

	<b>THIRD CIRCUIT COURT POLICY PROCUREMENT POLICY</b>	<b>SECTION:</b> Facilities & Purchasing <b>NUMBER:</b> 3CC-P05-0001
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**I. REFERENCES:**

- [2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)

**II. DEFINITIONS AND ABBREVIATIONS:**

- CFR – Code of Federal Regulations

**III. BACKGROUND AND SCOPE**

Non-Federal entities are required to establish procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with Federal funds. These standards are designed to ensure that materials and services are obtained in an effective manner and in compliance with Federal regulations. Procurement procedures must conform or be more restrictive than applicable federal laws and standards.

The purpose of this policy is to communicate the requirements regarding Procurement Standards as outlined in Title 2 C.F.R. §200.317 - .327 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

**IV. POLICY APPLICABILITY AND ENFORCEMENT**

Court Administration of the Third Circuit Court is responsible for the development, communication, revision, and enforcement of this policy. Budget & Finance will assist in the interpretation and monitoring of adherence to this policy to assist in complying with federal grant regulations.

**V. POLICY PROVISIONS**

**1. General Procurement Standards**

Procurement standards apply to the purchase of supplies, equipment, construction (if approved) and other services funded in whole or in part by federal grant funds, which include the following:

- Non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law.
- Non-Federal entity must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
  - No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.
  - Such a conflict of interest would arise when the 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.
  - The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Third Circuit Court is in compliance with these requirements in that such language is included in the Court Employee Code of Conduct, which is distributed to employees on an annual basis or as modifications are made, with acknowledgment that they have received and reviewed the policy.

- If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state or local government, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest.

- The non-Federal entity must avoid acquisition of unnecessary or duplicative items.
- The non-Federal entity is encouraged to enter into state and local intergovernmental agreements for use of common or shared goods and services.
- The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property.
- The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size.
- The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
- The non-Federal entity must maintain records sufficient to detail the history of procurement. The records will include, but are not 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.
- The non-Federal entity may use a time and materials contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.
- The non-Federal entity must be responsible for the settlement of all contractual and administrative issues arising out of procurements.

## 2. Competition

All procurement transactions must be conducted in a manner providing full and open competition. Situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered; and
- Any arbitrary action in the procurement process.

The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
- Identify all requirements which the offerors must fulfill and all factors to be used in evaluating bids or proposals.

The non-Federal entity must ensure all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

## 3. Methods of Procurement

The non-Federal entity must use one of the following methods of procurement or be more restrictive with their policies:

- **Micro-Purchase.** Per 2 C.F.R. §200.320, procurement by micro-purchase is the acquisition of supplies or services which are less than \$10,000. This purchase may be awarded without soliciting competitive quotations, if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other documented information.
- **Small Purchase.** Per 2 C.F.R. §200.320, small purchase procedures are those simple and informal procurements for securing services, supplies or other property that cost between \$50,000 and \$250,000. The Court policy is more restrictive than Federal regulations and has established the small purchase threshold from \$10,000.01 to \$150,000.00. Price and rate quotations must be obtained from at least three qualified sources. The Court requires solicitations of written or internet quotes from a minimum of three qualified sources and documentation of the quotes. The award should be made to the lowest responsive source upon evaluation of the application.
- **Sealed Bid (Formal Advertising) or Alternate** procedures are required for purchases of \$150,000.01 and over.
  - **Sealed Bids (Formal Advertising).** Bids are publicly solicited and a firm fixed price contract is awarded. The sealed bid method is preferred for procuring construction.

- **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 of contract is awarded.
- **Noncompetitive Proposals.** This is the solicitation of a proposal from only one source and may be used only when one or more of the following applies:
  - The purchase does not exceed the micro-purchase threshold, \$10,000.
  - The item is available only from a single source;
  - The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
  - The Federal awarding agency or pass-through entity authorizes noncompetitive proposals in response to a written request; or
  - After solicitation of a number of sources, competition is determined inadequate.

#### **4. Contract Cost and Price**

Per 2 C.F.R. §200.324, a non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications.

#### **5. Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms**

The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises (WBE), and labor surplus area firms are used when possible. Affirmative steps must include:

- Placing qualified small and minority businesses and WBE’s on solicitation lists;
- Assuring that small and minority businesses, and WBE’s are solicited whenever they are potential sources;
- Dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and WBE’s;
- Establishing delivery schedules to encourage participation by small and minority businesses and WBE’s;
- Using the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are admissible, to take the affirmative steps as listed above.

#### **6. Federal Awarding Agency of Pass-Through Review**

The non-Federal entity must 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.

The non-Federal entity must make available upon request, procurement documents, such as requests for proposals or invitations for bids, or independent estimates, when:

- The non-Federal entity’s procurement procedures or operations fails to comply with the procurement standards as detailed above;
- The procurement is expected to exceed the Simplified Acquisition Threshold, (SAT), \$250,000 per Title 2 C.F.R. §200.88, and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- The procurement, which is expected to exceed SAT, specifies a “brand name” product;
- The proposed contract is more than SAT and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than SAT.

The non-Federal entity is exempt from the pre-procurement review noted above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the above standards.

#### **7. Bonding Requirements**

For construction or facility improvement contracts or subcontracts exceeding the SAT, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has decided that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price;
- A performance bond on the part of the contractor for 100 percent of the contract price; and
- A payment bond on the part of the contractor for 100 percent of the contract price.

**8. Contract Provisions**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200-Contract Provisions for non-Federal Contracts under Federal Awards. Please refer to the following link provided above.

**9. Court Approvals**

Purchasing & Facilities has the primary responsibility of making purchases and selecting vendors for the Court. This ensures that the appropriate quotes are collected, due diligence is performed on the potential vendors and the vendors offer fair and reasonable pricing. ITSB has delegated authority to make recommendations on vendors and facilitate purchases related to data processing items once requests receive all approvals.

Below summarizes the workflow required for purchases:

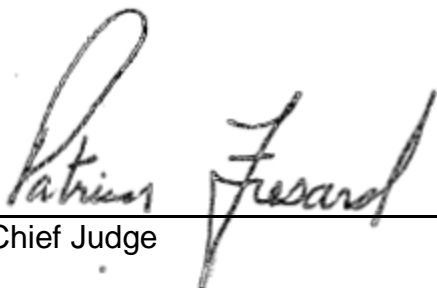
- Requisition created by department staff
- Department approver – Department head/Deputy Court Administrator or designee
- Purchase approver – Director of Purchasing & Facilities
- Budget approver – Chief Financial Officer or Deputy Chief Financial Officer
- Court Approver – Executive Court Administrator or Chief Judge

Items not covered by the procurement policy include training, dues, memberships, catering for approved meetings and training, reimbursement of employee travel and parking, and certain items allowable for specialty court programs.

Any contracts associated with the procurement of goods and services must be approved by General Counsel early in the procurement process, but before Budget and Court requisition approvals are obtained. Upon execution of the contract, it should be attached to the requisition.

**EFFECTIVE: 6/1/2024**

Date: 6/4/2024

  
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Chief Judge