

# ROWAN UNIVERSITY POLICY

**Title:** *Uniform Guidance Procurement Policy*

**Subject:** *Contracting and Purchasing*

**Policy No:**

**Applies:** *University-Wide*

**Issuing Authority:** *Senior Vice President for Finance and CFO*

**Responsible Officer:** *Senior Director of Contracting & Procurement*

**Adopted:** *10/15/2020*

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## I. PURPOSE

In accordance with Uniform Guidance, the set of rules and regulations that governs the administration of federally funded projects during its lifespan, and to the maximum extent possible, the procurement of goods and services for Rowan University of New Jersey, will be conducted in an open and competitive environment to ensure that prices paid by Rowan for those goods and services are fair and reasonable, and that procurements for Rowan University follow best in class ethical business practices.

The Uniform Guidance guidelines are meant to combine, update, and supersede the OMB Circulars and federal guidelines, including A-21, A-110, and A-133. The standards are laid out in sections 200.317-200.326 of the CFR Title 2, Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. All expenditures utilizing federal award funds are allowable in accordance with 45 CFR Part 75 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards) in combination with State regulations.

Procurements of goods and services for Rowan must conform to the standards identified in this policy which reflect applicable Federal and State laws and regulations where necessary. This Policy shall replace prior policies on this topic.

## II. ACCOUNTABILITY

At the direction of the Senior Vice President for Finance and CFO, the Senior Director of the Office of Contracting & Procurement (OCP) shall implement this policy and the deans, department chairs, department directors and users of the purchasing system, shall ensure compliance with the policy.

## III. APPLICABILITY

This policy applies to all authorized University departments and personnel who accept responsibility for using the purchasing system and who have obtained a federally funded grant, which may only be used in accordance with the policy and procedures described below.

## IV. RESOURCES

Rowan Policies:

- [University Procurement Policy](#)
- [CFR Title 2, Part 200](#)
- [University Policy-Travel and Business Expense Policy](#)
- [University Policy – Alternate Purchase Card](#)
- [University Policy – Contracts](#)
- [IRT/ITAP](#)

#### **IV. DEFINITIONS**

- A. *Bid:*** The formal submission of an offered price for the goods or services being sought by the University. A bid is submitted to the University in electronic format and opened in public at an advertised time and place. Any bidder unable to submit its bid in electronic format must first contact the University and ask for alternative methods of submission upon explanation of its inability to submit electronically. The lowest responsive, responsible bidder is awarded the contract.
- B. *Cooperative & State Contracts:*** a type of arrangement, among public entities, to agree to aggregate demand to get lower prices from selected suppliers. It is often used by government agencies to reduce costs of procurement.
- C. *Contracts:*** Contracts or agreements, or those interactions both written and verbal containing those elements that result in a contractual obligation to the University for the performance of work or the furnishing or hiring of services, materials or supplies, as distinguished from contracts of employment.
- D. *Grantee: Individual awarded the grant.***
- E. *Quotation:*** The offering of a price for goods or services being sought by the University. A quote must be written and may be rescinded by the vendor before acceptance of a contract. Requesting quotations is a less formal procedure than a request for bids. An email may act as a written quote.
- F. *Sole Source:*** A sole source purchase request cannot be considered unless it is clearly demonstrated that no other similar product and/or service can meet the department's needs. Brand preference or time issues may not be used as a reason to bypass normal requisition procedures. When a requisitioner requests a "sole source" purchase, they must complete the sole source request form (located on the OC&P website) and send it to the OC&P for approval.
- G. *Supplier:*** A person or entity that is the source of goods and services procured by the University.
- H. *Time & Material Contract:*** a contract whose cost to a Rowan University is the sum of:  
The actual cost of materials; and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- I. *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.

#### **V. POLICY**

- A.** The OC&P is under the supervision of the Senior Vice President for Finance. The Senior Vice President has designated immediate supervision to the Senior Director of Contracting and Procurement, who has day-to-day responsibility for all University purchasing and contracting and supervision of the OC&P.
- B.** The University purchasing policy does not allow employees of the University to order equipment, materials, or services without an approved purchase order and following all processes mandated with the limited exceptions of those purchases made on a Non-PO Purchase Order or with a University Purchasing Card and in accordance with those policies.

**Expenditures made without required approvals, or in violation of this policy, are unauthorized purchases. Documents will not be processed and will be returned to the employee responsible.**

**In addition, employees may be held personally liable for payment of unauthorized purchases unless they can provide a letter of justification signed by the Vice President of their Division stating why the purchase was made in violation of the process. Employees may also be subject to disciplinary action, up to and including termination in accordance with applicable policies for violations.**

- C.** All University purchasing will comply with State and Federal applicable laws and regulations in effect at the time of the purchase.

**D. Conflict of Interest**

1. The University maintains written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of federally funded contracts.
2. 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.
  - a. 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 parties indicated here-in, 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 University must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
  - b. However, the University 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 University.
3. If the University has apparent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the University must also maintain written standards of conduct covering organizational conflicts of interest.
  - a. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, Rowan University is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

**E. Duplicative Items**

The OC&P avoids acquisition of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

**F. Cooperative & State Contracts**

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the OC&P encourages the partnership of state and local inter-governmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

**G. Federal Excess & Surplus**

The OC&P encourages the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

**H. Value Engineering**

Wherever possible, OC&P uses value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

**I. Contracting**

The OC&P awards contracts 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.

1. The OC&P maintains records sufficient to detail the history of procurement. These records include the: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and/or the basis for the contract price.

**2. Time & Material**

The grantee may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.

- a. Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.
  - Therefore, each contract must have a set ceiling price that the contractor exceeds at its own risk.
  - Further, the grantee awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- 3. The OC&P, along with the grantee, are responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.
  - a. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

#### J. Competition

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

- 1. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.
- 2. Specifications cannot place unreasonable requirements on firms in order for them to qualify to do business.
- 3. Specifications cannot require unnecessary experience and excessive bonding;
- 4. Noncompetitive pricing practices between firms or between affiliated companies;
- 5. Noncompetitive contracts to consultants that are on retainer contracts.
- 6. Organizational conflicts of interest;
- 7. Specifying only a “brand name” product instead of explicitly allowing “or equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- 8. Any arbitrary action in the procurement process.
- 9. Rowan University must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical 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 is relevant and leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 10. Grantees, assisted by OC&P, must incorporate clear and accurate and descriptive specifications of the technical requirements for the material, product, or service to be procured.
  - a. Such specifications must not, in competitive procurements, contain features which unduly restrict competition. The specifications 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.
  - b. 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 identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

- c. OC&P 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.
- d. OC&P will not preclude potential bidders from qualifying during the solicitation period.

## K. Methods of Procurement

One of the following methods of procurement are mandatory:

- 1. **Procurement by Micro-Purchases:** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act).
  - a. To the extent practicable, Rowan University must distribute micro-purchases equitably among qualified suppliers.
  - b. Micro-purchases will follow all normal procurement procedures and State guidelines.
- 2. **Procurement by Small Purchase Procedures:** 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 *Simplified Acquisition Threshold*.
  - a. If small purchase procedures are used, price or rate quotations must be obtained from at least three qualified sources.

<i>Simplified Acquisition Threshold</i>
\$10,000.00 - \$34,440.00
- 3. **Procurement by sealed bids (formal advertising IFB):** Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the method for procuring construction, if the conditions in paragraph of this section apply.
  - a. **In order for sealed bidding to be feasible, the following conditions should be present:**
    - A complete, adequate, and realistic specification or purchase description is available;
    - Two or more responsible bidders are willing and able to compete effectively for the business; and
    - 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 the sealed bid procurement method is chosen, the following requirements apply:**
    - The invitation for bids will be publicly advertised, providing them sufficient response time prior to the date set for opening the bids;
    - 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;
    - All bids will be publicly opened at the time and place prescribed in the invitation for bids;
    - 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
    - Any or all bids may be rejected if there is a documented legal basis.

**4. Procurement by Competitive Proposals (RFP):** The technique of competitive proposals 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 and/or when seeking professional services.

**a. If this procurement method is used, the following requirements apply:**

- Requests for proposals (RFP) 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;
- Proposals must be solicited from an adequate number of qualified sources;
- Rowan University must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- Rowan University may 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. Procurement by Noncompetitive Proposals**

Procurement by non-competitive 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 (sole source);
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. After solicitation of a number of sources, competition is determined in-adequate.

**L. Contracting with Small, Minority, Women's Business Enterprises and Labor Surplus Area Firms**

Rowan University must take all necessary affirmative steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible.

**1. Affirmative steps must include:**

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- d. 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
- e. Encouraging the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs L.1.(a-e) of this section.

**M. Procurement of Recovered Materials**

Rowan University is a state agency and, as such, all contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The

requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **N. Contract Cost and Price**

Grantees must perform a cost or price analysis in connection with every procurement over \$250,000 including contract modifications.

1. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the grantee must make independent estimates before receiving bids or proposals.
2. The grantee must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
3. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
4. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the Rowan University under Subpart E-Cost Principles of this part. The OC&P references its own cost principles that comply with Federal cost principles.
5. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

#### **O. Federal Awarding Agency**

1. The OC&P, along with the grantee, must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.
  - a. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
2. The OC&P, along with the grantee, will make available upon request, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
  - a. The OC&P's procurement procedures or operation fails to comply with Uniform Guidance procurement standards;
  - b. 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;
  - c. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - d. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

- e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- 3. The OC&P is exempt from the pre-procurement review in paragraph (1) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
  - a. The OC&P may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
  - b. The OC&P may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the OC&P that it is complying with these standards. The OC&P must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### **P. Bonding Requirements**

For construction or facility improvement contracts or subcontracts exceeding \$150,000, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of Rowan University provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.

- 1. If such a determination has not been made, the minimum requirements must be as follows:
  - a. A bid guarantee from each bidder equivalent to five percent of the bid price or \$20,000, whichever is lower. The "bid guarantee" must consist of 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 as may be required within the time specified.
  - b. 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.
  - c. 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 law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **Q. Contract Provisions**

Rowan University's contracts contain the applicable provisions described in [Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts under Federal Awards](#)