

3349-11-50 Purchasing and selling university property.**(A) Purpose**

To establish a rule through which the university can purchase and sell property necessary to conduct its operations. The university procurement activities must be conducted in an efficient and cost-effective manner that supports the mission of the university while maintaining compliance with applicable state and federal laws and regulations.

(B) Scope

This rule applies to all purchases and sales of university property, other than construction projects, capital assets, and certain grants for purchases that qualify as capital assets, please refer to rule 3349-11-49 of the Administrative Code. The procurement on federal grants depends upon the guidelines of the specific grant. In circumstances where the limitations of the grant guidelines are more restrictive than university rule, the grant rules will apply. In the absence of grant procurement guidelines, university rule will apply.

(C) Definitions

- (1) Aggregate cost refers to the collective and final price of the procurement activity. As an example, if a service was procured for three years with an annual cost, the aggregate cost would be the summation of the three annual costs. If a good was procured in bulk, the aggregate cost would be the cost summation of each individual good.**
- (2) Competitive bidding refers to the procurement method used when each seller may have a similar product or service and a standardized evaluation method is used to determine the awarding of the contract, as outlined in the request for proposal (RFP).**
- (3) Good (end product) refers to physical items, software, digital solutions/systems, or any other type of non-service product procured by the university from a seller.**

- (4) Competitive quotes refer to soliciting and obtaining quotes for the same good or service from multiple vendors or suppliers, either directly from the seller or through their public website.
- (5) Inter-university council purchasing group (IUC-PG) refers to a purchasing consortium comprised of the purchasing officers of the state of Ohio institutions of higher education.
- (6) Purchaser refers to a university employee with procurement authority for their division or department.
- (7) Request for proposal (RFP) refers to a formalized document that solicits proposals from qualified sellers with the intent to procure a specific good, service, or other type of asset for the university.
- (8) Sealed bid refers to the procurement method used when there are specifications with a defined quantity for a fixed price, where the lowest and/or most responsive bidder is awarded the contract.
- (9) Seller refers to a vendor or supplier that sells a goods or services.
- (10) Service refers to a procured activity that directly engages the time and effort of a contractor or vendor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.
- (11) Sole source purchase refers to the purchase of a good or service in which the needed product is only available from a single vendor, only that vendor can provide the product in the timeframe required or the competition is deemed inadequate, after solicitation attempts.
- (12) University procurement refers to the methods of obtaining a lower fixed cost either through IUC, group purchasing or

organizations or university contracts. Purchasing of a good or service for the university

(D) Body of rule

(1) Administration of university procedure activities

All university procurement activities shall be administered by the division of operation and finance. The office of budget and accounting has been assigned the following primary responsibilities related to purchasing:

- (a) Performing the purchasing function in compliance with applicable state and federal regulations, laws, and guidelines, and university policies including maintaining current language in the RFP and purchase orders regarding vendor requirements;
- (b) Coordinating the purchase of goods and/or services required by the requisitioning department, as economically as possible and consistent with desired quality using principles of value analysis;
- (c) Administering required competitive bidding processes including, but not limited to, approving or denying requests for waiver of competitive bidding and obtaining completed security questionnaires, where applicable, from potential vendors;
- (d) Establishing vendor contracts for purchase of goods and/or services as well as rental or lease of equipment with review by university counsel prior to execution of contracts;
- (e) Providing guidance and information to the university community regarding mandatory use of university contracts and monitoring adherence to this requirement;

- (f) Generating purchase orders and authorizing change orders for goods and/or services;
- (g) Recommending standard specifications for equipment and materials of common use throughout the university;
- (h) Encouraging participation of diverse suppliers in all university purchase agreements;
- (i) Monitoring the use of the university purchasing card (p-card) program
- (j) Participating in the inter-university council contracts, state of Ohio term contracts, other universities' contracts, or other joint/group purchasing contracts when such contracts resulted from competitive bidding; and
- (k) Maintaining all competitive bidding documentation, including purchase orders, invoices, and other items necessary for the basis of selection. These are available for future review.

(2) Procurement standards

- (a) Authority. No individual has the authority to enter into purchase contracts or to obligate the university to any agreements other than those individuals who have been properly delegated authority.
- (b) Costs incurred by the university must be necessary and cost-effective.
- (c) The university has competitively selected, formally negotiated agreements or has access to preferred and collaborative agreements for numerous goods, services and capital equipment that include benefits such as favorable terms and conditions, discounted

pricing, guaranteed performance levels, no-hassle return policies, free or reduced freight costs, volume incentives and liability and insurance protection.

- (d) All procurement transactions must provide full and open competition.
 - (e) Any procurement transaction or negotiation of a personal nature is prohibited.
 - (i) Purchases of questionable or concerning nature may be referred by the office of operations and finance to general counsel and/or subject to internal audit.
 - (ii) Conflicts of interest when procuring are not permitted. It is the responsibility of the purchaser to ensure that the university does not knowingly enter into any commitments that could result in a conflict of interest.
 - (f) The purchaser must maintain documentation addressing cost and price analysis, as well as vendor selection, dependent on procurement method [see section e].
- (3) Regulations that must be considered when making purchases:
- (a) Preferred suppliers and existing agreements. Whenever existing federal, state, inter-university council, or other group purchasing organization agreements or contracts from other state of Ohio universities are used as a source for establishing prices where, in the discretion of the director of procurement, such bidding process utilized by the entity is consistent with the minimum protections required by university rule and state and federal law. Any such contracts must have resulted from

competitive bidding that adhered to state requirements and university rule.

(b) Supplier diversity

The university has a goal consistent with section 125.081 of the Revised Code to procure a percentage of its eligible goods and/or services from state certified minority business enterprises (MBE), women's business enterprises, and labor surplus area firms. As such, all departments are responsible for taking action as outlined below where reasonable. Affirmative actions include:

- (i) Including certified MBEs on solicitation lists;
- (ii) Dividing total requirements when economically feasible, into smaller tasks or quantities to permit maximum participation by MBEs;
- (iii) Establishing delivery schedules, where the requirement permits, which encourage participation by MBEs;
- (iv) Using the services and assistance of the small business administration and the minority business development agency of the department of commerce where applicable;
- (v) Requiring prime contractors, if subcontractors are let, to take the affirmative steps listed above.

(c) Equal employment opportunity requirement. The university requires that a supplier, in bidding and/or filing a purchase order, agrees not to discriminate against any employee or applicant for employment with respect to hiring and tenure, terms, conditions, or privileges of employment, or any matter directly or

indirectly related to employment, because of race, color, religion, gender, age, sexual orientation, national origin, disability, or identity as a disabled veteran or veteran of the Vietnam era to the extent required by law. The supplier must further agree that every subcontract for a given order will contain a provision requiring nondiscrimination in employment, as specified in this rule. This covenant is required pursuant to Executive Order 11246 of the U.S. Department of Labor and Executive Order 11375 of the U.S. Department of Labor, and any breach thereof may be regarded as a material breach of the contract or purchase order.

- (d) Other state and federal legal requirements. All vendors transacting any form of business with the university shall comply with all state and federal laws and shall not be banned from doing business with the federal government thus identified on a federal list of debarred or excluded suppliers.
- (e) Data security. Vendors who will have access to data by virtue of a university agreement to purchase goods and/or services shall comply with requirements as established by the university. These requirements include, but are not limited to, providing relevant attestations, completing data security questionnaires, and complying with the university's data security policies and procedures.
- (f) Tax exemption. The university is exempt from paying Ohio sales tax (and other recognized states). All agreements must comply with this provision where appropriate.
- (g) Buy Ohio. The university shall give preference in its purchasing activities to products that are produced or mined in Ohio and to bidders that qualify as having a significant Ohio economic presence in accordance

with section 125.11 of the Revised Code. This requirement may be waived when compliance would result in the university paying an excessive price for the product or acquiring a disproportionately inferior product.

(h) Buy America. Section 125.11 of the Revised Code stipulates that state agencies and public colleges or universities shall give preference in its purchasing activities to products produced, mined, or manufactured in the united states. This requirement may be waived when a determination has been made that the products to be purchased are not mined, produced, or manufactured in the united states in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(4) Lease versus purchase analysis

When equipment is being purchased for projects of limited duration, the university will prepare an analysis, where appropriate, to determine if leasing is a better alternative to purchasing. The analysis will be done to determine which method is most economical and practical given the project.

(E) Methods of procurement for each purchase of goods or services:

(1) A cost or price analysis must be done in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. Purchasers must make independent estimates before receiving bids or proposals. The resultant contract will be executed only after all appropriate approvals have been secured by the financial manager, grants accounting, the vice president for operations and finance, and the board of trustees where applicable. University general counsel will review all contracts that require a signature by the vice

president for operations and finance and the board of trustees.

- (2) Purchases less than five thousand dollars in aggregate or micro-purchases less than ten thousand dollars for federal grants (two thousand dollars or less for federal grant purchases that are subject to the Davis-Bacon Act of 1931, under 23 U.S.C. 113):
- (a) Do not require sealed bids, competitive bidding or competitive quotes
 - (b) Reasonable efforts to conduct a cost or price analysis should be made
 - (c) Must spread purchases out among qualified suppliers
 - (d) Must be approved by the financial manager
 - (e) If grant funded, requires additional approval from grants accounting
 - (f) Terms and conditions may need approval through general counsel prior to purchase
- (3) Purchases between five thousand dollars and forty-nine thousand nine hundred ninety-nine dollars in aggregate or small purchases between ten thousand dollars and forty-nine thousand nine hundred ninety-nine dollars for federal grants:
- (a) Require competitive quotes from at least three vendors if purchasing goods with university funds. If purchasing with a federal grant, competitive quotes are required for both goods and services excluding subcontracts.
 - (i) An exception to this requirement is if the purchase is through the current university.

inter-university council or other group purchasing organization negotiated contract.

- (b) If the aggregate cost of goods is five thousand dollars or more, a purchase order is required regardless of funding.
 - (i) Appropriate approvals are obtained through the purchase order process. Terms and conditions may need approval through general counsel prior to purchase.
- (4) Purchases in aggregate between fifty thousand dollars and four hundred ninety-nine thousand nine hundred ninety-nine dollars:
 - (a) The sealed bid or competitive bidding process must be used for these purchases. The university uses public purchase to advertise and solicit competitive bidding. The request will be available to allow sufficient time to obtain a minimum of two qualified bids.
 - (i) All bids are sealed until the expiration of the RFP deadline when the files are sent to a committee for evaluation. For competitive bids, details of the evaluations are based on the matrix outlined in the RFP and are maintained by the department of operations and finance.
 - (ii) Sealed (fixed price) bids should be opened publicly at the time and place as outlined in the invitation to bid and are awarded to the lowest responsive and responsible bidder.
 - (b) Administration of competitive bidding. Formal quotations and/or proposals for all purchases that require competitive bidding will be obtained by the procurement department through a request for

proposal (RFP) or request for quotation (RFQ) based on written descriptions or specifications provided by the requisitioning department.

- (c) Solicitation of bids. Any purchase or lease of goods and/or services that requires competitive bidding will be advertised in a way that is most beneficial to the university while satisfying requirements of competitive bidding.
- (d) Vendor selection. The vendor selected as a result of a competitive bidding process shall be the vendor determined to offer the best overall value taking into consideration all factors identified in the specifications of the bid solicitation.
- (e) Notification of vendor selection. The vendor selected and all other vendors responding to a bid solicitation shall be notified in a timely fashion of the selection pending approval by the board of trustees (where applicable) and execution of a contract. In cases requiring approval of the board of trustees, contract terms may be negotiated pending the approval, however such negotiation shall not revise or otherwise materially change or alter the specifications provided for in the bid documents and/or response.
- (f) If not identified until after the fact that aggregate purchases from a single supplier during a fiscal year have reached the dollar limits requiring competitive bidding, future purchases from the same supplier will not be made until competitive bidding has been conducted. This subsequent competitive bidding will be required only if it is likely that the future purchases of similar goods and/or services from that supplier within the fiscal year will again exceed established dollar limits.

- (g) All terms and conditions will need to be reviewed by general counsel prior to purchase
 - (h) These purchases require a purchase order.
 - (5) Purchases in aggregate of five hundred thousand dollars or more
 - (a) Require the same competitive bidding process as the previous threshold and the additional approval of the board of trustees.
 - (b) All terms and conditions will need to be reviewed by general counsel prior to purchase.
 - (c) These purchases require a purchase order.
 - (6) Waiver of competitive or sealed bidding
 - (a) Competitive bidding requirements may be waived for the purchase or lease of equipment, materials, supplies and services in the following instances:
 - (i) The board of trustees or the president and vice president determine an emergency situation exists that makes obtaining bids impossible or impractical.
 - (ii) In the judgement of the responsible purchasing officer of the university, it is impossible or impractical to obtain more than one bid because the item is obtainable only from a single source, or for other sufficient economic reasons.
- Single source purchases of any amount need to document the following:

- (a) What the piece of equipment is and how it is used.
 - (b) If anyone else sells this equipment, it is not a single source and will need multiple quotes.
 - (c) What other vendors the university has looked at to know if they do and do not have this or similar equipment.
 - (d) What aspect of this equipment from this vendor is different and necessary over any other similar equipment? Document if this aspect is different from other equipment. If not, it is a single source. If it is, explain why this is necessary.
- (iii) Existing federal, state inter-university council, university or other university-partner contracts are used as a source for establishing price.
- (iv) In general, the following do not require competitive bidding:
- (a) Temporary staffing (except where the cost of a single staffing engagement is fifty thousand dollars or more);
 - (b) Legal services;
 - (c) Annual year-end financial audit services;
 - (d) Real estate or investments and associated fees;
 - (e) Regulated utilities;

- (f) Publishers (books, periodicals, and other published materials) (this exception does not include distributors of published materials.);
- (g) Entertainment providers;
- (h) Dues or fees for institutional membership in an organization or association;
- (i) Tickets for passenger air transportation;
- (j) Public notifications required by law or to provide notification of job openings;
- (k) Postage purchased from the U.S. postal service (USPS) or through a vendor at official USPS rates; or
- (l) Purchases from state agencies or other state-assisted institutions of higher education.

(F) Procurement for construction

Purchases related to construction are governed by separate requirements set forth in the construction procurement procedures.

(G) Sale of equipment

- (1) To determine whether equipment is eligible to be sold, refer rule 3349-11-49 of the Administrative Code. If it is allowed to be sold, and if no university department expresses interest in the equipment after a reasonable time, the property may be sold, disposed of or redistributed in one of the following manners:

- (a) Pursuant to competitive bidding procedures with the award being made to the highest bidder;
- (b) Advertised public sale with the property having a price assigned to each item and sold to the public at a stipulated time and place;
- (c) Advertised public auction with the property being sold to the highest bidder;
- (d) Surplus property of minimal (salvage) value may be disposed of in the way most economical for the university.

(2) Ineligible bidders on sale of equipment

No employee of the university, or immediate family member of the employee, who has participated in the determination to dispose of property, participated in the preparation of property for sale, participated in determining the method of sale or acquired information not otherwise available to the general public regarding usage, condition, quality or value of property may bid on or purchase any property offered for sale by the university. To qualify as a purchaser of such property, an employee of the university may be asked to certify in writing that he has not participated in any of the activities or acquired information as specified in this rule.

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Certification

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