

# Procurement Policy for Federal Grant Awards

# Delta College Procurement Policy for Federal Grant Awards

## **1.0 Purpose**

The purpose of this policy is to ensure that goods and services purchased for the performance of a federal grant award are obtained in a cost-effective manner and in compliance with federal regulations. Procurement of all goods and services under a Federal award shall be made in compliance with Federal, State, local, and tribal laws and regulations, including College policies.

## **2.0 Scope**

This policy applies to procurements using federal grant awards.

## **3.0 General Procurement Standards**

### 3.1 Code of Conduct

As representatives of Delta College (herein "College"), all employees, officers, and agents are expected to conduct themselves in a professional and ethical manner, maintaining high standards of integrity and the use of good judgment. Employees, officers, and agents are expected to be principled in their business interactions and act in good faith with individuals both inside and outside the College.

The following Code of Conduct shall govern the performance, behavior, and actions of College employees, officers, or agents who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts:

- a) No employee, officer, or agent of the College shall participate in the selection, award, or administration of contracts supported by a federal award if a conflict of interest is real or apparent.
- b) Such a conflict of interest would arise when any employee, officer, or agent of the College, any member of his or her immediate family, his or her partner, or an organization which employs, or 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 the contract.
- c) The College's employees, officers, and agents shall neither solicit nor accept gratuities, favors, gifts, consulting fees, trips, or anything having a monetary value in excess of twenty-five dollars (\$25.00) from a vendor, potential vendor, from the family of employees of a vendor, contractors, or parties to subcontracts.
- d) All employees, officers, and agents of the College shall adhere to the College's Conflict of Interest Policy.

- e) Disciplinary measures for violations of the Code of Conduct by employees, officers, or agents who are engaged in any aspect of procurement, including, but not limited, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts could lead to disciplinary measures, up to and including possible termination of employment.

3.2 Proper oversight must be maintained to ensure that contractors perform in accordance with the terms, conditions, and specifications of the College's contracts or purchase orders.

3.3 Acquisition of unnecessary or duplicative items must be avoided. Consideration should be given to consolidating or dividing procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

3.4 To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, the College shall enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

3.5 Procuring federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs may be utilized.

3.6 Value engineering clauses may be used in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. 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.

3.7 Contracts shall only be awarded 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.

The College is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. The College will not award, subaward, or contract with such parties. The College can confirm that a party is not debarred, suspended, or otherwise excluded by checking the federal government's System for Award Management website at [www.sam.gov](http://www.sam.gov).

3.8 Records will be maintained sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Business Services/Facilities Management will be the repository for said records and shall be maintained for a period of not less than seven (7) years.

3.9 Time and material type contracts (open-ended) may be used only after a determination that no other contract is suitable. Time and material type contract means a contract where the cost to the College 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. Each time a material contract will set a ceiling price that the contractor exceeds at its own risk. A higher degree of oversight is required in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

3.10 The College alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims (collectively, the "Protests.>").

The requirements and procedures for Protests are governed by relevant provisions in the Request for Proposals or the individual bid specification package. If no such provisions exist, a Protest must be received by the College Director of Business Services within 3 calendar days of when the allegedly aggrieved party knew or should have known of the act, omission, or condition on which the Protest is based. The College Director of Business Services will render a decision within 5 calendar days of receiving the Protest.

Failure to file a written Protest within these time periods will constitute a waiver of that Protest by the allegedly aggrieved party.

These standards do not relieve the College of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of the College unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

#### **4.0 Competition**

4.1 All procurement transactions must be conducted in a manner providing full and open competition. 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 will be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- a) Placing unreasonable requirements on firms in order for them to qualify to do business;
- b) Requiring unnecessary experience and excessive bonding;
- c) Noncompetitive pricing practices between firms or between affiliated companies;
- d) Noncompetitive contracts to consultants that are on retainer contracts;

e) Organizational conflicts of interest;

f) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement; and

g) Any arbitrary action in the procurement process.

4.2 Procurements shall be conducted 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 leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

4.3 All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description 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. Detailed product specifications should be avoided if at all possible. 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.

4.4 Solicitations shall identify all the requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

4.5 All prequalified lists of persons, firms, or products which are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and free competition. Also, potential bidders shall not be precluded from qualifying during the solicitation period.

## **5.0 Methods of Procurement**

One of the following procurement methods shall be used:

### **5.1 Procurement of Micro-purchases**

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the Micro-Purchase Threshold as defined in 2 CFR 200.67 (note: as of August 2019, this amount is \$10,000, but it is periodically adjusted for inflation). To the extent practicable, micro-purchases will be distributed equitably among qualified suppliers.

Micro-purchases may be awarded without soliciting competitive quotations if the Director of Business Services considers the price to be reasonable.

### 5.2 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 as defined in 2 CFR 200.88 (note: as of August 2019, this amount is \$250,000, but it is periodically adjusted for inflation). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

### 5.3 Procurement by Sealed Bids (formal advertising)

Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to 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 shall apply:

- a) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the 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 publicly opened at the time and place prescribed in the invitation for bids;
- d) A firm fixed 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 of all bids may be rejected if there is a sound documented reason.

### 5.4 Procurement by Competitive Proposals

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

- a) Requests for proposals 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;
- b) Proposals must be solicited from an adequate number of qualified sources;
- c) The following method for conducting technical evaluations of the proposals received and for selecting recipients shall be used:
  - 1. After all proposals are opened and recorded, the Purchasing Department shall determine if the proposals are responsive. A responsive proposal conforms in all material respects to the RFP.
  - 2. Select the Evaluation Committee members. At a minimum, members should consist of purchasing staff and an end user with decision making authority.
  - 3. Create a scoring matrix with weighted factors based on the evaluation criteria stated in the RFP.
  - 4. Provide members with copies of the proposals and the scoring matrix.
  - 5. Members individually review and score all proposals based on the criteria in the RFP. Include written justification for each scoring category.
  - 6. Members submit scoring matrices and comments for each responsive proposal to the Purchasing Department.
  - 7. The Purchasing Department compiles all the members' matrices to arrive at the final scorings.
  - 8. A meeting is scheduled with all members to discuss all aspects of the proposals and final scorings.
  - 9. The members short-list the top candidates.
  - 10. Schedule interviews, if necessary with top candidates.
  - 11. Ask for Best and Final offers from top candidates (optional).
  - 12. All members make a joint written recommendation. All scoring sheets, justification and rationale for the recommendation and any other variables that may have been considered are sent to the Purchasing Department.
- d) Any response that takes exception to any mandatory items in this proposal process may be rejected and not considered;
- e) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- f) Competitive proposal procedures may be used 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.

### 5.5 Procurement by Noncompetitive Proposals

Procurement by noncompetitive 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;
- b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- d) After the solicitation of a number of sources, competition is determined inadequate.

### **6.0 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area (a place of high unemployment) Firms**

6.1 All necessary affirmative steps will be taken to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. 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) 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:
- d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e) Using the services and assistance, as appropriate, of such organizations as the Small Administration and the Minority Business Development Agency of the Department of Commerce; and,
- f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e) of this section.



## **7.0 Procurement of Recovered Materials**

The College 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 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.

## **8.0 Contract Cost and Price**

8.1 A cost or price analysis shall be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold as defined in 2 CFR 200.88, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates shall be made prior to receiving bids or proposals.

8.2 Profit shall be negotiated 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. 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.

8.3 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 College under Subpart E-Cost Principles of Part 200- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The College may reference its own cost principles that comply with the federal cost principles.

8.4 The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

## **9.0 Federal Awarding Agency or Pass-through Entity Review**

9.1 The College shall 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. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the College desires to have the review accomplished after a solicitation has been developed, the Federal

awarding agency or pass-through entity may still review the specification, with such review usually limited to the technical aspects of the proposed purchase.

9.2 The College will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- a) Procurement procedures or operation fails to comply with the procurement standards in this part;
- b) The procurement is expected to exceed the Simplified Acquisition Threshold as defined in 2 CFR 200.88 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 as defined in 2 CFR 200.88, specifies a “brand name” product;
- d) The proposed contract is more than the Simplified Acquisition Threshold as defined in 2 CFR 200.88 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 as defined in 2 CFR 200.88.

9.3 The College is exempt from the pre-procurement review in paragraph (9.2) 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 College 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 College 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 College that it is complying with these standards. The College must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

## **10.0 Bonding Requirements**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold as defined in 2 CFR 200.88 the College will require the following minimum bonding requirements:

- a) A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. 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 (100%) 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 a contract; and,
- c) A payment bond on the part of the contractor for 100 percent (100%) 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.

## **11.0 Contract Provisions**

Contracts must contain the applicable provisions described in Appendix II to Part 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards.

### **11.1 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 the College, all contracts made by the College under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold as defined in 2 CFR 200.88 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 College 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” (30FR 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 the College 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 Financed in Whole or in Part by Loans or Grants from the United States”.) The Act provides that each 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.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-37080). Where applicable, all contracts awarded by the College 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 the 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 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.

- (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) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- (I) 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 Excluded Parties List System 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." The Excluded Parties List System in SAM 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.
- (J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above 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.
- (K) See Procurement of recovered materials, above.