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Policy Number: 105
Effective Date: July 1, 2018
Applicability: All Purchases made with Federal Funding
Related Policies: Policy 102, Purchasing Policy Pertaining to the Procurement of Goods & Services
Revisions: 9/12/15/22

Policy Pertaining to the Purchase of Goods or Services with Federal Funding

Purpose:

The purpose of this policy is to ensure compliance with the general rules and regulations governing purchasing and to comply with the Office of Management and Budget (*OMB*) *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards - 2 CFR 200*.

Policy:

General Procurement Requirements

All procurement transactions must be in compliance with existing University Purchasing Policies (see the Purchasing Manual on the Purchasing Services website). In addition to the University policies, there are additional restrictions that must be adhered to specifically governing purchasing made utilizing sponsored grant funding. All purchases made with federal funding are subject to audit by federal awarding agencies.

The University will award 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. See also OMB Uniform Guidance on 2 CFR 200.318(d) Suspension and debarment.

The University will maintain records sufficient to detail the history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

In order to ensure compliance, Office of Management and Budget (*OMB*) *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards - 2 CFR 200* specifically addresses requirements related to Competition and Approved Methods of Procurement.

Competition:

1. All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. 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:

- (a) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (b) Requiring unnecessary experience and excessive bonding;
- (c) Noncompetitive pricing practices between firms or between affiliated companies;
- (d) Noncompetitive contracts to consultants that are on retainer contracts;
- (e) Organizational conflicts of interest;
- (f) 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 (Note: submitting a make/model for equipment within a proposal, and subsequent approval of proposal does NOT give authorization to proceed with the purchase of that specific make/model); and
- (g) Any arbitrary action in the procurement process.

2. The University will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state and local preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. 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.

3. These procedures for solicitation will ensure that all solicitations include:

- (a) 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. The specific features of the named brand which must be met by offers must be clearly stated; and
- (b) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

4. The University will ensure that all prequalified 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, the University will not preclude potential bidders from qualifying during the solicitation period.

Approved Procurement Methods:

The University must use one of the following methods of procurement whenever purchasing goods or services with federal funding.

1. Micro Purchasing Method: Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$10,000 (OMB Uniform Guidance

§200.67 Micro-purchase). To the extent practicable, the University will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

2. Small Purchase Method: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the defined Simplified Acquisition Threshold of \$250,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
3. Sealed Bids Method (formal advertising): Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - (a) In order for sealed bidding to be feasible, the following conditions should be present:
 - (i) A complete, adequate, and realistic specification or purchase description is available;
 - (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - (b) If sealed bids are used, the following requirements apply:
 - (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (iii) All bids will be opened at the time and place prescribed in the invitation for bids;
 - (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. 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; and
 - (v) Any or all bids may be rejected if there is a sound documented reason.
4. Competitive Proposal Method: Competitive selection is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
 - a) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - b) Proposals must be solicited from an adequate number of qualified sources;
 - c) The University will have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - d) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - e) The University will use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E

professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Non-competitive Proposal Method: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
- (a) The item is available only from a single source;
 - (b) The emergency-based need for the requirement will not permit a delay resulting from competitive solicitation;
 - (c) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the University; or
 - (d) After solicitation of a number of sources, competition is determined inadequate.