

HERKIMER COUNTY COMMUNITY COLLEGE BOARD POLICY

TITLE: Purchase of Goods and Services

POLICY #: FA 02-19A

DATE OF BOARD OF TRUSTEES APPROVAL: April 17, 2003

RESOLUTION #: 02-19, 09-39, 19-8

POLICY STATEMENT: At their November 20, 2019 regular meeting, the Herkimer County Community College Board of Trustees adopted the following updated Herkimer County Purchasing Policy, as passed by Herkimer County Legislature in Resolution No. 231:

All purchases from new federal awards and incremental funding to existing awards must comply with Uniform Guidance requirements outlined in Title 2 of the Code of Federal Regulations, Subtitle A, Chapter II, Part 200. The following procedures will be incorporated and in addition to the Herkimer County Purchasing Policy.

Standards of Conduct

- No employee, officer or agent will participate in the selection, award, or administration of a contract supported by federal monies if he or she or any member of his or her immediate family is employed or about to be employed, or a partner, officer or agent in the contracting organization or has a financial or other interest in or will receive a tangible personal benefit from a firm considered for the contract.
- Officers, employees and agents must neither solicit nor accept gratuities, favors or any item of monetary value from contractors or parties to subcontracts.

Pre-Procurement Procedures

- Measures must be taken to avoid any duplicate or unnecessary purchases of services, equipment or supplies.
- Look for opportunities to consolidate or split up purchases to save money or time, and document your findings.
- Weigh the options of leasing and purchasing to discover which is more economical.
- Utilize State and Federal contracts to obtain the best aggregate pricing.
- Investigate State and Federal surplus auctions.

Competition

- Procurements must be conducted in a manner providing full and open competition.
- In order to eliminate unfair competitive advantages, the following restrictive practices are prohibited:
 - Placing unreasonable requirements on firms in order for them to qualify to do business
 - Requiring unnecessary experience and excessive bonding
 - Noncompetitive pricing practices between firms or between affiliated companies
 - Noncompetitive contracts to consultants that are on retainer contracts
 - Organizational conflicts of interest
 - Specifying a “brand name” product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement
 - Any arbitrary action in the process.

Procurement Methods

- Purchases up to \$3,000 (Micro Purchases)
 - The purchase of supplies or services where the aggregate amount does not exceed \$3,000 should follow normal Herkimer County Purchasing Policy procedures.
- Purchases between \$3,000 and \$150,000 (Small Purchases)
 - Procedure should be based on existing Herkimer County Purchasing Policy procedures.
- Purchases over \$150,000
 - Sealed bids
 - Complete, adequate, realistic specifications
 - Two or more bidders must be willing and able to compete for the business
 - The procurement must lead to a firm fixed price contract, and selection must be based on price.
 - Competitive Proposals
 - Used when conditions are not appropriate for sealed bids
 - Requests for proposals must be publicized and identify evaluation factors and their importance.
 - Must be solicited from an adequate number of sources
 - Must have a written method for technical evaluations and selection
 - To be used for qualifications based procurement of architectural/engineering professional services
 - Non-Competitive Proposals
 - Proposal from only one source
 - The item or service is only available from one source
 - An emergency for the requirement will not permit a delay resulting from competitive solicitation
 - After solicitation from a number of sources, competition is determined inadequate.

Small, Minority and Women's Business Enterprises or Labor Surplus Firm

- Affirmative action steps must be taken to assure that minority and women owned enterprises and labor surplus area firms are used whenever possible.
 - Place small and minority businesses and women owned businesses on solicitation lists
 - Assure small and minority businesses and women owned businesses are solicited when they are potential bidders.
 - Divide contract requirements into smaller tasks or quantities to permit maximum participation.
 - Establish delivery schedules that encourage small and minority businesses and women owned businesses
 - Utilize the Small Business Administration and the Minority Business Development Agency and the Department of Commerce
 - Require prime contractors to take affirmative steps when dealing with subcontractors.

Recovered Materials

- Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, requires Political Subdivisions to procure only items designated in the guidelines of the Environmental Protection Agency at 40 CFR part 247. Items exceeding \$10,000 in purchase price or value must contain the highest percentage of recovered materials consistent with maintaining a satisfactory level of competition.

Contracts Cost and Price

- Every procurement in excess of the Simplified Acquisition Threshold (\$150,000) must have a cost or price analysis including modifications to existing contracts. An estimate should be created before proposals are solicited.
- Profit must be negotiated as a separate element of the price for contracts I which there is no price competition and in every case where cost analysis is performed.
- Costs or prices based on estimations are only allowable to the extent that costs incurred or cost estimates included in negotiated prices are allowable if the County has requested prior approval which should include the timeframe or scope of the agreement and be submitted not less than 30 days before the requested action is set to occur.
- Adjustments to the indirect cost rates resulting from a determination of unallowable costs being included in the rate proposal may result in the reissuance of the negotiated rate agreement.
- Financial records, supporting documents, statistical records and all other records pertaining to the award must be retained for a period of three years from the date of submission of the final expenditure report, or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as reported to the Federal awarding agency or pass through entity in the case of a sub recipient. The following exceptions apply:
 - If a litigation, claim or audit is started or filed in the three-year period, records must be kept until it has been resolved
 - When notified by the Federal Agency to extend the retention

- Records for real property and equipment must be retained for three years after disposal
- If records are transferred to or maintained by the Federal awarding agency or pass through entity
- Program income transactions after the period of performance must be retained starting from the end of the County's fiscal year in which the program income is earned.
- Negotiated indirect cost rate proposals, cost allocations plans and similar reports must be retained for the three-year period from the date of submission
- Non negotiated reports must be retained for three years from the end of the fiscal year covered by the plan.

Federal Awarding Agency or Pass Through Entity Review

- The County must make available upon request the technical specifications on proposed procurements where the Federal awarding agency or pass-through believes such a review is needed to ensure the item or service is the one being proposed.
- The County must make available pre-procurement documents when:
 - Procurement procedures or operations fail to comply with standards
 - The procurement exceeds the Simplified Acquisition Threshold and is to be awarded without competition
 - The procurement specifies a "brand name"
 - The contract is to be awarded to any other than the low bidder
 - A modification changes the scope of a contract or increases the amount by more than the Simplified Acquisition Threshold
- The County may request a review to ensure compliance with the standard.
- The County may "self-certify" its procurement system; however, such certification must not limit the Federal agency's right to survey the system.

Bonding Requirements

- The County bonding policy for construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold may be accepted by the Federal awarding agency if they make the determination that the Federal interests are protected.
- Bids must contain a bid bond, certified check or other negotiable instrument equivalent to 5% of the bid as a guarantee
- Performance bonds covering 100% of the contract must be issued in the event the contractor defaults.
- Payment bonds covering 100% of the contract to ensure payment of all persons supplying labor and materials.

Requirements for Pass Through Entities

- The County may receive concurrent Federal awards as a recipient, a sub recipient and a contractor, depending on its agreements with the Federal Agency and pass through entity. A determination must be made on a case by case basis whether agreements made for distribution of program funds cast the party receiving the funds in the role of a sub recipient or a contractor.
 - Sub recipients – the County must identify:

- Name
- Entity identifier (EIN)
- Federal Award Identification Number
- Period of performance
- Amount of Federal Funds Obligated to the sub recipient
- Total amount of Federal funds obligated to the sub recipient, including the current award
- Federal award project description
- Name of the Federal awarding agency, pass through entity and contact information of awarding official of the pass through entity.
- The dollar amount of each Federal award and the CFDA number at the time of Disbursement
- Whether the award is R & D and indirect cost
- All requirements imposed by the County on the sub recipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the award.
- Any additional requirements to meet the County's own responsibility to the Federal Agency
- An approved federally recognized indirect cost rate negotiated between the sub recipient and the Federal Government, or if no rate exists, the rate negotiated between the County and the sub recipient
- A requirement that the sub recipient permit the County and auditors to have access to the sub recipients records and financials as necessary
- Appropriate terms and conditions concerning closeouts
- The County must evaluate each sub recipient's risk of noncompliance for the purpose of determining the appropriate monitoring, which may include factors such as:
 - Prior experience with same or similar sub awards
 - Previous audit results
 - Changes in personnel or systems
 - Results of the Federal Award agency monitoring – if sub recipient receives other awards
- The County should consider imposing specific conditions upon the sub recipient if appropriate
- The County should monitor the activities of the sub recipient to ensure the sub award is used for the intended purpose and goals are achieved by:
 - Monitoring financial statements and performance reports
 - Follow up on deficiencies notes through audits, review and other means.
 - Issue a Management Decision for findings pertaining to the award
- The following monitoring tools may be helpful to ensure proper accountability and compliance:
 - Providing sub recipients with training and technical assistance on program related matters
 - Performing on site reviews of the sub recipients program operations
 - Arranging for agreed upon procedure engagements
- The County should verify that every sub recipient is audited as required by Subpart F – Audit requirements set forth in 200.501

- The County should consider whether or not the sub recipients audit results, on site reviews or other monitoring indicate conditions that necessitate adjustments to the County's own records.
- Take enforcement action against non-compliant sub recipients as described in 200.338.

Contract Provisions

- The County contracts must contain the applicable provisions described in Appendix II to Part 200, Contract Provisions for Non-Federal Entity Contracts (attached).

BACKGROUND: The New York State Legislature has required that policies and procedures be adopted to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances and guard against favoritism, improvidence, extravagance, fraud and corruption, said policies and procedures are to govern all procurement of goods and services which are not required to be made pursuant to bidding requirements.

Changes to this policy were adopted in November 2019 based on recommendation from the results of the New York State Comptroller's audit in 2019 in order to maintain compliance with Title 2 of the Code of Federal Regulations, Subtitle A, Chapter II, Part 200.

Revised: 4/29/2010, 11/20/2019

Code of Federal Regulations

Title 2, Grants and Agreements (Refs & Annos)

Subtitle A, Office of Management and Budget Guidance for Grants and Agreements (Refs & Annos)

Chapter II, Office of Management and Budget Guidance (Refs & Annos)

Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Refs & Annos)

2 C.F.R. Pt. 200, App. II

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

Effective: December 26, 2014

Currentness

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable:

(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 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,

(Attachment to Policy FA 02-19A, Cont'd.)

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).

(H) 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 exclusions 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," SAM Exclusions 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.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 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.

(J) See § 200.322 Procurement of recovered materials.

Credits

[79 FR 75888, Dec. 19, 2014]

AUTHORITY: 31 U.S.C. 503

Current through August 8, 2019: 84 FR 39173.