

Marywood University

Policies and Procedures

Federal Funds Procurement Policy

Policy Statement:

This policy outlines general procurement regulations applicable to Federal Grants and Contracts that reference the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance; 2 CFR Part 200) which supersedes and combines the requirements of the Office of Management & Budget (OMB) Circulars A-21, A-50, A-87, A-89, A-102, A-122, and A-133. Uniform Guidance 2 CFR Part 215 addresses the Federal Uniform Administrative Requirements for grants and agreements with Institutions of Higher Education, Hospitals, and other non-profit Organizations.

Scope and Application

Federal, state, and local government grants and contracts usually contain specific instructions regarding laws, and regulations applicable to purchases from grant funds. Grant Directors are required to be in full compliance with all such regulations contained in and/or referred to in grant or contract agreements. They must be observed for all procurements from federal funds unless a grant agreement or contract specifically waives the requirement or if permission for waiver of a requirement is received from the grantor or sponsoring agency. In many cases, an awarding agency will issue its own set of regulations and represent that they are its implementation of 2 CFR Part 215. In such cases, the agency regulations should be followed.

Procedures:

Membership and Selections:

A. Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Consideration is to be given to possible organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage,

contractors who develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.

Awards are to be made to the vendor or bidder whose bid or offer is responsive to the solicitation and is most advantageous to the University; price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by the University. Any and all bids or offers may be rejected when it is in the University's interest to do so.

B. Screening.

The above described screening process also applies to purchases from grant funds. Project Directors, employees charged with oversight of the project and the use of funding, must avoid purchasing unnecessary items from grant funds.

C. Cost and Price Analysis.

A form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, whether or not it is allocable, and whether or not it is allowable.

D. Indirect Cost Rate.

Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

Indirect costs shall be classified within two broad categories: "Facilities" and "Administration."

"Facilities" is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable).

The University elects not to use the 10% de minimis rate. Marywood will use its federally negotiated rate unless an agency does not allow it. In those instances, the university will use the rate specified by the funding agency.

E. Lease/Purchase Option.

For all federal grants, where appropriate, an analysis is to be made of the lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government. This consideration may also be appropriate for the equipment purchases from University funds.

F. Requests for Quotations.

Solicitation for goods and services should provide the following:

1. A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features that unduly restrict competition.
2. Requirements that the bidder must fulfill and all other factors to be used in evaluating bids or proposals.
3. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
4. The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

5. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

6. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

G. Vendor Selection/ Minority Suppliers.

The University is committed to the principles of Affirmative Action and shall endeavor to apply these principles in its purchasing with the objective of fostering greater participation by, and the utilization of, small businesses, minority-owned firms, and women's business enterprises, whenever possible. The following steps shall be taken to further this goal:

1. Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
2. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
3. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
4. Encourage contracting with consortiums of small businesses, minority owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance, as appropriate, of such organization as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.
6. 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.

H. Davis Bacon Act

The Davis Bacon Act, as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract (40 U.S.C. 3141-3148). Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character (see Marywood University *Davis Bacon Act Compliance Policy*).

I. Suspension and Debarment

In certain circumstances, contracts with certain parties are restricted by a grantor's implementation of Executive Orders 12549 and 12689, "Debarment and Suspension." The University may not make purchases from vendors who are debarred or suspended from doing business on government contracts. Federal law (2 CFR 200.213) prohibits non-federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors and/or firms receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a federal agency. Contractors and firms submit the Suspension and Debarment Certification Form as well as print-outs from the SAM.gov Exclusions Database.

J. Prior Review and Approvals

The University shall, on request, make available for a Federal awarding agency, pre-award review and procurement documents, such as requests for proposals

or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

1. The University's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation 2CFR Part 200.
2. The procurement is expected to exceed the small purchase threshold fixed at 41 USC 134 (currently \$250,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
3. The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.
4. The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under sealed bid procurement.
5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

K. Procurement Records

Purchases funded by Federal grant funds must adhere to regulations found in Uniform Guidance as a condition of receiving funds and to meet annual audit compliance. The NDAA 2017 compliance supplement enacted on December 23, 2016 increased the micro-purchase threshold to \$10,000.

L. Methods of Procurement.

1. Micro Purchases-the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000.
2. Small Purchase- the acquisition of supplies, services, or equipment in the range of \$10,001 to \$250,000. Price or rate quotations must be obtained from an adequate number or qualified sources prior to making a purchase.
3. Sealed bids-For acquisitions costing more than \$250,000, bids are publicly solicited, and a firm fixed price contract is awarded to the responsible bidder whose bid is the lowest price.

4. Competitive proposals- For acquisitions costing more than \$250,000, conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program with price and other factors considered.

5. Noncompetitive proposals- Procurement through solicitation of a proposal from only one source. A waiver must be granted by submitting the Sole Source Justification Form.

The University will follow the Uniform Guidance 200.320 Methods of Procurement for additional guidance on these matters.

The Project/ Program Directors, those charged with the oversight of spending the funds, must follow the following guidelines.

Marywood University will not require quotes for purchases of \$10,000 or less. If the Project/ Program Directors are uncertain as to whether a purchase qualifies as a micro purchase or small purchase, they must contact the Grant Accountant or Assistant Provost for Research and Sponsored Programs prior to making the purchase. Installment payments less than \$10,000 towards a total purchase price greater than \$10,000 do not count as micro purchases.

For purchases between \$10,001 and \$250,000, Project Directors will need to submit a purchase order documenting at least three (3) price quotes and the basis for vendor selection prior to making a purchase. Documentation needs to be in writing from the vendors and can include screen shots from websites, copies of published price lists and advertised pricing in established magazines or journals

For purchases greater than \$250,000, Project Directors must contact the Fiscal Services Department for assistance with the formal bid process. The Fixed Asset and Grant Accountant will work collaboratively with the Project Director to facilitate this process and meet all the federal requirements. It is important, therefore, that the Project Director communicate their plans to the Grant Accountant or Assistant Provost for Research and Sponsored Programs for major purchases as early as possible so there will be reasonable time to accomplish the bidding procedure.

M. Sole Source Justification Form

There may be times when competitive bids are not appropriate and the requirement for obtaining them is waived. For an exception to be valid, a clear statement of justification for waiving the competitive bidding process must be submitted in writing for approval by completing the Sole Source Justification Form.

Situations that would justify purchases without the competitive bid process are:

- The supplier is obviously a sole source for the item.
- There is an undeniable compatibility requirement. The item must be compatible with existing equipment or the purchase is an upgrade to existing equipment/software.
- There has been an unpredictable emergency and there is no time to bid. Examples: Human life, health or the University property is in jeopardy.
- Repairs are immediately needed for equipment where delay will lead to a higher expense.
- Subcontracts whereby the agreement to work with another individual or institution was written into the grant award.

N. Equipment Acquired with Federal Funding

It is the policy of the University that equipment acquired with Federal funding is managed in accordance with Federal regulations, sponsor requirements, and University policy (*Safeguards and Maintenance of Federally Funded Equipment*). The management of equipment acquired with Federal funding at the University is an integral process supported by all Finance and Administration, Purchasing, Operations, departments, and schools of the University.

O. Procurement Instruments.

The usual procurement instrument used by the University is an official Marywood University Purchase Order. The Vice President for Finance and Administration may approve other procurement contracts/forms from time to time as appropriate. In no case may "cost-plus-a-percentage-of cost" or "percentage of construction cost" methods of contracting be used.

P. Contract Administration.

Whenever a contract or subcontract or similar agreement is entered into for a procurement to be charged to a federal grant or contract held by the University, the Grant Director is responsible for monitoring and documenting contractor performance.

In some cases, specific contract provisions may be required. Specific requirements for this area are stated in 2CFR Part 200 (200.319).

Q. U.S. Department of Education Grants.

Special procurement regulations for grants from the U.S. Department of Education may differ in some respects from those set forth. Most procurement regulations for these grants appear in “Education Department General Administrative Regulations” (EDGAR). Grant Directors for such grants must carefully examine regulations received with such grants and EDGAR. Assistance from the Fiscal Services Office is available in this regard.

R. Other Grant and Contract Considerations.

Project Directors are responsible for determining which of the provisions described herein are applicable to the grants. Some grantors, such as the National Science Foundation, U.S. Department of Education, Air Force Office of Scientific Research, and other federal agencies, issue specific guidelines implementing CFR 200 regulations. Such guidelines may require variations of the regulations. Questions about the applicability of regulations to specific grants and contracts should be directed to the Director of Fiscal Services before a purchase transaction if there is any doubt about applicability.

S. Audit Requirements

The University is required to maintain internal control over Federal programs to provide reasonable assurance that the University is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

Therefore, employees administering Federal Funds must comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs. Documentation of compliance must be submitted to the

Grants and Fixed Asset Accountant in the Fiscal Services Office no later than July of any given year.

T. Other Important Information.

Any questions should be directed to the Grants and Fixed Asset Accountant in the Fiscal Services Office or the Assistant Vice President for Research and Sponsored Programs in the Office of Research and Sponsored Programs.

Suspension and Debarment Certification form.

[SAM.gov](https://sam.gov) Exclusions Data Base.

Policy History:

05/12/2023: The President approved the establishment of this policy as recommended by the Policy Committee of the University at their May 12, 2023 meeting.

03/2/2024: The President approved revisions to this policy as recommended by the Policy Committee of the University at their March 1, 2024 meeting.

12/16/2024: The President approved revisions to this policy as recommended by the Policy Committee of the University at their December 13, 2024 meeting.

Related Policies:

Davis-Bacon Act Compliance Policy

Safeguards and Maintenance of Federally Funded

Award Management and Financial Administration for Federally Funded Sponsored Projects Policy

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Secretary of the University and General Counsel**