THE COLLEGE OF WOOSTER

Policy: **Procurement Policy for Government Grant Funded Purchases**

Effective: August 13, 2020

Source: VPFB

Purpose: The purpose of this policy is to ensure that goods and services purchased for government grants comply with policies of both the grantor agency and The College of Wooster.

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1. **Scope**

This policy applies to Principal Investigators (PIs), Project Directors and any designees ("buyer") who make purchases using government grants. **This policy is not applicable to the general purchases of the College.** It is strongly recommended that PIs familiarize themselves with these requirements in advance of any expenditure.

2. **Responsibility**

The buyer is responsible for determining whether a purchase is allowable and necessary under the terms of the government grant and will ensure purchases are in accordance with this policy. The Controller's Office will serve as the final repository for purchase transaction records for government grants.

3. **Code of Conduct**

As representatives of the College, all employees (faculty and staff) are expected to conduct themselves in a professional and ethical manner, maintaining high standards of integrity, using good judgment and complying with the College's Conflict of Interest Policy for Government Grants. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside the campus community.

4. **Conflict of Interest**

a. Exhibit A – Financial Conflict of Interest, PHS (Faculty and PIs)
b. Exhibit B – Financial Conflict of Interest, Non-PHS (Faculty and PIs)
c. Exhibit C – Conflict of Interest Policy for Board Members and Senior Administrators
d. Additionally, all vendors are required to provide a Conflict of Interest Statement as part of their proposal response in the bidding process.

5. **Overview**

To promote compliance with government regulations, the College requires buyers to perform a cost and pricing analysis, which shall be documented in the procurement files in connection with every procurement action. Price analysis may be done in various ways, including comparison of price quotations submitted, market prices, discounts, etc. Buyers shall avoid purchasing unnecessary or

duplicative items. All vendor bids and quotations must be evaluated on the basis of product quality, technical compliance with specifications, total cost, and the vendor's acceptance of the College's terms and conditions. The vendor selection process for goods and services valued at $5,000_or greater must be documented and stored as part of the transaction record. All prequalified lists of persons, firms, or products which are used in acquiring goods and services should be current and include enough qualified sources to ensure maximum open and free competition. The College will not preclude potential bidders from qualifying during the solicitation period.

The procurement process must comply with policies of both The College of Wooster and the grantor agency. When policies disagree, the most restrictive take precedence.

6. **Vendor Selection and Bidding Requirements**

Buyers should consider the following before making a vendor selection:

a. Does the vendor provide the best mix of quality, service and price for the specified need? Government regulations require that the lowest price have priority, unless quality, service or delivery time takes priority as to need.
b. Does the vendor reside and produce most of its products and/or services in the United States? To the greatest extent practicable, The College of Wooster will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.
c. Does the vendor qualify as a small, disadvantaged, minority or women-owned business? Qualifying vendors should be given preference to the extent practical and economically feasible. Affirmative steps to be considered during the bidding phase include:
    i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    iii. 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;
    iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
    v. 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
    vi. Requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
d. Does the vendor have a conflict of interest with anyone connected with the grant in accordance with The College of Wooster's policy on Conflict of Interest as described in Section 4 of this document?
e. Is the vendor prohibited? Procuring covered telecommunications equipment, services, or systems provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) with federal grant dollars is prohibited, according to 2 CRF 200.216.

The level of bidding required and bid documentation to be submitted to the Procurement Office and approved by the Business Office, is determined by the dollar amount of the purchase. The type of procuring instruments used shall be determined by the College but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved.

All procurement transactions shall be conducted to the maximum extent practical, in a manner providing full and open competition. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order to be evaluated by the College. The College shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

	Purchases <$5,000	**Between $5,000 and $10,000**	**> $10,000**
Formal bid process required?*	No	Yes	Yes
Acceptable forms of bids	N/A	verbal, published catalogues, written	written only
Minimum number of bids required	N/A	3	3
Submit bid documentation to the Purchasing Office	No	Yes	Yes
Complete a Vendor Selection Form	not required	Yes	Yes
Analyze lease vs. buy options	not required	not required	Yes

7. Micro-purchases

Micro-purchases are the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold ($5,000 according to College policy supported by 41 USC 1902, $2,000 in the case of acquisitions for construction subject to the Davis Bacon Act). Formal documentation of vendor selection is not required. Buyers are expected to conduct an informal cost/price analysis and select the vendor offering the best mix of quality, service and price for the specified need. Reasonable efforts shall be made to ensure fair and competitive pricing. To the extent practicable, the College shall distribute micro-purchases equitably among qualified suppliers. Securing a price comparison, however, shall be strongly encouraged when beneficial to the College.

8. Small Purchases

Solicitations for goods and services shall provide the following:

a. A clear and accurate description of the technical requirements for the material, product, or service desired. The description shall not be designed to limit competitive solicitation from multiple vendors.
b. Requirements that the bidder must fulfill and all other factors to be used in evaluating bids and proposals.
c. A detailed statement describing the source of the funds (Federal, State of Ohio, awarding agency, pass-through information, grant identification number).
d. A description of the technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

e. The specific features of "brand name or equal" descriptions that bidders are required to meet.
f. To the extent practical, that products and service be dimensioned in the metric system of measurement.
g. Preference, to the extent practical and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

For purchases from $5,000 to $10,000

A minimum of three (3) bids, written or verbal, are required. Each vendor must be provided with the same precise and accurate description of the specifications and technical requirements for the item or service. Web price lists and catalogue listings can be considered verbal bids.

Buyers must complete a **Vendor Selection Form**. A copy of the completed form must be attached to the selected vendor's invoice and submitted to the Controller's Office for payment. The College shall document the technical evaluations of the proposals received, including the basis for the award cost or price, any justification for lack of competition when competitive bids or offers are not obtained, and the selection of recipients, and basis therein, in written form.

For purchases $10,000 and over

A minimum of three (3) **written** bids are required. Each vendor must be provided with the same precise and accurate description of the specifications and technical requirements for the item or service. Written bids may be received by mail, fax or email and should be signed/e-mailed by an authorized representative of the vendor. See Competitive Bids below.

Buyers must complete a **Vendor Selection Form**. A copy of the completed form and all written bids must be attached to the selected vendor's invoice and submitted to the Controller's Office for payment. The College shall document the technical evaluations of the proposals received, including the basis for the award cost or price, any justification for lack of competition when competitive bids or offers are not obtained, and the selection of recipients, and basis therein, in written form.

When lease options are available, an analysis of the lease versus buy option must be performed to determine which alternative would be the most economical and practical form of procurement. The Controller will assist buyers with a lease/buy analysis upon request.

9. Sealed Bids

Sealed Bids are 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 preferred method for procuring construction, if the following conditions apply:

a. A complete, adequate, and realistic specification or purchase description is available;
b. Two or more responsible bidders are willing and able to compete effectively for the business; and

c. 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.

If sealed bids are used, the following requirements apply:

a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening bids;

b. 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;
c. All bids will be opened at the time and place prescribed in the invitation for bids;
d. 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
e. Any or all bids may be rejected if there is a sound documented reason.

10. **Competitive Bids**

Competitive Bids are 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. For competitive bids, the following requirements apply:

a. Requests for proposals must be developed and identify all evaluation factors and their relative importance;
b. Proposals must be solicited from an adequate number of qualified sources;
c. The College shall document all technical evaluations of the proposals received and for selecting recipients;
d. Contract shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
e. The College 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.

11. **Non-Competitive Vendor Selection**

Occasionally, a PI is unable or chooses not to competitively bid the requirements. These situations are characterized as sole or single source transactions.

Sole Source: No other vendor capable of fully meeting the requirements exists.

*Single Source***:** Alternative vendors exist in the competitive market, but the buyer chooses to solicit a bid from only one particular vendor because of technical requirements (precision, reliability) or past performance by other vendors (poor service, availability of parts).

Emergency Procurement: In the case that the requirement of a product or service does not permit a delay resulting from competitive solicitation, an emergency procurement may be necessary. At the next reasonable opportunity, the standard paperwork should be submitted to the Office of Procurement.

PI should seek approval from the granting agency prior to making a sole or single source purchase. In addition, the PI must complete the **Vendor Selection Form** if the purchase is $5,000 or greater, and written documentation should be maintained in the procurement files providing the justification for the sole or single source selection.

12. Contract Administration

a. The College shall evaluate contractor conformance with the terms, conditions, and specifications of the contract to ensure adequate and timely follow-up of all purchases and document whether contractors have met the terms, conditions, and specifications of the contract.
b. 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.
c. The College shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold ($150,000) including contract modifications.
d. The College 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.
e. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimated included in negotiated prices would be allowable for the non-Federal entity under 2 CFR 200, Subpart E.
f. 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.
g. All contracts in excess of $10,000 shall contain suitable provisions for termination, including the manner by which termination shall be affected and the basis for the settlement. The contract will also state under which conditions the contract may be terminated for default as well as conditions where it may be terminated because of circumstances beyond control of the contractor.
h. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
i. Except as otherwise required by statute, an award that requires the contracting/subcontracting for construction of facility improvements shall follow the College's requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract/subcontract exceeds $100,000. The Federal awarding agency may accept the policy/requirements of the College in contracts exceeding $100,000 if a determination has been made that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
    i. A bid guarantee from each bidder equivalent to five percent of the bid price.
    ii. A performance bond on the part of the contractor for 100 percent of the contract price.
    iii. A payment bond on the part of the contractor for 100 percent of the contract price.

13. Contract Provisions

When entering into a contract or subcontract, the College shall include provisions to define a sound and complete agreement. The following provisions will also apply:

a. **Debarment and Suspension** (Executive Orders 12549 and 12698) - Federal Executive Orders 12549 and 12689 prohibit sub-awards, contracts and purchase orders with certain parties who are debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Federal agencies have issued regulations regarding the implementation of these Orders, and it is the responsibility of each Buyer to understand and follow the regulations of the grantor agency. Buyers shall use the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion when requesting bids for purchases in excess of the grantor's small purchase threshold (generally $25,000). The Excluded Parties List System (EPLS) in the System for Award Management (SAM) must be checked before issuing a purchase order or contract for amounts in excess of the grantor's small purchase threshold. (The small purchase threshold applies to an entire contract, not to separate invoice amounts.) The signed certification or printed results from the EPLS must be attached to the vendor's invoice when it is submitted to Accounts Payable. Any transaction proposed with an entity or individual that is debarred, suspended, or proposed for debarment must be approved in advance by the grantor.

b. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity."

c. **Davis-Bacon Act,** as amended (40 U.S.C. 3141-3148). When required by federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The College must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The College must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145). As supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors in Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that every contractor or sub-recipient must 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 or she is otherwise entitled. The College must report all suspected or reported violations to the Federal awarding agency.

d. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics and laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must 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 one and a half times the basic rate of pay for all hours worked in excess

of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work is 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.

e. **Rights to Inventions Made Under a Contract or Agreement**. If the Federal award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 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.

f. **Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended – Contracts and sub-grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

g. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352) – Contractors that apply or bid for an award exceeding $100,000 must 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 an agency, 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 must 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 non-Federal award.

Please contact the Office of Procurement or the Controller with questions.