

# Purchasing with Federal Funds Procedure

## Instructions

### 1. Considerations

Buyers are required to consider the following prior to making purchases with federal funds:

- a. Duplicative items and unnecessary purchases must be avoided;
- b. Any available lease options;
- c. Consolidation opportunities;
- d. Applicable cooperative agreements;
- e. Availability of local, state and federal surplus property; and
- f. Domestic preferences for procurement per 2 CFR 200.322.

### 2. Micro- Purchases

Procurement of supplies or services for which the aggregate dollar amount does not exceed \$10,000 and \$2,500 for services (or \$2,000 in the case of construction projects are subject to the Davis-Bacon Act) may be conducted without soliciting competitive quotations. If micro-purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

Note: CFR considers procurements less than \$10,000 to be micro purchases. Such procurements do not require a quote process (only those prices for goods and services are reasonable). However, the College Purchasing Policy requires a quote process for purchases that equal or exceed \$5,000 unless the good or service being purchased qualifies as a non-competitive purchase. Therefore, we must adhere to the most restrictive policy, which is the LCC Purchasing Policy.

### 3. Small Purchases

Procurement of supplies or services for which the aggregate dollar amount is more than \$10,000 but does not exceed \$250,000 may be purchased when a quote has been received from at least two suppliers or by research done on public websites.

Note: CFR considers procurements between \$10,000 and \$250,000 to be small purchases and within a Simplified Acquisition Threshold. Such procurements do not require full open competition. However, the College Purchasing Policy requires full and open competition for any purchases that exceed \$25,000 unless the good or service being purchased qualifies as a non-competitive purchase (or the purchase is being made in response to a declared federal emergency – in which case the competitive bid threshold for the College is \$50,000). Therefore, we must adhere to the most restrictive policy, which is the LCC Purchasing Policy.

### 4. Competitive Process

Similar to non-federal funded purchases, procurements in excess of \$25,000 will be presented via a public competitive bid or proposal receipt process (open to all interested Contractors). All bids and

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proposal will be received in a sealed format either online or in person (for construction contracts). Bids (including construction) will be awarded on a firm fixed price basis to the lowest responsive and responsible bidder conforming to all material terms and conditions of the competitive solicitation. Competitive bid and proposal documents must include the following:

- a. Complete, adequate and realistic specifications;
- b. Identification of evaluation criteria and relative importance; and
- c. Written method for conducting technical evaluations (where applicable).

Buyers are to avoid the following:

- a. Geographical preferences except when mandated or encouraged by federal government or when contracting with A/E firms (as long as the later does not prohibit competition);
- b. Placing unreasonable requirements on firms in order for them to qualify to do business;
- c. Requiring unnecessary experience and excessive bonding;
- d. Noncompetitive pricing practices between firms or between affiliated companies;
- e. Noncompetitive contracts to consultants that are on retainer contracts;
- f. Organizational conflicts of interest;
- g. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- h. Any arbitrary action in the procurement process.

Contractors that develop or draft specifications or a statement of work for a particular bid or proposal are excluded from competing for award of that particular procurement.

Evaluators are required to fill out a conflict of interest and confidentiality form in order to participate in the evaluation process. Proposals are awarded based on price and other factors to the responsible Contractor whose proposal is most advantageous to the College. Qualifications based procurement are permitted for architectural/engineering (A/E) professional services. Bid and RFP evaluations include the following considerations:

- a. Contractors ability to perform successfully;
- b. Contractor integrity;
- c. Compliance with public policy;
- d. Record of past performance;
- e. Financial resources of Contractor; and
- f. Technical resources of Contractor.

All award notifications are publicly posted and/or provided to all participating Contractors in writing.

Note: A cost or price analysis is required for federally funded procurements that exceed \$250,000 (including contract modifications). The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates shall be made prior to receiving bids or proposals.

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Profit shall be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the College under Subpart E—Cost Principles of Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The College may reference its own cost principles that comply with the federal cost principles.

## **5. Construction Contracts**

Construction contracts are subject to value engineering clauses (when applicable).

Cost plus a percentage of cost & percentage of construction cost methods of contracting must not be used. Time and materials contracts may only be used after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. When awarding such a contract, the College must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (\$250,000), the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the College provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- a. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price.
- b. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified;
- c. A performance bond on the part of the contractor for 100 percent (100%) of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and,
- d. A payment bond on the part of the contractor for 100 percent (100%) of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## **6. Non-Competitive Purchases**

The use of non-competitive proposals are permitted where only one source for procurement is considered, if any one or more of the following situations applies:

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- a. The item is only available from a single source;
- b. Public exigency or emergency for the required procurement that will not permit a delay for competitive solicitation;
- c. The College has received in writing express authorization from the federal awarding agency to use sole source procedures; or
- d. After soliciting a number of sources, the College has determined that competition was inadequate.

All Non-Competitive Purchases are subject to a cost analysis and a negotiation of profit as a separate element of the price.

**7. Prequalification Lists**

All prequalified lists of persons, firms, or products that are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and free competition. In addition, potential bidders shall not be precluded from qualifying during the solicitation period.

**8. Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus**

The College does not have a traditional bid list. Small and minority businesses, women's business enterprises and labor surplus organizations (identified via research or commodity code) will be informed via e-mail of opportunities to provide a quotation for micro-purchases and small purchases; as well as respond to publically posted competitive solicitations estimated to equal or exceed \$25,000.

All necessary affirmative steps will be taken to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include but are not limited to:

- a. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- b. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- c. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and,

Awarded prime contractors for projects supported by federal funds will be encouraged to:

- a. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
  - b. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
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- c. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

## **9. Contract Provisions**

College contracts must contain the applicable provisions described in United States Code of Federal Regulation (CFR), Uniform Guidance (UG), Appendix II to Part 200—Contract Provisions for College Contracts under Federal Awards. The provisions are as follows:

- a. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
  - b. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
  - c. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “Federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
  - d. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The
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decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
  - f. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
  - g. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
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- h. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- i. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- j. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- k. See §200.322 Procurement of recovered materials.

#### **10. Administrative Practices**

The College alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the College of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of the College unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

#### **11. Contract Review**

Contractor performance reviews can be submitted online via the Purchasing website 24 hours a day, 7 days a week. Additionally the Purchasing Department reviews vendor performance quarterly.

#### **12. Transparency**

A file must be kept on each federal procurement. The file includes a detailed history of the procurement which includes but is not limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price. Pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates are available and subject to review by the federal awarding agency as

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well as any pass-through agency. The federal awarding agency and/or pass through agency may request to review the file when:

- a. Procurement procedures or operation fails to comply with the procurement standards in this CFR, UG;
- b. The procurement is expected to exceed the Simplified Acquisition Threshold (\$250,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- c. The procurement, which is expected to exceed the Simplified Acquisition Threshold (\$250,000) specifies a “brand name” product;
- d. The proposed contract is more than the Simplified Acquisition Threshold (\$250,000) and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold (\$250,000).

The College is exempt from the pre-procurement review discussed in this section if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of United States Code of Federal Regulation (CFR), Uniform Guidance (UG) effective December 26, 2014.

### **13. Resources**

These procedures are based on requirements of the United States Code of Federal Regulation (CFR), Uniform Guidance (UG) effective December 26, 2014 which can be found at:

<http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1> as well as the College Purchasing Policy and Conflict of Interest with Vendors Policy which can be found at: <http://www.lcc.edu/policy/>.

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