

High Point University's Office of Research Administration and Sponsored Programs Federal Purchasing Policy

This purchasing (also known as "procurement") policy was developed to comply with Title 2, Subtitle A, Chapter II, Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. This policy applies to all federally funded awards, both direct awards and pass-through awards managed by the Office of Research Administration and Sponsored Programs (RASP). It does not apply to any other RASP administered projects. This policy supplants the HPU Purchasing Policy, as pertaining to federally funded awards purchasing activities.

In accordance with §200.324(b)(2), HPU self-certifies that its procurement system meets the requirements as provided in the Procurement Standards of §Subpart D of Title 2, Subtitle A, Chapter II, Part 200.

1. General Procurement Standards (200.318)

- a. Conflicts of Interest
 - i. Individual: No employee, officer, or agent may participate in the selection, award, or administration of contracts supported by federal funds if there exists a real or apparent conflict of interest. *A conflict of interest is defined as when an 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 herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.* Standards of conduct and disciplinary procedures are more fully defined in the HPU Purchasing Policy.
 - ii. Organizational: If HPU creates or acquires a parent, affiliate, or subsidiary entity that provides products or services to HPU, an organizational specific conflict of interest management plan shall be developed. *An organizational conflict of interest is defined as when HPU is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization due to a relationship with a parent, affiliate, or subsidiary entity.*
- b. Procurers should avoid purchasing duplicative or unnecessary items.
- c. Consideration should be given to consolidating or breaking out procurements to obtain the most cost-effective pricing.
- d. Procurers are encouraged to consider using Federal excess and surplus property when reasonably available when it meets the total requirement and when it would reduce the true total costs.
- e. Procurers are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to reduce costs.
- f. Subawards and contracts funded with Federal funds shall not be issued to those contractors who are debarred, suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. A listing of those entities that are not allowed to do business with the Federal government can be found at <https://www.sam.gov/>. Click on "Search Records" and click on "ADVANCED SEARCH-EXCLUSION" to ensure that the chosen contractor can receive Federal flow-through funds.
- g. HPU's online procurement system, Unimarket, managed by the HPU Manager of Contracts and Procurement, will be used to maintain procurement documentation that details the rationale

for method of procurement, contract type, contractor selection or rejection, and the basis for the contract type.

- h. Time and material contracts are prohibited unless approved in advance by the Director of Research Administration and Sponsored Programs. If approved, the Director shall provide further documentation to justify the exception.

2. Competition (200.319)

- a. While price will always be a consideration, lowest price shall not be the sole factor in awardee selection. Selection will be based upon best overall value to HPU. In addition to price, the procurer may consider value and quality factors in his/her decision, including but not limited to, delivery, maintenance, warranty, product and service quality, useful life, environmental and energy efficiency, and personnel qualification. The procurer shall document the value and quality factors considered in their selection.
- b. In cases where the procurer purchases products or services through a term contract or similar vehicle, such contractor pricing was established through a competitive process and as a result, these purchases are considered to be a competitive purchase. No further competition is required.
- c. Notwithstanding North Carolina licensing laws, selection of contractors under Federal funded awards based solely on a geographic preference is prohibited, except as provided by Federal regulation.
- d. All procurement transactions shall, to the maximum extent possible, provide for full and open competition. It is forbidden in the development of bid invitations or request for proposals to:
 - i. Place unreasonable requirements on firms to qualify to do business;
 - ii. Require unnecessary experience or excessive bonding;
 - iii. Allow noncompetitive pricing practices between affiliated entities;
 - iv. Allow noncompetitive contracts to consultants that are on retainers;
 - v. Not mitigate or manage organizational conflicts of interest;
 - vi. Specify "brand name" products without allowing for the use of "equal to" products/services; and
 - vii. Use other arbitrary practices.
- e. All solicitations must:
 - i. Incorporate a clear and accurate description of the requirements for the material, product or service to be procured;
 - ii. Identify all offeror requirements; and
 - iii. Document evaluation factors for selection of best overall value.
- f. Prequalified bidders lists are not maintained by HPU.

3. Procurement Methods (200.320)

- a. There are three levels of purchasing:
 - i. *Micro-purchases*: Procurements less than \$3,000. To the extent practicable, procurers should distribute these purchases equally to qualified firms. If the purchaser considers the price to be reasonable, i.e. what a prudent person would pay, no competitive solicitation is required.
 - ii. *Small Purchases*: Procurements from \$3,000 to \$150,000. Procurers shall solicit two or more offers, price or rate quotations from qualified offerors. Procurers shall maintain sufficient documentation of his/her efforts to solicit said offerors. Purchase is awarded based upon best overall value.
 - iii. *Standard Purchases*: Procurements from \$150,000 and above.

1. *Sealed Bids*: Procurers shall not use sealed bidding procedures unless approved in advance by the Director of Research Administration and Sponsored Programs. If approved, further policy documentation will be provided.
2. *Competitive Proposals*: Procurers may use competitive proposals to acquire goods and services above the \$150,000 threshold. HPU will publicize the opportunity through the RASP website or other method. Procurers will seek two or more qualified contractors. Each request for proposal (RFP) must have a written method for conducting technical evaluations and selecting the winning contractor. As provided in §2.a, procurers shall consider value and quality in addition to price in contractor selection.
3. *Noncompetitive proposals*: Procurement by noncompetitive proposals (a.k.a. sole source procurement) may only be used when the circumstances below apply. Documentation of the circumstances is required.
 - a. The item is available from only a single source;
 - b. A public exigency or emergency for the requirement will not permit a delay resulting from a competitive competition;
 - c. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive proposal in response to a written HPU request; or
 - d. After solicitation of a number of sources, competition is determined inadequate.

4. Contract Cost and Price (200.323)

- a. In all Standard Purchases, as defined in §3.a.iii, the procurer must perform an independent cost or price analysis before receiving bids or proposals.
- b. In all Standard Purchases, as defined in §3.a.iii, the procurer must negotiate profit as a separate element of the price. In determining reasonable profit, consideration must be given to the:
 - i. Work complexity,
 - ii. Contractor risk,
 - iii. Contractor investment,
 - iv. Subcontracting efforts,
 - v. Past performance, and
 - vi. Industry profit rates for the surrounding area for similar work.
- c. In all cases, costs or prices in any resulting procurement must be allowable under §Subpart E of Title 2, Subtitle A, Chapter II, Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

5. Contracting with small and minority businesses, women's business enterprises and labor surplus area firms (200.321)

- a. When possible, procurers should seek out qualified small and minority businesses and women's business enterprises.
 - i. Qualified lists of small and minority businesses and women's business enterprises can be found at:
 - A. State of North Carolina's VendorLink Search:
<https://www.ips.state.nc.us/Vendor/SearchVendor.aspx>
-Select "Yes" under the dropdown selection for "HUB Certification" and "Small Business"
 - B. Federal Government's System for Award Management Advanced Entity Search:
<https://www.sam.gov/>
 1. Click on the "Search Records" button
 2. Click on the "ADVANCED SEARCH – ENTITY" button
 3. Check the box for "Socio-Economic Status" and choose the boxes as needed. Women Owned Small Business, Self-Certified Small Disadvantaged Business, and SBA Certified 8A Program Participant are good starting points.
- b. When economically feasible, procurers should divide requirement into smaller tasks or quantities to permit maximum small and minority businesses and women's business enterprise participation.
- c. When appropriate, establish delivery schedules that encourage small and minority businesses and women's business enterprise participation.
- d. When appropriate use the services and assistance of agencies that advocate for small and minority businesses.
- e. Insert §5.a-d in all HPU subcontracts above the Simplified Acquisition Threshold in effect at the time of issuance.

6. Federal Awarding Agency or Pass-through Entity Review (200.324)

- a. As self-certified in the preamble to this policy, this policy meets the requirements of §200.324 and HPU is therefore exempt from the pre-procurement review in paragraph (b) of said section.
- b. HPU shall provide this policy and referenced documentation to a Federal agency or pass-through entity as evidence of HPU's compliance.

7. Bonding Requirements (200.325)

- a. In cases of construction or facility improvement contracts exceeding the Simplified Acquisition Threshold, the procurer shall determine whether the Federal agency or pass-through entity will accept HPU's bonding requirements. If not, the minimum requirement is:
 - i. A bid guarantee from each bidder equivalent to five percent of the bid price. The guarantee must consist of a firm commitment such as a bid bond, certified check, or other accompanying instrument that commits the bidder to execute such contractual documents that are required upon acceptance of its bid.
 - ii. A performance bond on part of the contractor for 100 percent of the contract price.
 - iii. A payment bond for 100 percent of the contract price.

8. Contract Provisions (200.326)

- a. HPU shall insert the contract provisions found in Appendix II to Part 200-Contract Provisions for non-Federal Entity Contracts Under Federal Awards.
- b. Current below as of 8/24/2015
- c. The current provisions can be found at: http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=4e84f69382b3d1422ad60ca9f1d993be&ty=HTML&h=L&n=2y1.1.2.2.1&r=PART#ap2.1.200_1521.ii

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) 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” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) 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 non-Federal entity 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 non-Federal entity 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 on Public Building or Public Work Financed in Whole or in

Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient 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 non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) 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 or 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 in 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.

(F) 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 subrecipient 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 subrecipient 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.

(G) 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 subgrants 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).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) 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 any agency, a member of Congress, officer or employee of Congress, or an employee of 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.

(J) A non-Federal entity that is a state agency or agency of a political subdivision of a state and its 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 during 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.

Appendix A

Federal Award/Pass-Through Procurement Documentation Form

Instructions: Complete this form and attach it to the Unimarket Payment Request. Contact the Director of Research Administration and Sponsored Programs for further assistance rasp@highpoint.edu.

1. Item(s): _____

2. Procurement Amount:

- Less than \$3,000 (Micro purchases)
 - \$3,001 through \$150,000 (Small purchases)
 - \$150,001+ (Standard Purchase):
 - Sealed Bid: (Requires RASP prior approval for use)
 - Fixed Price, Cost Reimbursement, or Other
 - Competitive Proposals:
 - Fixed Price, Cost Reimbursement, or Other
 - Non-competitive Proposal (sole source procurement):
 - Fixed Price, Cost Reimbursement, or Other
- Rationale for use:
- Available only from a single source
 - Public exigency/emergency
 - Prior approval from Federal agency or pass-through entity
 - Inadequate competition following

3. Contractor Selection Rationale:

Best Overall Value/Quality (check all that apply)

- Reasonable Price
 - Delivery
 - Maintenance
 - Useful life
 - Personnel qualification
 - Other: _____
 - _____
 - _____
 - _____
- Product/service quality
 - Warranty
 - Environmental/energy efficiency

4. Basis for Contract Selection:

Price Competition Term contract Similar to a recent purchase(s)
 Other: _____ HPU Cost Analysis (attached)

Certification: *I certify that I have no conflicts of interest in the selection of this contractor as defined in Research Administration and Sponsored Programs Purchasing Policy. Furthermore, I hold that the contractor chosen herein possesses the ability to perform successfully under the agreement terms.*

Name: _____ Signature: _____ Date: _____

Appendix B

HPU Cost Analysis Form

Instructions: Use this form to perform a cost and price analysis for all federal or federal pass-through procurements that are in excess of \$150,001 for each offeror.

1. Offeror Information:

Offeror Name: _____

Total Offeror Cost: \$ _____

HPU Proposal Number Reference: _____

2. Cost Analysis:

a. Are the costs reasonable?

Yes, No, or Partially:

Reasonable is defined as a cost that is:

- i. *Allowable*. The applicable cost principles (see section below) will usually state either a type of cost is allowable or not.
- i. *Allocable*. This means that the costs are logically related to, or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract.
- ii. *Reasonable*. This term is generally defined as what a prudent business would pay in a competitive marketplace. A cost can be allowable and allocable, and still not be what a prudent businessperson would pay (e.g., first class airfare).

Notes:

b. Are the costs necessary?

Yes, No, or Partially:

Are the costs necessary to accomplish the work? Direct cost elements should be necessary to perform work. A cost may be allowable under the cost principles and even allocable to the type of work to be performed, *but* still not be necessary for the specific contract.

Notes:

c. Are pre-negotiated rates used?

Yes, No, or Partially:

Does the offeror use audited or pre-negotiated indirect cost (e.g., overhead) rates, labor and fringe benefit rates, or other factors.

Notes:

d. Can the offeror contain costs from escalating?

Yes, No, or Unknown:

Does the offeror have a track record of containing costs?

Notes:

e. Are cost changes likely?

Yes No, or Unknown:

Is there any indication that his/her costs are likely to increase or decrease over the life of the contract?

Notes:

3. Cost Comparison:

If possible, after completing the cost analysis, compare:

- i. The offeror's costs with actual costs previously incurred by the same offeror for the same or similar work. If it is a repetitive type of work or service, how much has it cost in the past. Apply any appropriate inflation factors for past work.
- ii. Actual costs of previous the same or similar work performed by other contractors.
- iii. Previous cost estimates from the offeror or other offerors for the same or similar items.
- iv. The methods proposed by the offeror with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed and the work required?).

4. Overall Contractor Analysis:

Yes or No: Are the costs provided in the offeror's proposal acceptable?

5. Signature and Date:

Analyzer Name: _____

Analyzer Signature: _____

Date of Analysis: ___/___/___

Appendix C Federal Award/Pass-Through Procurement Decision Tree

