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PURCHASING POLICY 39 - REVISED

DATE: September 7, 2012 (Revised June 11, 2015)

TO: State Agencies

FROM: Brenda Willard 
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SUBJECT: Construction Supplemental Agreements; Encumbrances and Payments

POLICY OBJECTIVE

This policy covers encumbering funds, issuing construction supplemental agreements, and issuing payments of construction supplemental agreements in order to comply with the requirements of Minn. Stat. § 16A.15, subd. 3(c) and Minn. Stat. § 16A.124.

The statutory language regarding supplemental construction work is Minn. Stat. § 16A.15, subd. 3 (c), which reads as follows: "To minimize potential construction delay claims, an agency with a project funded by a building appropriation may allow a contractor to proceed with supplemental work within the limits of the appropriation before money is encumbered. Under this circumstance, the agency may requisition funds and allow contractors to expeditiously proceed with a construction sequence. While the contractor is proceeding, the agency shall immediately act to encumber the required funds."

Changes in the work may be necessary while a project is under construction. Agencies shall follow the terms and conditions contained in Article 7 of the General Conditions (current version of AIA A201 - as Modified by Owner). Agencies should establish the price or the 'not to exceed' amount for the change in the work prior to authorizing the work. When the price cannot be established beforehand, Article 7.3 contains the process to follow for a Construction Change Directive. Supplemental agreements to the construction contract must be executed for such changes in the work.

ENCUMBERING SUPPLEMENTAL AGREEMENTS

The agency may either (1) encumber the funds on the supplemental agreement within 3 business days, or (2) encumber funds on a blanket purchase order. Minnesota Management and Budget (MMB) stated they, "...would prefer agencies establish a blanket encumbrance to cover these obligations. In an event a blanket encumbrance does not exist, agencies will have

grace period of 3 business days to comply with the Minn. Stat. § 16A.15 subd. 3 language requiring them to “immediately act to encumber funds.”

Since the process of preparing a supplemental agreement and obtaining the required signatures cannot always be completed immediately, it is MMB’s and MMD’s recommendation to use a blanket purchase order encumbrance. Prior to executing an original construction contract, the agency establishes a Building Construction Contract (BCC) or Other Construction Contract (OCC) in SWIFT. In addition, the agency establishes a Contract Encumbering Order (CEO) for the original contract amount and may establish a Blanket Purchase Agreement (BPA) for an appropriate contingency amount to cover possible supplemental agreements. Before executing a supplemental agreement for the supplemental work, the agency will add a contract line to the appropriate BCC or OCC along with a new CEO line for the amount of the supplemental agreement. The BPA may be decreased by the amount of the supplemental agreement. The agency is responsible to monitor the BPA balance to ensure appropriate contingency funds.

By following this policy, the statutory requirement in Minn. Stat. § 16A.15, subd. 3(c) that agencies shall immediately act to encumber the required funds will be fulfilled. If the funds are not encumbered on the supplemental agreement within 3 business days or a sufficient balance was not encumbered on the BPA, then the agency must complete and process a 16A/16C violation form and maintain a copy in the project file.

EXECUTING SUPPLEMENTAL AGREEMENTS

The agency must review, approve, and process the supplemental agreement within 30 calendar days of the approval of the additional work, whenever practical.

In the event the supplemental agreement is not executed within 30 calendar days of authorization of the work, the agency must document in their project file the specific reason(s) it was not possible to execute the supplemental agreement within the time period, as well as the anticipated date that it will be resolved. Some reasons may include, but are not limited to, the following:

- Parties have not reached agreement on cost
- Parties have not reached agreement on need to change schedule
- Parties have not reached agreement on scope of additional work
- Additional documentation is required (specific documents needed must be identified)

The agency must continue to document every 30 days the estimated resolution date and the specific reasons for the delay in completing and issuing the supplemental agreement.

This information must be maintained in the project file.

PAYMENTS ON SUPPLEMENTAL AGREEMENTS

Minn. Stat. § 16A.124 requires that the state agencies promptly pay their vendors, and shall not exceed 30 days (from the date goods or services were received, or the invoice was received, whichever is later) without the possibility of incurring interest charges. Additional information regarding payment processing and scheduling can be found in the MAPS Policy and Procedures, Number 0803-01, at <http://www.mn.gov/mmb/accounting/state-financial-policies/ch8.jsp>.

This policy is made a part of the Department of Administration, Materials Management Division ALP Manual, Appendix N. Contact Luke Jannett at 651.201.2446 or Luke.Jannett@state.mn.us if you have questions regarding this policy.