

LAWRENCE UNIVERSITY
PROCUREMENT POLICY FOR FEDERALLY SPONSORED PROJECTS
REVISED AND ADOPTED JULY 1, 2018

PURPOSE

Federal grants are taxpayer dollars entrusted to Lawrence University for the advancement of public good. It is incumbent upon the university to make effective and thoughtful use of those funds. The purpose of this procurement policy is to ensure that purchases made with federal grant funds are carried out in a manner that upholds the university's commitment to good stewardship of the resources entrusted to it and that fulfills the requirements established by federal law and regulation.

APPLICABILITY

On December 26, 2013, the Office of Management and Budget (OMB) issued Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) to improve the effectiveness and efficiency of federal financial assistance. This "Uniform Guidance" replaces the administrative, accounting, audit rules, and principles publicized in the OMB Circulars, including A-21, A-110, and A-133. Administrative requirements and cost principles apply to new awards and to additional funding to existing awards made after December 26, 2014. Existing federal awards will continue to be governed by the terms and conditions of the federal award.

The Uniform Guidance set forth standards for use by Lawrence University and other federal grant recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable federal statutes and executive orders.

Project directors, principal investigators, and other key personnel on federal grants must comply with all applicable federal regulations, as well as any agency-specific requirements and the terms and conditions of their particular grant(s).

This policy is effective for all purchases of goods or services that are funded in part or whole by federal grant dollars or that are funded by other sources (e.g., Lawrence University funds) and are reported as cost share on a federal grant. Please note that purchases made under this policy must still comply with ordinary university procedures and channels for acquiring goods or services.

LAWRENCE UNIVERSITY RESPONSIBILITIES

The standards contained in this section do not relieve Lawrence University of the contractual responsibilities arising under its contract(s). The university is the responsible authority, without recourse to the federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such federal, state or local authority as may have proper jurisdiction. Purchases and commitments that are not in compliance with these requirements will need to be returned, cancelled, or paid for with non-federal funding sources.

CODE OF CONDUCT

No employee, officer, or agent of Lawrence University shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be

involved. Such a conflict 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 the firm selected for an award. The officers, employees, and agents of Lawrence University shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, Lawrence may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The university may take disciplinary action for violations of this code of conduct by its officers, employees, or agents.

ALLOWABLE, ALLOCABLE, AND REASONABLE

Like all expenditures made for federally sponsored projects, all purchases of goods or services must be allowable, allocable, and reasonable.

- 1) Allowable** means that the cost is permitted under the Federal Cost Principles standards set out in 2 CFR 200.403, conforms to any established limits or exclusions, and is permitted under the granting agency's rules and regulations and the specific terms and conditions of the grant. In general, costs are assumed to be allowable that are within an approved project budget that was reviewed prior to submission by a Corporate, Foundation, and Sponsored Research (CFSR) officer and was approved by the funding agency. Before incurring any sponsored project procurement costs that are in excess of budgeted amounts or for goods or services that are substantively different from, or are not included in, the approved project budget, Project Directors (PD), Principal Investigators (PI), and other project key personnel must confer with their CFSR officer to determine whether prior approval is required for the cost to be allowable.
- 2) Allocable** generally means that (1) the cost is incurred solely to advance to work under the grant or sponsored agreement. Occasionally, grant (or cost share) funds may be used for a portion of the cost of goods or services that (2) benefit both the sponsored agreement and other work of the institution, in proportions that can be approximated through use of reasonable methods, or that are (3) necessary to the overall operation of the institution and, in light of the principles provided in the Uniform Guidance, are deemed to be assignable in part to the federally sponsored project. In the case of (2) or (3), the portion of the procurement cost that is allocated to the sponsored project should be proportionate to the relative benefit. See 2 CFR 220.405 for complete details.
- 3) Reasonable** means that the expenditure passes the "prudent person test." Would a prudent person, in the prevailing circumstances at the time the procurement decision is made, take the same action with respect to the choice of item or service selected and cost for that item or service? See 2 CFR 220.404 for detailed guidance on reasonable costs. In general, purchases made in compliance with this policy and in particular with the guiding principles (below) of necessity, value, competition, and equal opportunity are assumed to be reasonable.

GUIDING PRINCIPLES: NECESSITY, VALUE, COMPETITION, AND EQUAL OPPORTUNITY

As good stewards of the federal grant funds entrusted to Lawrence University, personnel expending funds for federally sponsored projects may not purchase unnecessary goods or services. All purchases must be necessary to carry out the objectives of the federal award. Where appropriate, an analysis should be made for value engineering and for lease and purchase alternatives (e.g. cost sharing arrangements or use of surplus property) to determine which would be the most economical and practical option.

Procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Positive efforts shall be made to ensure that small businesses, minority-

owned firms, and women's business enterprises have opportunities to be included in competitions or price comparisons, and are utilized whenever possible and to the fullest extent practicable.

It is important to ensure that Lawrence University and its federally sponsored projects receive good value from goods or services procured. Some form of cost analysis or price analysis must be performed for every procurement action (regardless of size). *Cost analysis* is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability. *Price analysis* may be accomplished in various ways, including the comparison of price quotations submitted, market prices and other indicia, together with discounts.

Procurement decisions must reflect a best-value analysis. Lowest price does not necessarily represent best value, especially for professional services or for non-standardized goods. The factors contributing to that analysis (e.g., price, quality, utility of distinctive features or characteristics, qualifications, record of past performance, integrity, financial or technical resources, ability to deliver timely, whether the contractor is a small business, minority-owned firm, or women's business enterprise) will depend on the nature of the goods or service being procured, the needs of the specific sponsored project, and the size of the procurement action.

PROCUREMENT, SUSPENSION, AND DEBARMENT REQUIREMENTS

Lawrence University is prohibited from contracting with or making a sub-award to parties that are suspended or debarred or whose principals are suspended or debarred by the federal government. For purchase amounts or sub-awards of \$25,000 or more, vendors and sub-awardees must be verified that they do not appear on the Excluded Parties Listing using the search function of the System for Award Management (SAM.gov). CFSR staff will verify purchase orders of \$25,000 or more on SAM.gov prior to purchase and document findings on the Contractor Selection Form.

PROCUREMENT METHODS

Federal funds used for purchases and subawards must comply with the procurement standards and all applicable procedures and limitations as described in the Uniform Guidance, which outlines five methods of procurement. For each federal grant purchase, the CFSR officer will determine which of these five methods is applicable:

1) MICRO-PURCHASES (<\$10,000 AGGREGATE)

Personnel authorized to make purchases for federally sponsored projects may take procurement actions of less than \$10,000 without documenting contractor quotes if the price is considered reasonable, or \$2,000 in the case of acquisitions for construction contracts subject to the Davis-Bacon Act. Installment payments less than \$10,000 towards a larger purchase are not considered micro-purchases.

When practical, the university should distribute micro-purchases equitably among qualified suppliers. Personnel are expected to exercise prudence; to keep the procurement guiding principles in mind; to observe ordinary university procedures for purchase decisions and channels; and to take reasonable steps to secure cost-effective goods and services, including taking advantage of negotiated supplier contracts available to Lawrence University or other discounts.

2) SMALL PURCHASES (\$10,000 UP TO \$250,000 SIMPLIFIED ACQUISITION THRESHOLD)

Small purchases include procurement of goods or services of \$10,000 and up to the simplified acquisition threshold, which is currently \$250,000 (or as updated in 41 USC 134).

Informal purchasing procedures are acceptable, but price or rate quotes must be obtained and documented from a minimum of two contractors. These quotes can be made by email, from screen shots of websites, from copies of published price lists, through advertised pricing, by fax, or in writing; oral quotes are acceptable if other methods are not readily available or would unacceptably delay a time-sensitive procurement decision. All price or rate quotes must be documented on the Contractor Selection Form, along with a procurement justification that describes the basis for selecting the contractor.

In some situations, fewer than two quotes may be acceptable. If several qualified contractors were invited to submit quotes or proposals and only one did so, the procurement process may move forward using the available quote. Sole source procurement may occasionally be acceptable; please see the “Sole Source” section below for more information.

3) SEALED BIDS (ABOVE \$250,000 SIMPLIFIED ACQUISITION THRESHOLD)

Sealed bids may be used for purchases of goods or services over the simplified acquisition threshold, currently \$250,000. With this purchase method, formal solicitation is required, and the fixed price (lump sum or unit price) is awarded to the responsible bidder who conformed to all material terms and is the lowest in price. This method is the most common procurement method for construction contracts. Expected cost and price analysis must be done in advance for each purchase above \$250,000 (i.e. catalogued or published list price, historical or market pricing; comparison to similar purchases).

Request for proposal (RFP) bids must be obtained from at least two qualified sources. The RFP must fully define the item, service specifications, or scope of work in order for the bidder to respond properly. The description shall not contain features which unduly restrict competition. Contractor selection must be documented in writing using the Contractor Selection Form and be based on the evaluation methods written into the RFP.

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.

4) COMPETITIVE PROPOSALS (ABOVE \$250,000 SIMPLIFIED ACQUISITION THRESHOLD)

Competitive proposals may be used for purchases of goods or services over the simplified acquisition threshold, currently \$250,000, in instances where the use of sealed bids is not appropriate (e.g. skilled or professional contracts). Under this purchase method, formal solicitation, fixed-price or cost-reimbursement contracts are used. Expected cost and price analysis must be done in advance for each purchase above \$250,000 (i.e. catalogued or published list price, historical or market pricing; comparison to similar purchases).

Request for proposal (RFP) bids must be obtained from at least two qualified sources. The RFP must fully define the item or scope of work in order for the bidder to respond properly. The description shall not contain features which unduly restrict competition. The RFP must also clearly identify all evaluation factors and their relative importance in the awarding process (i.e. pricing, timing, outcome specifications, or references). Contractor selection must be documented in writing using the Contractor Selection Form and be based on the evaluation methods written into the RFP. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors.

5) SOLE SOURCE

Sole source procurement, also known as non-competitive procurement, may be appropriate when one of the following four criteria are met:

- an item is available only from one source;
- when a public emergency does not allow for the time of the competitive proposal process;
- when the federal awarding agency authorizes it;
- when the competition is deemed inadequate after a number of attempts at a competitive process.

Sole source purchase decisions must identify which of the four criteria apply to the procurement method and document information on the Contractor Selection Form that addresses justification for noncompetitive procurement (i.e. only one known source; unique source; compatibility; professional expertise; product availability, exigency, or geographic limitations).

GENERAL PROCEDURES

- 1) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.
- 2) Recipients shall, on request, make available for the federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.
 - A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.
 - The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
 - The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product.
 - The proposed award over the Simplified Acquisition Threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.
 - A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the Simplified Acquisition Threshold.
- 3) **Procurement Records.** Procurement records and files for purchases in excess of the Simplified Acquisition Threshold shall include the following at a minimum: (a) Basis for contractor selection; (b) Justification for lack of competition when competitive bids or offers are not obtained; and (c) Basis for award cost or price.
- 4) **Contract Administration.** A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

CONTRACT PROVISIONS

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts and subcontracts exceeding the Simplified Acquisition Threshold:

- 1) Contracts in excess of the Simplified Acquisition Threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- 2) All contracts in excess of the Simplified Acquisition Threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- 3) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.
 - A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - A performance bond on the part of the contractor for 100 percent 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.
 - A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
 - Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, “Surety Companies Doing Business with the United States.”
- 4) All negotiated contracts (except those for less than the Simplified Acquisition Threshold) awarded by recipients shall include a provision to the effect that the recipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- 5) All contracts, including small purchases below the Simplified Acquisition Threshold, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

APPENDIX A—CONTRACT PROVISIONS

All contracts awarded by a recipient shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339), as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), 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 shall 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 is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall 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 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 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.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued

pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 180.220) shall not be made to parties listed on the government-wide SAM.gov (which includes information formerly provided in the Excluded Parties List System), in accordance with the OMB guidelines at 2 CFR part 180 that implement E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), “Debarment and Suspension.” SAM.gov 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 E.O. 12549.