

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, 23-13

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 latest Herkimer County Purchasing Policy adopted February 6, 2023.

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. This policy was updated again in 2024 to reference the latest County purchasing policy.

Revised: 4/29/2010, 11/20/2019, 4/22/2024