

## Procurement – Federal Programs

This document is intended to integrate purchasing procedures with additional requirements applicable to purchases that are subject to the federal Uniform Guidance regulations. The University maintains the following purchasing procedures in accordance with federal and state laws: Uniform Guidance - 2 CFR 200.318-200.325, State of Ohio Revised Code, State of Ohio Controlling Board and Efficiency and Affordability Task Force Mandate.

### **Responsibility for Purchasing**

The University has outlined standard purchasing responsibility, methods of purchasing, price quotations and bid requirements in the following policies and procedures along with their accompanying administrative regulations or procedures:

Policy 55.030 Purchasing  
Policy 55.007 Purchasing Competitive Bidding  
Policy 55.074 Purchasing Card

### **Purchase Methods**

When a request for purchase of goods, services or construction has been submitted and approved, the procurement method to be used will be determined based on the total cost of the purchase as outlined below. This procedure outlines how the cost thresholds for determining when the quote or formal bidding procedures that are required by state law as reflected in Policy 55.007 must be modified when making purchases for federally funded purposes to which the Uniform Guidance regulations apply, so as to comply with both state and federal requirements. Final determination of which purchasing procedures are to be applied is delegated to the University Finance department.

#### **Micro-Purchases Not Requiring Quotes or Bidding (up to \$50,000)**

For purpose of this procedure, **micro-purchase** means a purchase of goods and services for use in federally funded programs using simplified acquisition procedures, the aggregate amount of the purchase which does not exceed a base amount of \$50,000. The micro-purchase dollar threshold is adjusted periodically by the federal government, and the threshold most recently established and published in the [M-18-18 OMB Statutory Changes](#) was implemented from July 1, 2018 to November 12, 2018. Effective November 13, 2018 the University received approval from the federal oversight agency, DHHS, to adjust the micro-purchase dollar threshold to \$50,000.

The micro-purchase method is used in order to expedite the completion of its lowest dollar small purchase transactions and minimize the associated administrative burden and cost. This aligns the University competitive bidding threshold (as required under the Ohio Revised Code section 125.05 and University policy 55.007 – Competitive Bidding) and the micro-purchase threshold at \$50,000. Procurement by micro-purchase is the acquisition of goods or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

To the extent practicable, the University distributes micro-purchases equitably among qualified suppliers when the same or materially interchangeable products are identified and such suppliers offer effectively equivalent rates, prices and other terms.

The Purchasing Office will be responsible to determine the equitable distribution of micro-purchases. Micro-purchases may be awarded without soliciting competitive quotations if the purchase price is considered to be reasonable. Reasonable means that sound business practices were followed and the purchase is comparable to market prices. Even if the cost of a purchase qualifies it as a micro-purchase, bidding or small purchase procedures may be used optionally when those procedures may result in cost savings.

Small Purchase Procedures (\$50,000 or more for goods and services, \$215,000 or more for construction)

For purposes of this procedure, **small purchase procedures** are those relatively simple and informal procurement methods for securing goods, services and construction in federally funded programs. From July 1, 2018 to November 12, 2018 small purchase procedures required written price or rate quotations obtained from at least three (3) qualified supply source and records of quotes are maintained as attachments to the requisition. Purchases were awarded to the supplier whose quote is most advantageous to the program, with price and other factors considered. This requirement did not apply to purchases made from [Preferred Suppliers](#) regardless of the source of funds used to pay for the purchase, as those suppliers have already gone through the competitive bidding process and the University had determined pricing is reasonable under Federal regulations. Effective November 13, 2018 the University received approval from the federal oversight agency, DHHS, to adjust the micro-purchase dollar threshold to \$50,000.

This aligns the University competitive bidding threshold (as required under the Ohio Revised Code section 125.05 and University policy 55.007 – Competitive Bidding) and the micro-purchase threshold at \$50,000. The small purchase procedure is the same as the formal competitive bidding procedure.

Formal Competitive Bidding (\$50,000 or more for goods and services and \$215,000 or more for construction)

For purchases of goods and services at \$50,000 or more and construction at \$215,000 or more requires competitive bids publicly solicited and awarded to the most responsive and responsible proposal that provides the best overall value to the University.

The federal competitive bidding dollar threshold is adjusted periodically by the federal government, and the threshold most recently established and published in the Federal Register shall apply if other than \$250,000. (48 CFR Subpart 2.1 and M-18-18)

**Note:** The federal formal competitive bidding threshold is higher than the requirements of the State of Ohio; therefore, this regulation follows State law.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

### Competitive Proposals

State law requires entities to solicit competitive bids for goods or services at a base amount of \$50,000 or more or construction at \$215,000.

Federal regulations allow the use of competitive proposals as an alternative when formal bidding would otherwise be required only to procure architectural and engineering services. Other types of services for federally funded purposes to which the Uniform Guidance applies, professional or otherwise, must be procured using competitive bidding when the cost would meet or exceed the federal threshold for competitive bidding, \$250,000.

**Note:** The federal formal competitive bidding threshold is higher than the requirements of the State of Ohio; therefore, this regulation follows State law.

When permitted, the technique of competitive proposals is normally conducted with more than one (1) source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors. Any response to publicized requests for proposals must be considered to the maximum extent practical.
2. Proposals must be solicited from an adequate number of qualified supply sources.
3. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Competitive proposals shall be evaluated by the selection team.

### Contract/Price Analysis:

There is a cost or price analysis in connection with every procurement action in excess of \$215,000, including contract modifications. (2 CFR Sec. 200.323(a)).

A **cost analysis** generally means evaluating the separate cost elements that make up the total price, while a **price analysis** means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. An independent estimate prior to receiving bids or proposals is to be

completed; which may include evaluation of similar prior purchases or another review process as appropriate. (2 CFR Sec.200.323(a)).

When performing a cost analysis, the University negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration could include 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, or industry profit rates for similar work. (2 CFR Sec. 200.323(b)).

### Noncompetitive Proposals (Sole Sourcing)

**Procurement by noncompetitive proposals** means procurement through solicitation of a proposal from only one (1) source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. An **emergency** exists whenever the time required to act in accordance with regular procedures would endanger life or property;
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
4. After solicitation of a number of sources, it is determined the competition is inadequate.

In addition to standard procurement policy and procedures, documentation is required for a noncompetitive method, which may include written confirmation from the contractor as the sole source of the item. Documentation will be maintained for sole source.

### Purchasing Card (p-card)

The use of p-cards for permissible purchases by designated employees to improve the efficiency of purchasing activities, reduce processing expenses, improve controls for small-dollar purchases, and streamline contractor payment. P-card credit limits align with federal procurement standards for single purchases.

P-cards may be used for purchases under federal programs. The use of p-cards is governed by Policy 55.074 Purchasing Card.

### Full and Open Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR Sec. 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals

must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies.
4. Noncompetitive contracts to consultants that are on retainer contracts.
5. Organizational conflicts of interest.
6. 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.
7. Any arbitrary action in the procurement process.

### **Minority Businesses, Women’s Business Enterprises, Labor Surplus Area Firms**

There are steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (2 CFR Sec. 200.321)

1. Placing qualified small and minority business and women’s business enterprises on solicitation lists.
2. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
3. Dividing total purchasing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women’s business enterprises.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises.
5. 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.
6. Requiring the prime contractor, if subcontracts are let, to take the affirmative steps listed above.

### **Geographical Preferences Prohibited**

Procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or

encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

### **Prequalified (Preferred) Lists**

There must be assurance that all prequalified (preferred) lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, potential bidders must not be precluded from qualifying during the solicitation period.

### **Solicitation Language**

There must be assurance that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement, provided the brand name specification is widely distributed or available across multiple distribution channels. The specific features of the named brand which must be met by offers must be clearly stated; and identify all requirements which the solicitor must fulfill and all other factors to be used in evaluating bids or proposals.

### **General Procurement Standards**

#### **Avoiding Acquisition of Unnecessary or Duplicative Items**

The University must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase; and, where appropriate, an analysis must be made of leases versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

#### **Use of Intergovernmental Agreements and Cooperative Purchasing**

To foster greater economy and efficiency, the University enters into state and local intergovernmental agreements where appropriate for cooperative purchasing or use of common or shared goods and services.

When procuring supplies or services for federally funded purposes to which the Uniform Guidance applies, there will be verification of the organization conducting the procurement pursuant to such agreements complies with the applicable requirements and standards of the Uniform Guidance as outlined in this procedure.

#### Use of Federal Excess and Surplus Property

The University considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

#### Debarment and Suspension

The University awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The University may not subcontract with or award sub-grants to any person or company who is debarred or suspended. The University verifies that the contractor is not excluded or disqualified. (2 CFR Part 200, Appendix II, and 2 CFR Sec. 180.220 and 180.300).

The University will be responsible for verification of suspension or debarment from federal projects at the time of purchase.

#### Maintenance of Procurement Records

The procurement records must be maintained to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

#### Time and Materials Contracts

Time and materials type contracts may be used only: (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. **Time and materials type contract** means a contract whose cost is the sum of: the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, there must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

## Settlements of Issues Arising Out of Purchases

The University is 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 University of any contractual responsibility under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

## Conflict of Interest Requirements

### Standards of Conduct

In accordance with 2 C.F.R. §200.318(c)(1), the University maintains the following standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the gift is an unsolicited item of nominal value. Disciplinary actions would be defined and administered by Legal Affairs per Policy 55.030 Purchasing and the laws of the State of Ohio.

### Organizational Conflicts

The University cannot issue a purchase order or contract to a supplier where an organizational conflict exists. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the University is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization per 2 C.F.R § 200.318(c)(2). Conflict of interest issues are referred to Legal Affairs and handled in accordance with Ohio University policies/processes, State of Ohio law and any Federal requirements.