction**," and "**constructed**," in addition to their ordinary meaning, repair, demolition, and alteration

Application to Purchasing Agency Contracts



- [5-18A-2](#): **Unless otherwise authorized by law**, the provisions of this chapter [5-18A] and chapters 5-18B, 5-18C, and 5-18D apply to all contracts issued by any purchasing agency.
- [5-18A-3](#): **Unless otherwise authorized by law**, each contract for supplies, services, and construction shall be awarded by one of the following methods:
 - (1) Competitive sealed bids as provided in § 5-18A-5;
 - (2) Competitive sealed proposals as provided in §§ 5-18A-6 and 5-18A-7;
 - (3) Small purchases as provided in § 5-18A-11;
 - (4) Sole source procurement as provided in § 5-18A-8; or
 - (5) Emergency procurement as provided in § 5-18A-9.
- [5-18A-4](#): Contracts shall be awarded by the use of competitive sealed bids **except as otherwise provided in this chapter [5-18A]** and chapters 5-18B, 5-18C, and 5-18D.

Procurements Exempt from Chapters 5-18A through 5-18D



- Currently **nineteen** exemptions from the procurement process ([5-18A-22](#))
 - Immediately prior to the 2010 session, the existing exemption statute at the time, [5-18-18](#), contained **eight** (last amended in 1998)
 - Separately, four other statutes created exemptions: [5-18-18.1](#), [5-18-18.2](#), [5-18-18.3](#), [5-18-18.4](#),
 - Further, [5-23-21](#) and [5-23-21.1](#) exempted certain purchases from state-specific procurement requirements, but still required the procurement to “be made be made under the supervision of the Bureau of Administration”
 - Original version of House Bill 1046 (2010) had twelve exemptions, but then the first amendment ([1046od](#)) added one more, and the second amendment ([1046op](#)) added three more, resulting in sixteen total exemptions at that time
- Effectively, *none* of the procurement provisions apply to the exemptions in 5-18A-22, meaning state entities are free to contract for the supplies or services listed therein from the seller of their choice using the process of their choice
 - “The provisions of this chapter [5-18A] and chapters 5-18B, 5-18C, and 5-18D do not apply to: . . .”

List of Exemptions (Part 1)



- **(1)** Any highway construction contract entered into by the Department of Transportation;
 - One of the 2009 exemptions (although it covered *any* purchase by DOT)
- **(2)** Any contract for the purchase of supplies from the United States or its agencies or any contract issued by the General Services Administration;
 - One of the 2009 exemptions
- **(3)** Any purchase of supplies or services, other than professional services, by purchasing agencies from any active contract that has been awarded by any government entity by competitive sealed bids or competitive sealed proposals or from any contract that was competitively solicited and awarded within the previous twelve months;
 - See, e.g., purchase order [20S1620758](#)
 - One of the 2009 exemptions

List of Exemptions (Part 2)



- **(4)** Any equipment repair contract;
 - See, e.g., purchase order [19S1295111](#)
 - One of the 2009 exemptions
- **(5)** Any procurement of electric power, water, or natural gas; chemical and biological products; laboratory apparatus and appliances; published books, maps, periodicals and technical pamphlets; works of art for museum and public display; medical supplies; communications technologies, computer hardware and software, peripheral equipment, and related connectivity; tableware or perishable foods;
 - See, e.g., [22H2915545](#) (lab appliances); [22H2919920](#) (medical supplies); [20L2012625](#) (communications tech)
 - Electric power, water, or natural gas and communications technologies, computer hardware and software, peripheral equipment, and related connectivity are both 2009 exemptions

List of Exemptions (Part 3)



- **(6)** Any supplies, services, and professional services required for externally funded research projects at institutions under the control of the Board of Regents;
- **(7)** Any property or liability insurance or performance bonds, except that the actual procurement of any insurance or performance bonds by any department of the state government, state institution, and state agency shall be made under the supervision of the Bureau of Administration;
- **(8)** Any supplies needed by the Department of Human Services or the Department of Social Services or prison industries for the manufacturing of products;

List of Exemptions (Part 4)



- **(9)** Any printing involving student activities, conducted by student organizations and paid for out of student fees, at institutions under the control of the Board of Regents. However, nothing in this subdivision exempts, from the requirements of this chapter and chapters 5-18B, 5-18C, and 5-18D, purchases that involve printing for other activities at institutions under the control of the Board of Regents;
- **(10)** Any purchase of surplus property from another purchasing agency;
 - One of the 2009 exemptions
- **(11)** Any animals purchased;
 - One of the 2009 exemptions
- **(12)** Any purchase by a school district of perishable food, raw materials used in construction or manufacture of products for resale, or for transportation of students;
 - One of the 2009 exemptions

List of Exemptions (Part 5)



- **(13)** Any authority authorized by chapters 1-16A, 1-16B, 1-16G, 1-16H, 1-16J, 5-12, or 11-11;
 - Includes Health And Educational Facilities Authority, Economic Development Finance Authority, Board of Economic Development, Science And Technology Authority, SD Ellsworth Development Authority, Building Authority, and SD Housing Development Authority
 - Does not apply to the Governor's Office of Economic Development (authorized originally by chapter 1-52)
- **(14)** Any seeds, fertilizers, herbicides, pesticides, feeds, and supplies used in the operation of farms by institutions under the control of the Board of Regents;
- **(15)** Any purchase of supplies for any utility owned or operated by a municipality if the purchase does not exceed the limits established in § 5-18A-14;
 - One of the 2009 exemptions

List of Exemptions (Part 6)



- **(16)** For political subdivisions, any contract for asbestos removal in emergency response actions and any contract for services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, or auction services;
- **(17)** Any purchase of supplies or services from a contract established through a Midwestern Higher Education Compact group purchasing program by a competitive sealed bid or a competitive sealed proposal;
 - Added in 2011 ([Senate Bill 168](#))

List of Exemptions (Part 7)



- **(18)** Any contract concerning the custody, management, purchase, sale, and exchange of fund investments and research by the State Investment Council or Division of Investment; or
 - Added in 2015 ([Senate Bill 8](#))
- **(19)** For political subdivisions, any purchase of equipment involving the expenditure of less than fifty thousand dollars.
 - Added in 2016 ([Senate Bill 118](#))