

**University of Oklahoma
Purchasing Department
Policy Governing the Acquisition of Goods and Services
With Funding from Federal Awards**

General

This policy is established in compliance with 2 CFR 200 – Uniform Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)

Requirements

The requirements set forth by this policy govern the University's purchasing processes and controls relative to acquisition actions proposed to be funded by federal awards under the University's management.

For such acquisition actions, the University Purchasing Department (Purchasing) shall comply with all applicable statutes, regulations, rules, and policies. In the event that any of these may conflict with the Uniform Guidance, the Uniform Guidance shall prevail.

Oversight

Purchasing is responsible for ensuring that acquisitions are appropriately managed so that suppliers perform in accordance with an agreement's terms, conditions, and specifications. In fulfilling that responsibility with regard to any agreement, Purchasing may appoint, within the primary using University department, a representative to carry out such responsibility, acting in that capacity as a representative of Purchasing.

Standards of Conduct / Conflicts of Interest

All University personnel and agents involved in a transaction falling within the scope of the Uniform Guidance must comply with the University's policies governing compliance and conflict of interest (Board of Regents Policy Manual Sections 3.5 and 3.7). Additionally, to the extent that a University policy may not provide for or address them, University personnel and agents shall specifically adhere to the following requirements.

- No employee, officer, or agent must 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 above referenced parties has a financial or other interest in or a tangible personal benefit from a firm considered for an award.
- Generally, University employees and agents must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, University employees and agents may follow University policy relative to whether and when such items may be nominal or insubstantial and therefore not in violation of this requirement.



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Mandatory Considerations for Every Purchase

Prior to releasing any purchase order covered under this policy, Purchasing shall execute and document (a documented history) the steps and measures necessary to ensure that the following considerations have been explored and implemented where possible and feasible.

- Small and Minority Businesses, Women's Business Enterprises, Labor Surplus Area Firms. First consideration must be given to these types of businesses. Investigate and assess that any of these types are appropriate and available for the acquisition action at hand. Note the requirements farther below, under this heading.
- Recovered Materials. Investigate whether recovered materials may be involved in an acquisition action and, if so, consult 40 CFR Part 247 for full compliance. For items costing more than \$10,000 – either individually or cumulatively over a year – without losing or avoiding competition, consider first those items that contain the highest percentage of recovered materials. If purchasing solid waste management services, make maximization of energy and resource recovery an explicit objective of the requirements.
- Unnecessary / Duplicative Purchases. Investigate and confirm that a purchase is necessary and is not duplicative. Purchases that are denied shall be accompanied by documentation substantiating the denial.
- Consolidating or Breaking Out. Investigate and assess opportunities to lower costs either by consolidating multiple purchase requests or by breaking out a single purchase request into separate instances.
- Rationale for Purchasing Method. Exercise due care and thought in developing the rationale for the purchasing method selected for an acquisition action.
- Lease versus Buy. In many instances better value may be achieved through leasing rather than buying. Investigate and determine whether an acquisition action is an appropriate candidate for such a comparison and perform the analysis necessary to achieve best value.
- Type of Agreement. Exercise due care and thought in selecting the type of agreement that is used for an acquisition action.
- Price. Explore and confirm how reasonableness of price will be evaluated, tested, and confirmed.
- Cost / Price Analysis. Conduct a cost / price analysis (see farther below) for any acquisition action at or above the Simplified Acquisition Threshold.
- Acquisition Specifications and Evaluation Criteria. Establish the exact elements of the specifications the supplier must fulfill, of the criteria that will be used in evaluating responses, and the methodology for deciding upon and selecting the successful supplier. Detailed product specifications should be avoided. 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 to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.
- Cooperatives, Group Purchasing Organizations, Inter-Agency and Inter-Institutional Agreements. Investigate and determine whether competitively awarded contracts by purchasing cooperatives and/or group purchasing organizations (GPOs) provide sourcing opportunities for the acquisition at hand. Investigate, search out, assess, invite, and establish where feasible inter-agency (State of Oklahoma) and/or inter-institutional (other Oklahoma education institutions) agreements that may result in economies and



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efficiencies from the cost-effective acquisition of common or shared products and services.

- ❑ **Surplus Property.** If acquiring equipment or supplies, use University, State of Oklahoma, and/or Federal surplus property if feasible and more economical than procuring new. Document that each related website has been accessed and researched.
- ❑ **Value Engineering.** In construction and minor construction contracts, include terms and conditions that encourage or require value engineering. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- ❑ **Supplier Capacity and Ability.** Investigate and assess whether suppliers have the capacity and operational wherewithal to successfully satisfy all requirements of the acquisition actions in process. Consider elements such as integrity, compliance with public policy, record of past performance, and financial and technical strength.
- ❑ **Time and Material Contracts.** If time and material type contracts are proposed, investigate and assess whether they satisfy the special requirements (see farther below) governing their use. Generally, time and material type contracts may be considered only when all other contract types are not suitable.
- ❑ **No Cost-plus Percentage of Cost Contracts.** Do not allow cost-plus percentage of cost type contracts. They are prohibited
- ❑ **Prohibited Methods and Requirements.** Do not allow contractors who develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals to compete for such procurements. Do not place unreasonable requirements for firms to qualify to do business with the University. Do not require excessive bonding.
- ❑ **Excluded Parties / Debarment and Suspension.** Prior to any award check the government wide Excluded Parties List System in the System for Award Management (SAM). SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. If the party is listed, make no award.
- ❑ **No Geographic Preferences.** Do not allow supplier physical location to be a factor of preference in the selection process. However, geographic location may be a selection criteria for A&E services when there are an appropriate number of qualified firms to compete given the nature and size of the project.
- ❑ **Bonding Requirements.** Determine whether bonding requirements (see farther below) exist and, if so, take appropriate action for compliance.
- ❑ **Protest Procedures.** Ensure that bid protest procedures are included in the terms and conditions of the solicitation.
- ❑ **Required Terms and Conditions.** As appropriate make sure that the terms and conditions (the full language of each is presented farther below) are included.



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Purchasing Methods

The following purchasing methods are allowed. Departure from any of these methods must be fully justified and thoroughly documented.

Micro-purchase. Micro-purchases may be awarded without soliciting competitive quotations if the price is considered reasonable. The aggregate dollar amount of a purchase under this method cannot exceed the threshold set forth by the appropriate governing authority. To the extent practicable distribute micro-purchases equitably among qualified suppliers.

Small Purchase. Small purchase procedures comprise relatively simple and informal acquisition methods. The aggregate dollar amount of a purchase under this method must be between the Micro-purchase Threshold and the Simplified Acquisition Threshold. These thresholds are set forth by the appropriate governing authority. Price or rate quotations must be obtained from an adequate number of qualified sources.

Formal Purchase. Formal purchase procedures comprise those described immediately below. These procedures must be used when the aggregate dollar amount of a purchase equals or exceeds the Simplified Acquisition Threshold. This threshold is set forth by the appropriate governing authority.

Sealed Bids. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder who meets all requirements and offers the lowest price. This method is best used when all of the following conditions are met.

- Complete, adequate, and realistic specifications or purchase descriptions are available
 - Two or more responsible bidders are willing and able to compete effectively for the business
 - The purchase lends itself to a firm fixed price contract and the award can be made principally on price
- ❑ The invitation for bids must be advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time.
 - ❑ The specifications must clearly define the items or services in order for bidders to properly respond.
 - ❑ All bids will be publicly opened at the time and place prescribed.
 - ❑ A firm fixed price contract will be awarded to the lowest responsive and responsible bidder
 - ❑ Any and all bids may be rejected accompanied by a sound documented reason.

Competitive Proposals. This method is normally used when conditions for a sealed bid are not appropriate and more than one source can respond. A fixed price or cost-reimbursement type contract is usually the result. This method carries the following requirements.

- ❑ Requests for proposals (RFPs) must be publicized and identify all evaluation factors and their relative importance.



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- ❑ RFPs must be solicited from an adequate number of qualified sources.
- ❑ The method for evaluating proposals must be in writing.
- ❑ Any resulting contract must be awarded to the responsible source whose proposal is most advantageous to the program, with price and other factors considered.

This method, where price is not a factor, can only be used in procuring architectural/engineering (A/E) professional services; price is established through negotiation of fair and reasonable compensation. It cannot be used to purchase other types of service even though A/E firms may be potential sources.

Negotiated Proposals. This method is noncompetitive and is available only when one or more of the following circumstances apply.

- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the University.
- After solicitation of a number of sources, competition is determined inadequate.

Time and Material Contracts

Time and material (T&M) contracts may be used only after a determination that no other contract is suitable and if the T&M contract includes a price above which the supplier has the complete risk. The cost of a T&M contract is the sum of the actual cost of the materials and direct labor hours charged at fixed hourly rates that include wages, overhead, general and administrative costs, and profit. Accordingly, each contract must set a ceiling price that the supplier exceeds at the supplier's own risk. Purchasing or the departmental representative appointed by Purchasing must assert a high degree of oversight in order to obtain reasonable assurance that the supplier is using efficient methods and cost controls.

Small and Minority Owned Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Purchasing shall take all necessary and affirmative steps to assure that these classifications of businesses are used when possible. Affirmative steps include (1) placing qualified such businesses on solicitation lists and invitations, (2) making sure that such businesses are solicited whenever they are potential sources, (3) whenever feasible, dividing the requirements of the acquisition action at hand into smaller tasks or quantities to permit maximum participation by such businesses, (4) establishing delivery schedules – where the requirement permits – that encourage participation by such businesses, (5) using the services of organizations such as the Small Business Administration, business development associations, and similar, and (6) as applicable, requiring prime contractors to take the same steps as referenced herein.

Cost / Price Analysis



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Purchasing must conduct a cost / price analysis on each acquisition expected to meet or exceed the Simplified Acquisition Threshold. This includes contract modifications. Purchasing has discretion as to the method and degree of analysis depending on the attendant facts, but in any event Purchasing must make or require independent estimates prior to receiving bids or proposals. If there is no price competition, Purchasing must negotiate profit as a separate element of price, and in all cases in which cost analysis is performed. The measurement of fair and reasonable profit may take into consideration the complexity of work, the risk borne by the supplier, the supplier's investment, the extent of subcontracting, the supplier's past performance, and profit margins that prevail in the surrounding area for similar requirements. Costs or prices based on estimations are allowable only as set forth in 2 CFR 200.403:

Necessary and Reasonable. Elements must be necessary, reasonable, and compliantly allocable for the performance of the Federal award.

Conformance to Limitations or Exclusions. Elements must conform as set forth in 2 CFR 200 or the Federal award as to types or amount of cost items.

Consistency with Policy and Procedures. Treatment of elements must be uniformly consistent with that applied to other University acquisitions.

Consistent Treatment. A cost must not be treated as direct if any other cost for the same purpose has been allocated as indirect.

Generally Accepted Accounting Principles (GAAP). Treatment of elements must comply with GAAP.

No Inclusion with Other Federal Awards. Elements must not be included as costs or used to meet cost sharing or matching requirements of other Federal awards.

Documentation. Elements must be adequately documented in compliance with 2 CFR 200.300 through 2 CFR 200.309.

Bonding Requirements

For construction or facility improvement contracts exceeding the Simplified Acquisition Method Threshold, the University's bonding requirements may be used provided that the Federal interest is adequately protected. If a determination of such protection has not or cannot be made, the minimum requirements are as set forth below.

- Bid Guarantee of at Least 5% of Bid Price. The guarantee must offer 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 required within the specified time.
- Performance Bond for 100% of the Contract Price. The bond secures fulfillment of all the contractor's obligations under the contract.
- Payment Bond for 100% of the Contract Price. The bond assures payment as required by law of all persons supplying labor and material in execution of the work accomplished under the contract.

Contract Performance and Payments

Directly or through the Purchasing appointed departmental representative managing the contract, ensure that contract performance and payments are adequately monitored, manage,



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and executed.

Recovered Materials – Affirmative Procurement Program

The University affirmatively encourages and promotes its preference for maximizing recovered material content when purchasing those items designated by the Environmental Protection Agency (EPA) per 40 CFR Part 247. Purchasing will periodically market and promote this program to all University units. Purchasing, in its bids, quotes, and solicitations will incorporate terms and conditions that require bidders to estimate and certify the recovered material content of the above reference EPA-designated items. From time to time Purchasing may select a sample of such EPA-designated items that have been purchased and submit it to the appropriate experts for verification of the asserted recovered content. Purchasing will annually review the program and document its findings and recommendations.

Authorization for Changes to Programs

Directly or through the Purchasing appointed departmental representative managing the contract, ensure that any change to a program is specifically authorized by the awarding agency.

Real Property

If the University acquires real property under a Federal award (with Federal funds), title vests in the University. The property must be used for the originally authorized purpose as long as it is needed for that purpose, and during that time the University must not dispose of it or encumber its title. When the University no longer needs the property for the originally authorized purpose, it must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must require one of the three methods set forth below.

- ❑ Retain Title after Compensating the Awarding Agency. The amount paid to the Federal awarding agency is computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase and costs of improvements to the fair market value of the property. In those instances where the University acquires replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
- ❑ Sell the Property and Compensate the Awarding Agency. The amount due to the Federal awarding agency is calculated by applying the awarding agency's percentage of participation in the cost of the original purchase and improvements to the proceeds of the sale after deducting any actual and reasonable selling and fixing-up costs. If the award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. If the University is directed to sell the property, the University must provide for competition to the extent practicable and result in the highest possible return.
- ❑ Transfer Title to the Awarding Agency or to a Designated Third Party. The University is entitled to be paid an amount calculated by applying the University's percentage of participation in the purchase of the property and any improvements to the current fair market value of the property.

Equipment and Other Capital Expenditures

If the University acquires equipment or other capital assets under a Federal award (with Federal funds), title vests in the University. The University must use the equipment for the authorized



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purposes of the project until funding for the project ceases, or until the equipment is no longer needed for the purposes of the project. The University must not encumber the equipment without approval of the awarding agency or pass-through entity. The University must use and dispose of the equipment as follows.

- ❑ **Use.** The University must use the equipment for the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the award. The University must not encumber the equipment without prior approval of the awarding agency. When the equipment is no longer needed for the original program or project, the University may use it first in other activities supported by the awarding agency, and second in activities supported by other Federal agencies. During the time the University is using the equipment for the project or program, it must also make the equipment available for use on other projects or programs currently or previously supported by the Federal government, provided that such use does not interfere with the work on the project or program for which it was originally acquired. The University must not use the equipment to provide services for a fee that is less than private companies charge for equivalent services. If the University acquires replacement equipment, it may use the replaced equipment as a trade-in or sell it and use the proceeds to offset the cost of the replacement.
- ❑ **Management.** The University must maintain records that include a description of the equipment, a serial number or other identification number, the source of funding, who holds title, the acquisition date and cost, the percentage of Federal participation in the project costs for the award under which the equipment was acquired, the location, use and condition, and any ultimate disposition data including the date of disposal and sale price. At least once every two years the University must take a physical inventory of the equipment and reconcile it with the records. The University must maintain a control system to safeguard against loss, damage, or theft. The University must investigate any loss, damage, or theft. The University must develop maintenance procedures that keep the equipment in good working order. The University must develop proper procedures to ensure the highest possible return if the equipment is sold.
- ❑ **Disposition.** When equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, the University must – unless otherwise provided in Federal governing statutes or regulations – request disposition instructions from the awarding agency. Equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. For equipment with a fair market value greater than \$5,000, if the awarding agency fails to provide disposition instructions within 120 days, the University may retain or sell it. In such case, the awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's percentage of participation in the cost of the original purchase. If the University sells the equipment the awarding agency may permit the University to deduct and retain from the Federal share the lower of \$500 or ten percent of the proceeds for its selling and handling costs. The University may alternatively transfer title to the equipment to the Federal Government or to an eligible third party provided that the University must be entitled to compensation for its attributable percentage of the current fair market value. If the University fails to take appropriate disposition actions, the awarding agency may direct the University to do so.

Required Terms and Conditions When Appropriate

Remedies for Violation or Breach of Contract. For contracts exceeding Simplified Acquisition Threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as



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appropriate.

Termination for Cause or Convenience. All contracts exceeding \$10,000 must address termination for cause and for convenience by the NFE, including how it will be effected and the basis for settlement.

Equal Employment Opportunity. Contracts that meet the definition of “federally assisted construction contract” (41 CFR Part 60-1.3) must include the equal opportunity clause per 41 CFR Part 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.”

Davis-Bacon Act // Prevailing Wage. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by NFEs 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”). 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. Contractors must be required to pay wages not less than once a week. NFE must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. NFE must report all suspected or reported violation 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 Finance 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. NFE must report all suspected or reported violations to the Federal awarding agency.

Work Hours and Safety Standards. Contracts 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). 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 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 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.

Rights to Inventions. If the Federal award meets the definition of “funding agreement” under 37



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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, development, 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.

Clean Air Act // Federal Water Pollution Control Act. 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 EPA.

Energy Efficiency / Conservation. 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).

Debarment / Suspension. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with 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.” 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.

Anti-Lobbying. 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 an 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.

Procurement of Recovered Materials. See 40 CFR Part 247.

