

**I. Purpose**

The purpose of this policy is to provide clear direction to all College employees and to the contracting community on MCC's purchasing process when spending federally granted funds; to ensure compliance with required federal laws and regulations; and to ethically execute the purchasing function to best serve the mission of MCC.

**II. Scope**

This policy applies to all purchases for materials, supplies, equipment, services, contracts, service and maintenance agreements, and leases made using federal funds or flow-through funds (funds which are issued at a federal level but are administered by the State of Michigan or through a third-party agency).

**III. Records**

The Purchasing Department will keep detailed records of all procurement activity conducted as a matter of public record and to satisfy requirements for federal auditing agencies. Records shall minimally contain:

- 1) Rationale for method of procurement
- 2) Selection of contract type
- 3) Criteria for contractor selection or rejection
- 4) Basis for the contract price (e.g. fixed price, cost reimbursement)
- 5) Verification of contractor's status on the federal System for Award Management

**IV. General Procurement Standards****1) Conflict of Interest**

- a. Personal - An employee, officer or agent of MCC may not participate in any part of the procurement process, including the selection, award and administration of purchases or contracts supported by a federal award, if he/she has a real or apparent conflict of interest. A conflict occurs when the employee or any member of the employee's family, his/her partner, or an organization which employs or is about to employ the employee's family or partner has a financial, tangible, or other benefit from a contractor considered for award.
  - i. Also refer to Board Policies 5808 Conflict of Interest and 5800 Employee Conduct.
- b. Organizational - MCC must avoid an organizational conflict of interest where MCC would be unable to be impartial in conducting a procurement action because of an existing relationship with a parent company, affiliate or subsidiary organization.
- c. Bids and proposals from potential vendors to conduct business with or perform work for Mott Community College shall be strictly evaluated based upon the merit of requested bid specifications. Decisions to use a vendor or award a contract will be made consistent with Board Policy 4410, Purchasing." While the Office of Institutional Advancement may solicit for philanthropic support from the community and vendors, at no time will contract awards be based on whether or not a contribution is received. Staff involved with the purchasing process will not participate in soliciting vendors for contributions.

**2) Economical Purchasing**

- a. Prior to issuing final approval on a requisition, the approving cost center manager must review the proposed purchase to avoid acquisition of unnecessary or duplicative items.
- b. When determining the proper solicitation method, consideration will also be given to either consolidating or sub-dividing procurements to obtain a more economical purchase.
- c. The operating department requesting the purchase must submit an independent estimate (i.e. proposed budget amount) before requests for bids or proposals are issued
- d. Where appropriate:
  - i. A lease versus purchase analysis will be conducted to determine the most economical procurement method
  - ii. State and local intergovernmental and inter-entity agreements or use of common or shared goods and services are encouraged (e.g. publicly bid and awarded consortia agreements)
  - iii. The use of Federal excess and surplus in lieu of purchasing new equipment is encouraged
  - iv. The use of value engineering clauses for construction projects is encouraged



3) **Full & Open Competition**

- a. Contractors that draft or develop specifications, requirements, statements of work, invitations to bid or requests for proposal must be excluded from bidding
- b. Noncompetitive contracts cannot be awarded to consultants who are on retainer contracts
- c. A clear and accurate description of the technical or performance requirements of a material, product or service must be provided
  - i. As a last resort, a “brand name or equivalent” description may be used provided that the required performance and other relevant functional requirements are identified clearly
- d. Identify all requirements a contractor must fulfill as well as all factors to be used in evaluating bids or proposals
- e. No local preference will be recognized

4) **Encouragement of small, minority and women’s business enterprise**

- a. Place small, minority and women’s business enterprises on solicitation lists; use the services of assistance organizations (i.e. Small Business Administration, Minority Business Development Agency) to maximize visibility of the solicitation
- b. Organize requirements into smaller tasks or quantities and establish delivery schedules to permit participation
- c. Require awarded contractors, if subcontracts are to be let, to take the steps listed in IV(4)a and b

5) **Award**

- a. Perform a cost or price analysis with every purchase exceeding the Simplified Acquisition Threshold
- b. Award only to responsible contractors with the ability to perform successfully
- c. Consider contractor integrity, compliance with public policy, record of past performance and financial and technical resources when awarding

**V. Procurement Types**

- 1) **Micro-Purchases < \$3,000<sup>1</sup>** – Purchase of supplies or services totaling less than \$3,000. May award without competitive solicitation if price is considered to be reasonable. Purchases must be equitably distributed among qualified contractors.
- 2) **Construction Exception < \$2,000** – Purchases for construction subject to Davis-Bacon Wage Rates totaling less than \$2,000 may be awarded without competitive solicitation if price is considered to be reasonable.
- 3) **Simplified Acquisition Threshold Small Purchase Procedures < \$33,000** – Purchase of supplies, services or property totaling less than \$33,000 requires price or rate quotations from an adequate amount of qualified contractors.
- 4) **Sealed Bids > \$33,000** – Preferred method for construction. Purchases totaling \$33,000 or greater will be publicly bid. Requires:
  - a. A complete, adequate & realistic specification
  - b. Sufficient response time prior to bid due date
  - c. Firm, fixed price contract (lump sum or unit price)
  - d. Adequate number of responsible bidders willing to compete effectively
  - e. Award to lowest responsible bidder, including factors such as discounts, transportation cost and life cycle cost.
- 5) **Competitive Proposals > \$33,000** – Used when conditions are not appropriate for sealed bids. Purchases totaling \$33,000 or greater will be publicly bid. Requires:
  - a. Identify all evaluation factors and relative importance
  - b. Adequate number of qualified contractors

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<sup>1</sup> Thresholds set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 (Definitions). It is periodically adjusted for inflation.

- c. Written method for conducting technical evaluations
  - d. Fixed price or cost reimbursement contract
  - e. Award to contractor with most advantageous proposal, price & other factors considered
- 6) **Non-competitive Proposals** – Sole Source. Purchases under the following circumstances:
- a. Item is only available from one source
  - b. Public emergency
  - c. Pre-authorized by the federal awarding agency
  - d. After solicitation, competition is deemed inadequate
  - e. Requires an approved *Sole Source Request Form*.
- 7) **Transaction Splitting** – purchases may not be subdivided in separate orders with the intent to avoid purchasing policy. Activity inconsistent with Board Policy, Purchasing Policy and applicable laws and regulations will be reported to the CFO for investigation and disposition.

## **VI. Bonding Requirements**

For construction or facility improvement projects greater than Board of Trustee approval limits (set in Board Policy 4410, Section 3)

- 1) Bid guarantee from each bidder equivalent to 5% of the total bid price
  - a. Acceptable forms include bid bond, certified check
- 2) Performance bond equivalent to 100% of the contract price
- 3) Payment bond equivalent to 100% of the contract price

## **VII. Contracts**

- 1) Pre-award
  - a. Negotiate profit as a separate element of price for contracts with no price competition and in all cases where a cost analysis is performed.
    - i. Consider complexity of work, risk borne by contractor, contractor's investment, amount of subcontracting, record of past performance, and industry profit rates in the local area for similar work.
  - b. Time and materials contracts may only be used if it is determined that no other contract is suitable; contract must contain a ceiling price that contractor will exceed at their own risk. Contract may only contain actual cost of materials and direct labor hours at fixed rates that reflect wages, general & administrative expenses and profit. These contracts require a high degree of oversight by the contract administrator to assure efficient methods and effective cost controls.
  - c. Cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
- 2) Provisions
  - a. All contracts awarded using federal funds must contain the provisions listed in Appendix A, as applicable.
- 3) Administration
  - a. Contract administrators must maintain oversight to ensure contractors perform per the terms, conditions and specifications of the contracts and purchase orders.
  - b. Perform a cost or price analysis with every contract modification.

## **VIII. Contractor Appeal Procedure**

Contractors who have submitted a quote, bid or proposal may appeal an award decision. A contractor who submits a "No Bid Response" cannot appeal an award. To appeal an award, a contractor must:

- 1) Request an appeal of the award, in writing, to both the buyer listed on the bid and the Purchasing Manager within (48) forty-eight hours of the award
- 2) The appeal should contain the bid number, description of the bid, a clear and concise statement of the reason and supporting evidence for the appeal and the desired remedy that the contractor is seeking.
- 3) The following issues are not considered to be appealable issues:
  - a. Failure to properly submit a bid per the bid instructions

- b. Failure to submit a bid on or before the due date and time
  - c. Failure of a bidder to provide the required bid deposit, payment bond, or performance bond by the date and time specified
- 4) Following an investigation and review, the Purchasing Manager will provide a written decision

**IX. Reference Documents**

- 1) Title 2: Grants & Agreements | Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards | Subpart D: Post Federal Award Requirements | Procurement Standards 200.317 – 200.326
- 2) Mott Community College Board of Trustees Policy 5800 Employee Conduct
- 3) Mott Community College Board of Trustees Policy 5808 Conflict of Interest
- 4) Mott Community College Purchasing Policy

**X. Policy History**

Effective October 18, 2012  
Revised July 1, 2015  
Revised May 20, 2016  
Revised March 17, 2017

**APPENDIX A**

## Required Contract Provisions for Contracts Using Federal Funds

- I. **All contracts - Debarment and Suspension** A contract award will not be made to CONTRACTOR if CONTRACTOR is listed as an excluded party on the federal government's System for Award Management (SAM), which 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. If, during the term of this Agreement, the status of CONTRACTOR as reported on SAM changes to debarred, suspended, or otherwise excluded, MCC reserves the right to terminate the Agreement for cause.
- II. **All contracts where the assignment or performance of experimental, developmental, or research work is to be completed - Rights to Inventions** MCC and CONTRACTOR 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 federal awarding agency. *Note: Additional language will be added from 37 CFR 401.14(a) if this clause is applicable to any federally awarded funding agreement*
- III. **All construction contracts - Equal Employment Opportunity** CONTRACTOR will:
  - a. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. In all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
  - c. Send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising said labor union or workers' representatives of the CONTRACTOR's commitments under this section and post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. Comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - e. Furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, permit access to books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - f. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, CONTRACTOR fully understands that its contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - g. Include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or contractor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided however, that in the event a CONTRACTOR becomes involved in, or is

threatened with, litigation with a subcontractor or contractor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**IV. Additional clauses for construction contracts in excess of \$2,000**

- a. **Prevailing Wage** In accordance 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"), CONTRACTOR is 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, CONTRACTOR is required to pay wages not less than once per week. MCC's award of this Agreement is contingent upon the CONTRACTORS acceptance of the wage determination. MCC is required to report all suspected or reported violations to the Federal awarding agency.
- b. **Copeland Anti-Kickback Act** CONTRACTOR and subcontractor(s) are individually 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, as provided by 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").

**V. Additional clauses for all contracts in excess of \$10,000**

- a. **Termination for Convenience** This Agreement may be terminated, in whole or in part, when such action is deemed by MCC, in its sole discretion, to be in its best interest. Termination of duties hereunder shall be effected by written notice of termination to the CONTRACTOR specifying the extent to which performance of work is terminated and the date when termination is effective. The effective date of termination shall be no less than ten (10) days after the notice is sent.  
After receipt of a notice of termination and except as otherwise directed by MCC, the CONTRACTOR shall:
  - i. Stop work under this Agreement on the date and to the extent specified in such notice, and
  - ii. Complete performance of such part of the work which was not terminated by such notice.
- b. **Termination for Cause** MCC may, by written notice to the CONTRACTOR, terminate the whole or any part of this Agreement if the CONTRACTOR, in the judgment of MCC's Contract Administrator:
  - i. Disregards, violates or fails to perform the material provisions of the Agreement;
  - ii. Fails to timely execute any task, deliverable, service or other work required either under this Agreement, including extensions thereof or fails to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement or of any obligations of this Agreement and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as MCC may authorize in writing) after receipt of written notice from MCC specifying such failure;
  - iii. Violates applicable law, regulation or guidance of any governmental authority with appropriate jurisdiction;
  - iv. Presents an unreasonable risk of personal injury or property damage;
  - v. Declares bankruptcy, becomes insolvent, or assigns company assets for the benefit of creditors.

In the event that MCC terminates this Agreement in whole or in part as described, MCC may purchase, upon such terms and in such manner as MCC may deem appropriate, goods and services similar to those terminated. The CONTRACTOR shall be liable to MCC for any and all excess costs incurred by MCC, as determined by MCC, for such similar goods and services. The CONTRACTOR shall continue the performance of this Agreement to the extent not terminated under the provisions of this Section.

If the CONTRACTOR fails to perform this Agreement due to causes beyond its control, without fault or negligence, such as but not limited to: acts of God or of the public enemy, acts of MCC in its

contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; and if the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the CONTRACTOR and Subcontractor, and without the fault or negligence of either of them, the CONTRACTOR shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the required performance schedule. As used in this Section, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any tier.

If, after MCC has given notice of termination under the provisions of this Section, it is determined by MCC that the CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable due to causes beyond its control, without fault or negligence, the rights and obligations of the parties shall be the same as if the notice of termination had been as Termination for Convenience.

The rights and remedies of MCC provided in this Section 3.0 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

- VI. **Additional clauses for contracts in excess of \$100,000 - Byrd Anti-Lobbying Amendment**  
CONTRACTOR certifies that it will not and has not used federally 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. CONTRACTOR must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. These certifications and disclosures are additionally required for all subcontractors; certifications and disclosures should be forwarded from tier to tier until all have been received by MCC.
- VII. **Additional clauses for construction contracts in excess of \$100,000 - Contract Work Hours and Safety Standards Act**  
CONTRACTOR is 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, in compliance with 40 U.S.C. 3702 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous, per 40 U.S.C. 3704. These requirements do not apply to the purchases of supplies, materials, items ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- VIII. **Additional clauses for all contracts in excess of \$150,000**
- a. **Clean Air Act** CONTRACTOR agrees 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 will be reported to MCC, the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
  - b. **Breach of Contract** If CONTRACTOR fails to **timely execute any task, deliverable, service or other work required either under this Agreement, including extensions thereof, or fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as MCC may authorize in writing) after receipt of written notice from MCC specifying such failure**, CONTRACTOR shall be liable to MCC for such damages and any and all excess costs incurred by MCC in acquiring such similar goods and services from another contractor. If items purchased or services performed under this Agreement are non-conforming, defective or incomplete, CONTRACTOR shall be liable to MCC for the applicable cost of replacement, cost of repair, or cost to complete, as determined by MCC.  
In all circumstances, MCC will use such means as are reasonable to mitigate damages occurring under CONTRACTOR's breach of contract.