

Office of Sponsored Programs

Procurement Policy for Federal Sponsored Programs

Policy ID: OSP 0013

Date: 05/17/2022

Status: Approved

Policy Type: Public

Issuing Office: Office of Sponsored Programs ("OSP")

Responsible Executive: Provost

Affected Parties: All Liberty University ("Liberty") faculty and staff as well as any non-employees making purchases on behalf of Liberty must comply with this Procurement Policy for Federal Sponsored Programs ("Policy"). The Policy applies only to federally sponsored programs where Liberty receives funding through federal awards (including any grant, subgrant, contract, or cooperative agreement, each of which for the purposes of this Policy is a sponsored program), whether those funds come directly from a federal agency or indirectly through an intermediary (known as a "pass-through entity"). This Policy does not govern procurement or expenditures of funds received from non-federal sources (e.g., research foundations, alumni donations, state sponsored funds, etc.). While reference may be made in this Policy to Liberty's procurement procedures, this Policy applies only to federally sponsored programs.

Reason for Policy: Federal law imposes particular procurement requirements for the use of federal funds beyond those of Liberty's normal procurement procedures. This Policy is designed to ensure that Liberty complies with the Procurement sections ([2 CFR 200.318 –.326](#)) of the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards ("Uniform Guidance"). Individual federal sponsored programs may contain further unique requirements that are in addition to the requirements of the Uniform Guidance. The Principal Investigator is the person designated by the OSP who takes direct responsibility for the scientific or technical direction of the sponsored program. It is therefore important for each sponsored program's Principal Investigator to work closely with the OSP to ensure compliance with the procurement requirements of each sponsored program. This Policy supplements Liberty's existing procurement procedures. It is intended to ensure that Liberty's resources are used properly in purchasing activities related to federally sponsored programs. Consistent adherence to the Policy provides reliability and assurance that purchasing activities meet regulatory requirements and sound business practice for the procurement of services, supplies, and other property using federal funds.

Policy Statement: Liberty requires that all personnel who plan for and purchase services, supplies, or other property with federally sponsored program funds base purchases on sound business practice, best value, accountability, and

compliance with regulatory requirements. Such purchases will be subject to Liberty's current internal controls and procurement procedures (administrative, accounting, and purchasing) with modifications to accommodate the Uniform Guidance. Individuals planning for or making purchases must follow this Policy and other established Liberty policies and procedures. Liberty personnel must purchase goods and services using practices that comply with all applicable laws and regulations and that align with Liberty's policies and mission. In accordance with the Uniform Guidance, Liberty requires that purchases made with federal funds follow specific procedures. In addition, every purchase must comply with all terms and conditions of the funding agency. Whenever possible, any individual purchasing on behalf of Liberty should purchase goods and services from Liberty's preferred vendor list to reduce administrative burden and maximize Liberty's buying power. If direction differs between this Policy and applicable law, sponsor terms, or other internal policy or procedures, the more restrictive instruction will apply.

Uniform Guidance Goals and Procurement Standards

Goals: The Uniform Guidance requires recipients of federal funds to establish written policies and procedures that will focus resources on improving performance and outcomes. The intent is to reduce administrative burden for sponsored program applicants and recipients and reduce the risk of waste, fraud, and abuse. The Uniform Guidance also focuses on increasing competition and transparency in the procurement process.

General Standards: The Uniform Guidance emphasizes securing the best value for each federal dollar and promoting free and open competition. The detail required for the cost/price analysis and for the documentation increases with the amount spent. As a general principle, Liberty is responsible for the efficient and effective administration of federal sponsored programs through sound management practices. Liberty may not earn or keep any profit resulting from federal funds, unless expressly permitted to do so by the terms of the sponsored program.

Liberty adopts and agrees to adhere to the general procurement standards that cover the procurement of services, supplies, or other property under the Uniform Guidance, including the following:

1. Liberty must maintain documented procurement procedures that reflect all applicable laws, including the standards identified in the Uniform Guidance.
2. Liberty must maintain oversight of contracts entered into in relation to sponsored programs to ensure that contactors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

3. Liberty must maintain written standards of conduct covering internal and external conflicts of interest.
4. Liberty's procurement policies and oversight must ensure that costs are reasonable and necessary and that contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement.
5. Liberty's procurement transactions must be conducted in a manner providing full and open competition in accordance with the Uniform Guidance.
6. Liberty must maintain records sufficient to detail the history of each procurement, including the rationale for the method of procurement, the selection of contract type, the contractor selection or rejection, and the basis for the contract price.

Conflicts of Interest:

In addition to all other Liberty policies governing ethics and conflicts of interest, Liberty adopts the following conflict of interest requirements for any employees engaged in the selection, award and administration of contracts related to this Policy.

All sponsored programs must comply with the OSP policies and manuals (including the Financial Conflict of Interest for Sponsored Programs Policy), applicable law and regulations, and professional best practices. Reports must be complete, accurate and truthful.

No employee, officer, or agent of Liberty may participate in the selection, award, or administration of a contract using federal sponsored program funds if he or she has a real or apparent conflict of interest. Such individuals may not derive any financial or other interest in or a tangible personal benefit from a firm considered for a contract using federal sponsored program funds. This prohibition includes the employee's immediate family and any organization which employs or is about to employ any such family members, as such close relationships could give rise to an appearance of conflict. In addition, contractors or consultants who draft bid specifications or requests for proposal on Liberty's behalf are disqualified from bidding on those contracts. While such contractors or consultants are not automatically disqualified from other opportunities, care must be taken to ensure that their work for Liberty does not give them unfair advantage over competitors. Also, Liberty's officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to contracts. *Noncompliance with these requirements may result in disciplinary action.*

Methods of Procurement: The Uniform Guidance mandates that Liberty must use one of the following five methods of procuring services, supplies or other property.*

1. Micro-purchases (up to \$10,000):

- Micro-purchases may be awarded without soliciting competitive quotations if the Principal Investigator can defend the price as reasonable
- At least one quote/proposal is needed
- Micro-purchases must be distributed equitably among qualified suppliers

2. Small purchases (between \$10,001 and \$250,000):

- Small purchase procedures are those relatively simple and informal procurement methods not costing more than \$250,000 (“Simplified Acquisition Threshold”)
- Rate quotes must be obtained from a minimum of two sources
- Quotes may be obtained from suppliers or from public websites and included as backup documentation for the purchase
- No cost or price analysis is required for small purchases
- If only one supplier exists, the **Noncompetitive Proposal** guidelines (method 5 below) must be followed

3. Sealed bids (\$250,001 and above):

Where the aggregate total cost of the contract exceeds the Simplified Acquisition Threshold, the procurement may be completed by sealed bids (with 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 contracts and is feasible only if: (i) a complete, adequate, and realistic specification or purchase description is available; (ii) two or more responsible bidders are willing and able to compete effectively for the business; and (iii) 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. The following sealed bid procedures and requirements apply:

- The OSP and Liberty’s Procurement Department (“Procurement”), in conjunction with the Principal Investigator, will determine if the procurement request lends itself to a firm-fixed-price contract and if

* Liberty’s procurement thresholds are based on the National Defense Authorization Act of 2017 (NDAA-17) as well as OMB Memorandum 18-18 published June 20, 2018.

the selection of the successful bidder can be made principally on the basis of price.

- Principal Investigators must complete and submit the **Price Analysis Form** with their purchase request.
- Using the information provided on the Price Analysis Form, Procurement in collaboration with the Principal Investigator, in accordance with applicable requirements in Uniform Guidance Sections 200.319 and 200.320, initiates the competitive bidding process by preparing and issuing the appropriate formal request for competitive bids. Procurement also determines how and where to publicize the request for competitive bids.
- Procurement conducts the public bid opening at the time and place prescribed in the invitation for bids.
- A firm-fixed-price Purchase Order contract award will be made to the lowest responsive and responsible bidder.

4. Competitive proposals (\$250,001 and above):

Where the aggregate total of the contract exceeds the Simplified Acquisition Threshold, the procurement may alternatively be completed by competitive proposals for either a fixed price or cost reimbursement contract. This method is generally used when conditions are not appropriate for the use of sealed bids. Procurement will determine whether a competitive proposal or sealed bidding procurement method will be performed. If the competitive proposals procurement method is used, the following procedures and requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance.
- Proposals must be solicited from an adequate number of qualified sources. A minimum of two sources will meet this requirement.
- Liberty must have a written policy for conducting technical evaluations of the proposals received and for selecting recipients. Requestor must complete and submit the **Price Analysis Form**.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

5. Noncompetitive Proposal (\$10,001 and above):

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:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from Liberty; or
- After solicitation of a number of sources, competition is determined inadequate.

The circumstance justifying the noncompetitive proposal must be documented, and every noncompetitive proposal must include a price/cost justification. Methods of providing this justification include:

- documenting cost analysis efforts
- documenting market research including screenshots, emails, and/or catalog prices
- documenting pricing information obtained from colleagues at peer institutions who have purchased the same or similar items
- documenting prices of similar items

The Principal Investigator requesting a noncompetitive proposal for procurements of \$10,001 or more must complete and submit a **Sole Source Form** with their purchase request. If the procurement is estimated to be \$250,000 or more, the Principal Investigator must also submit a **Price Analysis Form** with their purchase request.

Bonding requirements:

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the federal sponsoring agency or pass-through entity may accept Liberty's bonding policy and requirements provided that the sponsoring agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements are as follows:

- Each bidder shall provide a bid guarantee equivalent to five percent 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.
- Prior to contract execution, successful bidders shall provide a performance bond for one-hundred percent of the contract price to secure fulfillment of contractor's obligations under such contract.
- Prior to contract execution, successful bidders shall also provide a payment bond for one-hundred percent of the contract price to ensure payment to persons supplying labor and materials under the contract.
- All bonds shall be issued by reputable and financially sound bonding companies licensed to do business in the Commonwealth of Virginia.

Monitoring and reporting program performance:

Principal Investigators, not the OSP, are responsible for oversight of activities supported by federal sponsored program funds. Principal Investigators must monitor activities under federal awards to ensure (i) compliance and (ii) achievement of performance expectations.

Principal Investigators are responsible for timely completion of all required reports. As a general rule, such reports are required at least annually and at most quarterly.

Performance reports shall be submitted using federally approved forms and standards. Please consult OSP for assistance in obtaining these forms or interpreting the applicable standards. Current federal standards require that reports provide:

- A comparison of actual accomplishments to the objectives of the federal award.
- The reasons why established goals were not met, if appropriate.
- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

General Requirements:

The following requirements are applicable to all procurement transactions, regardless of size.

- Procurement transactions shall be conducted in a lawful and ethical manner.
- Purchases of unnecessary or duplicative items are not permitted (and are not reimbursable expenses).
- Principal Investigators are responsible to ensure contractor performance in accordance with their contracts or purchase orders.

Whenever possible:

- Consider leasing versus purchasing;
- Enter into agreements to share common goods or services with other educational institutions, non-profit organizations or governmental entities;
- Use federal excess or surplus property in lieu of new purchases; and
- Consider breaking purchases into smaller consignments and/or consolidating purchases, if doing so will produce lower pricing or greater value.

When no price competition exists, the contractor's profit shall be negotiated as a separate line item. To establish a fair and reasonable profit, consider the:

- Complexity of the work to be performed;

- Risk borne by the contractor;
- Contractor's investment;
- Amount of subcontracting;
- Contractor's record of past performance; and
- Industry profit rates for similar work in the surrounding area.

Construction contracts may not be awarded based on a "cost plus" pricing method. The fee payable under the contract must be expressed in dollars to be paid, and not as a percentage of any cost component. In addition, value engineering should be applied to all construction contracts.

Contracts shall be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Furthermore, Liberty must ensure that every organization with which it is contracting is not suspended or debarred from doing business with the U.S. Federal Government prior to entering into a covered transaction. Such investigation must be documented and retained in the appropriate procurement file. Liberty may utilize www.sam.gov to perform this search.

Liberty must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in cases where applicable federal statutes expressly mandate or encourage geographic preference.

Liberty must maintain records detailing the history of all procurements. At a minimum, these records will disclose the rationale for the:

- Method of procurement;
- Selection of contract type;
- Contractor selection or rejection; and
- Basis for the contract price.

Time and material contracts may be used only after a determination that no other contract is suitable and only if the contract includes a ceiling price that the contractor may exceed only at its own risk.

Liberty's contracts must contain the applicable provisions described in Appendix II to Part 200 of the Uniform Guidance.

Liberty is a private Christian university and reserves the right to select with whom it transacts business to the extent permissible by law in order to maintain and fulfill its mission.

Liberty shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include, at minimum:

- Placing qualified small and minority businesses and women's business enterprises (collectively, "Minority Businesses") on solicitation lists;
- Assuring that Minority Businesses are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Minority Businesses;
- Establishing delivery schedules, where the requirement permits, which encourage participation by Minority Businesses;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to observe the foregoing requirements.

Records of all procurement transactions, and all relevant supporting documents, shall be available upon request to the federal sponsoring agency or the pass-through agency responsible for the funds provided to Liberty.

Domestic Preferences For Procurements

As appropriate and to the extent consistent with law, LU shall, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award

Sanctions:

Sponsored programs are subject to full review of all project activity (program and financial) by auditors. All project activities must comply with sponsor terms and conditions and with all applicable Liberty policies and regulations. Failure to comply with federal requirements can result in a variety of adverse consequences, ranging from denial of reimbursement to debarment of Liberty from all federal funding, including federal student aid. In certain circumstances, criminal charges may also be brought. Therefore, federal requirements must be scrupulously observed. Observed or suspected infractions of this Policy must be promptly reported to the Executive Director of the OSP. **Violation of this Policy may result in disciplinary action.**

Exclusions: None

Review Cycle: Every two years or as needed. All OSP policies will be reviewed by the Director of the Office of Sponsored Programs, with input from the following departments as needed: Finance, Legal, Human Resources and the Graduate School. The Provost will approve all OSP policies.