

**PROCEDURE FOR FEDERALLY-FUNDED PROCUREMENTS
HOUSTON COMMUNITY COLLEGE SYSTEM
PROCUREMENT OPERATIONS DEPARTMENT**

Note: Houston Community College has accepted the waiver and extension offered by the Department of Education for purchasing compliance with 2 CFR Part 200 regulations. Revised procurement policies and procedures will be implemented effective as of August 28, 2018.

Definition

A federally funded procurement is any purchase that is paid for with federal funds. Such purchases include items covered under the provisions of the Elementary and Secondary Education Act (as amended) Titles I and II, as well as special grant awards that the non-federal entity may have received for programs subsidized by the federal government.

Applicability and Purpose

This procedure is applicable to the Houston Community College Procurement Operations Department and is intended to assist Department personnel in achieving compliance with the regulations promulgated by federal grant awarding agencies, including but not limited to the U.S. Department of Education entitled Education Department General Administrative Regulations (“EDGAR”).

General Rules and Standards for Federally Funded Purchases

1. When using federal funds, Construction Manager-at-Risk or other Cost-Plus contracts are prohibited. Any contract utilizing unit pricing or time and materials pricing must state a “not to exceed” amount.
2. When using federal funds, P-Card transactions are prohibited unless prior determination/approval of the reasonableness of the cost can be made prior to the purchase.
3. When using federal funds, the Buyer may not utilize statutorily or administratively imposed in-State or local geographic preferences unless an applicable Federal statute expressly mandates or encourages geographic preference. The Buyer may apply an optional geographic preference for unprocessed locally grown or raised agricultural products for use in a Child Nutrition Program.
4. The non-federal entity shall take all necessary affirmative steps to assure participation by small and minority businesses, women’s business enterprises, and labor surplus area firms when possible. Affirmative steps shall include:
 - 4.1. Placing qualified small and minority businesses on solicitation lists;
 - 4.2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources;
 - 4.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;

- 4.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
 - 4.5. 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; and
 - 4.6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.
5. Buyers must follow the most restrictive rule or regulation, whether state or federal, which will depend on the contract amount as described below:
- 5.1. *Micro-Purchases.* 2 CFR Part 200 is the more restrictive rule when acquiring supplies or services, the aggregate dollar amount of which does not exceed \$10,000. 2 CFR Part 200 allows non-competitive awards for micro-purchases so long as the Buyer considers the cost reasonable. Additionally, the Buyer must attempt to distribute micro-purchases equitably among qualified suppliers to the extent practicable.
 - 5.2. *Small Purchases.* 2 CFR Part 200 is more restrictive for contracts between \$10,001 and \$49,999.99 and requires that the Buyer to obtain price or rate quotations from an adequate number of qualified sources.
 - 5.3. *Purchases between \$50,000 and \$249,999.99.* The state rules, which require the formal process of competitive procurement for purchases over \$50,000, are more restrictive for this category.
 - 5.4. *Purchases at or above \$250,000.* 2 CFR Part 200 requires competitive procurement for purchases at or above \$250,000, but the Buyer may do so according to state procurement rules. What makes 2 CFR Part 200 the most restrictive rule for this category of purchases are the requirements that the non-federal entity conduct full and open price competition unless noncompetitive proposals are permitted under Federal law and must also conduct (1) an Independent Estimate before the procurement commences; and (2) a Cost Analysis or a Price Analysis before the contract award (as further explained below).

Procedure

6. Identify the funding source of any and all incoming requisition(s). A federally funded requisition or line item will be identifiable by the three-digit fund code in the budget string. Buyers must have knowledge regarding the various fund codes and which are federally funded. The fund codes 200-379 (inclusive) indicate federally funded line items. A complete chart of funds and their descriptions may be obtained from the Accounting Department.
7. The Buyer should check to see if the item is available from government surplus and document this step to file. This can be accomplished by checking the following website: <http://www.tfc.state.tx.us/divisions/supportserv/prog/fedsurplus/>.
8. The Buyer should consider whether leasing is more practical or economical than an outright purchase and document this step to file. For example, leasing may be more practical or economical if the Buyer needs an expensive item for a relatively short period of time.

9. The Buyer may obtain the item or service from one of the Board-approved cooperative purchasing programs upon verification that the cooperative purchasing program complied with the most restrictive of the state or federal procurement rules. According to the TEA, upon verification that the cooperative purchasing program complied with the most restrictive of the state or federal procurement rules, the Buyer may purchase goods or services from the cooperative purchasing program directly without directly without any additional procurement activities or documentation. For purchases at or above \$250,000, the Buyer must still conduct an Independent Estimate before seeking quotes or proposals from the purchasing cooperative. Before entering into the contract, the Buyer should either request and review the price analysis conducted by the cooperative purchasing program or the Buyer should conduct its own price analysis.
10. The non-federal entity must maintain records sufficient to detail the history of procurement including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. In addition, the non-federal entity must document the justification for awarding any sole source contract.
11. The Buyer must assure that the selected vendor understands and will comply with the contract certifications required under Appendix II to 2 CFR Part 200.
 - 11.1. Certain types of goods for purchase will commonly appear on federally funded requisitions. These may include technology items, items with an instructional purpose such as educational software, items with an assistive purpose such as hearing or visual aids, or occasionally physical education or fine arts items. In order to be able to utilize the non-federal entity's annually recurring bid projects for such federally funded items, the bid documents must incorporate Exhibit B. Exhibit B should accompany the other standard district documents that may already be incorporated in the bid package. Proposers must understand that whenever an item is to be purchased using federal funding, Exhibit B will apply in addition to the standard district agreement and other applicable documents. Proposers must indicate their assent to the federal rules and requirements contained in Exhibit B by signing the Exhibit and including it in their proposal responses.
 - 11.2. The above modifications to the annually recurring bid projects shall take place at the time of a planned renewal option, or at the time of the next federally funded purchase under the current contract. In some instances, a Buyer may find it advantageous to cancel an existing bid project and replace it with a bid project that will be compliant with 2 CFR Part 200.
12. The non-federal entity must only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. To do so, 2 CFR Part 200 suggests that consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
13. Before making the purchase, check to assure that the desired vendor is not suspended or debarred by the federal government and document this step to file. This can be accomplished by checking website: <https://www.sam.gov/portal/SAM/#1>.

Cost or Price Analysis Procedures for Contracts at or above \$250,000

14. For contracts at or above \$150,000, 2 CFR Part 200 requires that the non-federal entity conduct an Independent Estimate before the procurement process commences. Prior to awarding a contract, either a Cost Analysis or a Price Analysis is required depending on the contract type.
15. **Independent Estimate.** The Buyer must make an Independent Estimate of the value of the goods or services in the current market prior to: (a) advertising and receiving bids or proposals; (2) seeking quotes or proposals from other governmental entities through an interlocal contract or purchasing cooperative; or (3) executing an extension or a contract modification.
 - 15.1. *Purpose.* The Independent Estimate Determination functions as a benchmark to evaluate the reasonableness of future bids, proposals, quotes, contract modifications, or contract extensions and ensures that the Buyer exercises due diligence to determine a fair and reasonable price range for the goods or services before procurement begins.
 - 15.2. *Suggested Techniques.* The level of analysis may vary from a simple budgetary estimate to a complex estimate that resembles a Cost Analysis or a Price Analysis (described below) more so than a preliminary estimate, but regardless of the level of complexity, the estimate should be an independent assessment of what the Buyer expects to pay for a particular good or service based on a reliable source such as historical payment, industry standard, or market survey.
16. After formulating the Independent Estimate but before the contract award, the Buyer must conduct either a cost analysis or a price analysis, depending on the contract type.
17. **Cost Analysis.** The Buyer should conduct a Cost Analysis whenever there is no price competition. Thus, the Buyer must engage in a Cost Analysis for federally funded purchases at \$250,000 or above if the expenditure is being made under one or more of the following categories: (a) Sole Source Purchases (as defined under TEC § 44.031(j)); (b) Emergency Procurements (as defined under TEX § 44.031(h)); (c) Competitive Bidding, Competitive Sealed Proposals, or Request for Proposals (where the solicitation is publically posted) and one bid/proposal is received; (d) Professional Services (as defined under TEX § 44.031(f) and/or Chap. 2254 of the Tex. Gov't Code) where no price competition exists prior to selection; (e) Design Build or Construction Manager-Agent; (f) Price adjustments to previous purchase orders or contracts; (g) Extensions of existing contracts past the initial term; or (h) Cost-Reimbursement Contracts.
 - 17.1. *Purpose.* The Buyer must determine whether each component of costs to be charged by the vendor is allocable, reasonable, necessary, and therefore, allowable in accordance with 2 C.F.R. Part 200, Subpart E—Cost Principles, and profit must be negotiated as a separate element.
 - 17.2. *Suggested Techniques.* When conducting a Cost Analysis, the Buyer should use as many of the following techniques as appropriate and as applicable:
 - 17.2.1. Comparison of costs proposed with actual costs previously incurred by the same vendor for the same or similar work;
 - 17.2.2. Comparison of costs proposed with actual costs of previous same or similar work performed by other vendors;

- 17.2.3. Comparison of costs proposed with previous cost estimates from the vendor or other vendors for the same or similar items or work;
- 17.2.4. Comparison of costs proposed with the Buyer's Independent Estimate Determination, so long as the Independent Estimate was determined to be allowable under 2 C.F.R. Part 200, Subpart E—Cost principles;
- 17.2.5. Comparison of costs proposed with the methods proposed by the vendor with the requirements of the solicitation, *i.e.*, whether the costs reflect the technical approach proposed and the work required;
- 17.2.6. Verification that the costs proposed conform to the appropriate set of cost principles;
- 17.2.7. Verification of the accuracy of the cost and pricing information submitted and evaluating the application of audited or pre-negotiated (e.g., by the Federal Government) indirect cost (e.g., overhead) rates, labor and fringe benefit rates, or other factors;
- 17.2.8. Verification of the accuracy of cost and pricing information proposed and evaluating the effect of vendor's current practices on future costs; or
- 17.2.9. Verification of the accuracy of the cost and pricing information submitted and evaluation of vendor's projected cost trends.

18. **Profit.** Whenever the Buyer is required to conduct a Cost Analysis, the Buyer must also negotiate profit as a separate element of the price. To establish a fair and reasonable profit, the Buyer must consider the all of the following: (a) the complexity of the work to be performed; (b) the risk borne by the contractor; (c) the contractor's investment; (d) the amount of subcontracting; (e) the quality of the contractor's record of past performance; and (e) industry profit rates in the surrounding geographical area for similar work.

19. **Price Analysis.** The Buyer should only conduct a Price Analysis if there was price competition for the contract and more than one bid or proposal was received. After the Independent Estimate Determination but before the contract award, the Buyer must conduct a Price Analysis if the expenditure is being made through one or more of the following: (a) an interlocal agreement or purchasing cooperative for goods or services, including construction services; (b) Request for Proposals (or Competitive Sealed Proposals) for goods or services, including construction services; or (c) Competitive Bidding for goods or services, including construction services.

19.1. *Purpose.* A Price Analysis involves "evaluating the total price" without analyzing the separate cost elements and functions to evaluate whether the lump sum price is fair and reasonable based on current market value or comparable products or services.

19.2. *Suggested Techniques.* When determining whether a price is fair and reasonable, the Buyer should use as many of the following techniques as appropriate and as applicable:

19.2.1. Comparison of previous non-federal entity purchase order and contract prices with the current proposed price, for the same or similar items;

19.2.2. Comparison with vendor's published price lists, market prices, pricing indexes, and discount or rebate arrangements (a vendor's quotation or correspondence does not qualify as a published price list);

19.2.3. Comparison of proposed price with Independent Estimates, which were determined to be allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles; or

19.2.4. Comparison of proposed price with prices obtained through market research for the same or similar goods or services.

20. 2 CFR § 200.318(c)(1) – The non-Federal entity must maintain written 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/her immediate family, his/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 of the non-Federal entity may **neither solicit nor accept gratuities, favors, or anything of monetary value** from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

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