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## PROCUREMENT PROCEDURE

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**Category:** Administration

**Date Approved:** Click to enter a date

**Name of Responsible Office:** Purchasing and Central Receiving, Controller's

**Date Revised:** Click to enter a date

**Title of Responsible Executive:** CFO/Vice President Administrative Services

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### Process

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#### DESCRIPTION OF PROCESS:

It is the intent of these procedures to set forth the procurement guidelines for Monroe Community College, and to ensure full compliance with the law. Article 5-A of the New York State General Municipal Law sets the framework for public contracts. Specifically, Sections 103 and 104 of Article 5A address procurement by public entities in New York State.

- Section 103 governs the process of public bidding, including when it is required and how it is administered.
- Section 104 governs the process for procurement of goods and services that fall outside of the public bid requirement.

General Municipal Law requires the College to publicly bid the procurement of single items (or groups of similar items) during the fiscal year that exceed \$20,000 in cost. In addition, public bids must be held for public works contracts (projects governed by prevailing wage requirements) that exceed \$35,000 in cost. There are exceptions to the public bidding requirement.

#### 1. EXCEPTIONS TO PUBLIC BIDDING REQUIREMENTS

The College is not required to competitively bid purchase contracts in excess of \$20,000 or public works contracts in excess of \$35,000 under the following specified circumstances, or as otherwise authorized by New York State or federal law:

Preferred Sources: New York State has enacted legislation to advance “special social and economic goals,” which accords certain providers with “preferred source” status.

Procurements of commodities and/or services when available in the “form, function and utility” desired by the College are required to be made from preferred sources and are not subject to competitive procurement requirements.

Preferred sources include:

- New York State Department of Correctional Services Division of Industries (known as Corcraft), provides employment opportunities for inmates.
- New York State Preferred Source Program for People Who Are Blind (NYSPSP), provides employment opportunities for blind and visually impaired New Yorkers.
- New York State Industries for the Disabled, provides employment opportunities for both disabled New Yorkers and veterans.

NYS Office of General Services: Purchases of materials, equipment, food products, supplies (except printed material), and contracts to obtain services may be made through contracts procured by the New York State Office of General Services (OGS).

County Contracts: Purchases of commodities and contracts to obtain services (other than services which require the payment of prevailing wages, pursuant to the NYS Labor Law) may be made through competitively bid county contracts, where such contracts contain language specifically authorizing governmental entities covered by General Municipal Law Section 103 to do so.

Emergencies: Commodities may be purchased and contracts for public works may be authorized without undergoing the competitive bidding process in the case of a public emergency arising out of an accident or other unforeseen occurrence or conditions whereby circumstances affecting public buildings, public property, or the life, health, or safety of persons require immediate action.

Sole Source Vendor: This exception applies only when the College requires particular supplies, materials, equipment, or services, which uniquely serve its interests and for which there is no substantial equivalent. Procurement by this method must be supported by documentation that sets forth the following:

- (i) the unique nature of the requirement;
- (ii) the basis upon which it was determined that there is only one known vendor able to meet the need (i.e., the steps taken to identify potential providers); and
- (iii) the basis upon which the cost was determined to be reasonable (i.e., a fair market price was inferred based upon the sole source provider’s product catalogs, published price lists and the like).

Surplus and Second-Hand Supplies: Purchases of surplus and second-hand supplies, materials or equipment may be made directly from the federal government, the State of New York or from any other political subdivision, district or public benefit corporation within the State of New York.

Piggybacking on Certain Government Contracts: As an alternative to soliciting competition on your own or through cooperative purchasing arrangements, the College may “piggyback” on contracts that have been extended to local governments and school districts by certain other governments. Use of these contracts constitutes an exception to the competitive bidding and offering requirements of the law.

Professional Services: Generally, “professional” services involve specialized skill, training and expertise, use of professional judgment or discretion, and/or a high degree of creativity.

## **2. WHEN A PUBLIC BID IS REQUIRED**

The College must administer a public bid in the following circumstances:

- a. For the purchase of goods in excess of \$20,000 which do not qualify under an exemption to bidding:

All purchases which, on a College-wide basis, are reasonably anticipated to involve an expenditure of more than \$20,000 over the course of a College fiscal year (September 1 – August 31) are to be awarded to the lowest responsible bidder after advertisements for sealed bids; or, alternatively, to the bidder whose bid represents the best value to the College. A determination of “best value” shall be based upon an objective and quantifiable analysis of a bidder’s ability to optimize quality, cost and efficiency.

The splitting of purchases in order to evade the monetary threshold of the New York State General Municipal Law constitutes a violation of this law and is strictly prohibited.

- b. For public works (projects governed by prevailing wage requirements) contracts in excess of \$35,000 which do not qualify under an exemption to bidding:

Contracts for public works encompass nonprofessional services, labor or construction, maintenance, painting, building construction and renovation.

All contracts for public works involving an expenditure of more than \$35,000 are to be awarded to the lowest responsible bidder after advertisements for sealed bids.

## **3. THE PUBLIC BID PROCESS**

Once the Purchasing and Central Receiving Department (hereinafter “Purchasing”) has determined the need for the issuance of a public bid, the following steps will be taken:

- a. Obtain Bid Specifications: In consultation with the requesting College department, Purchasing will assist in drafting the bid specifications which will allow bidders to provide reasonably equivalent commodities (for purchase contracts) or

- nonprofessional labor or construction services (for public works contracts) to compete on an equal, common basis.
- b. The specifications must ensure that bidders know exactly what is required. They should be as clear, inclusive and informative as possible. Specifications should be precise enough so that the College will receive the commodity or service needed, yet broad enough to encourage competition. Care must be taken so that requirements do not favor a particular vendor. However, the solicitation may incorporate any information obtained from research regarding the products and/or services available. Specifications establish the minimum level of acceptable requirements. The level of detail required in the specification depends upon the complexity of the commodities and/or services being procured
  - c. Occasionally, departments must obtain specifications from an outside source (a vendor, manufacturer etc.). To promote objective contractor performance and avoid the perception the College is favoring one vendor over another, departments need to be prepared to pay the vendor for this work such that the College owns the rights to the work. Care needs to be taken to insure the purchased specifications allow for competition. Departments need to take great care to advise external vendors and manufacturers that their assistance with preparing specifications does not provide them any advantage over their competitors.

Note: If the expenditure involves the use of Federal Funds, the following applies: In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.

The College is obligated by law to fairly review equivalent products and/or services from all qualified vendors. Since many products and services are similar in form and function, specifications that are the most critical to meet College needs will be emphasized accordingly in the bid documents. A manufacturer's name and model number may be used in the specification only to establish the level of quality desired. This is not interpreted to mean that the make or model specified is the only one acceptable. The College must consider all items determined equivalent to those specified.

In some cases vendors may have to be prohibited from participation in the bid process if it is perceived they have an unfair advantage.

- d. Advertisement of Bid: Purchasing will determine:
- title of the bid
  - date the bid will be publicly advertised
  - date/time bids are due from vendors

Availability of the bid is advertised for at least one (1) day. The ad announces the bid and invites prospective vendors to obtain the bid documents from the Purchasing Department.

There must be a minimum of five (5) business days between the date of bid advertising and bid opening. If more than one bid is being opened on the same day, they can be included in one advertisement.

In an effort to help ensure that the largest possible pool of potential vendors is made aware of College needs, the Purchasing Office may also send the bid announcement and/or the actual specifications directly to vendors they know may be interested.

- e. Coordination of the Process: Purchasing shall coordinate all aspects of the public bid opening, including documenting all proposals submitted.
- f. Determination Lowest Responsible Bidder: The mere fact that a particular bidder is the lowest price bidder does not establish an entitlement to the award or the contract. Purchasing must examine the low bidder's background and make a factual determination as to whether the bidder is a "responsible bidder". "Responsibility" generally involves a bidder's qualifications and ability to perform in accordance with the terms and conditions of the contract. "Responsibility" also encompasses such factors as financial ability to complete the contract, accountability, reliability, skill, past performance, judgment and integrity.
- g. Award: Upon determination of the lowest responsible bidder, Purchasing will make a written recommendation of award for the ultimate approval by the CFO/Vice President of Administrative Services.

If a bid is recommended to be awarded to other than the lowest responsible bidder, the written recommendation referred to above will include the justification for such a determination, including why the award furthers the interests of the College. In these cases, the CFO/Vice President of Administrative Services will obtain the approval to award from the Chair of the Finance Committee of the Board of Trustees.

#### 4. PROCEDURES FOR PURCHASES OF GOODS \$20,000 AND UNDER AND PUBLIC WORKS CONTRACTS UNDER \$35,000

If the monetary threshold for the purchase of commodities is not reasonably anticipated on a College-wide basis to exceed \$20,000 over the course of a fiscal year, and the items are not available on a federal, state, county, or piggyback contract, Purchasing will seek competitive price quotes from various vendors as appropriate. With respect to public works contracts, if the contract is anticipated not to exceed \$35,000 Purchasing will seek competitive price quotes from various vendors as appropriate. The type and extent of competition required depends on the dollar amount of the purchase. Various state, SUNY, and campus policies result in the following table (which serves as a general guide only and is not applicable to every purchase):

<i><b>PURCHASE OF GOODS AND MATERIAL</b></i>			
	# OF VERBAL QUOTES DESIRED	# OF WRITTEN QUOTES DESIRED	OTHER
\$0 - \$250	1		
\$250 - \$999	2		
\$1,000 - \$4,999	1	2	
\$5,000 - \$19,999		3-5	
<i><b>PUBLIC WORKS (LABOR ORIENTED) PROJECTS</b></i>			
	# OF VERBAL QUOTES DESIRED	# OF WRITTEN QUOTES DESIRED	OTHER
UNDER \$500	1		
\$500 - \$2,500	2		
\$2,501 - \$9,999		2	
\$10,000 - \$34,999		3-5	

#### 5. PROCUREMENT OF PROFESSIONAL SERVICES

Contracts for services that involve specialized skill, training, knowledge, expertise, technical skill and the use of professional judgment are considered “professional service” contracts which are excluded from the competitive bidding requirements of the General Municipal Law. These are services that cannot be competitively bid and awarded based on price, because the cost of services, although a factor, will not ensure that the College obtains the best services for the best value.

Some examples of professional services are contracts with physicians, attorneys, surveyors, engineers, architects, insurance brokers, consultants with specialized expertise, computer programmers, leases for personal property, contracts for customized software, and provision of software licenses.

The process of obtaining a professional service will depend on several factors including the monetary value of the contract, nature of the work, term of the contract, and the College's previous experience with similar contracts. Unlike a commodity or public works contract, which by law are subject to a formal competitive bidding process, professional services may be secured through negotiation or through solicitation of proposals, generally known as a Request for Proposal ("RFP").

The benefit of the RFP process is that it allows the College to explore the market of potential providers for creative approaches, specialized experience, quality of service, and cost differentials. Generally, an RFP should be prepared when any of the following criteria occur:

- the service will be for more than one year
- the compensation amount will be greater than \$25,000
- 3-5 years have transpired since the last RFP for the service was issued
- a new service is being sought

Even when any or all of these criteria have been met, there may be unique situations when it is not in the College's best interest to secure professional services through the RFP process. The College must weigh the cost of preparing an RFP and undertaking the review process against the benefit to the College. When the contract amount is small and the College is knowledgeable about the market, an RFP may not be necessary if it is determined that the College can effectively negotiate a contract directly with professionals that have the required skills.

Regardless of the anticipated expenditure, whenever it is recommended that an RFP not be used, a written justification for this decision must be prepared and forwarded to Purchasing for review and approval. If in the judgment of Purchasing the rationale is sound, the justification will become part of the "procurement record" (attached to the Purchase Order).

Written justification for not using an RFP should include the following as appropriate:

- Description of the nature of the services being sought.
- Estimated dollar value of the requested service with an explanation of how pricing was determined to be reasonable while providing the best value to the College.
- Detailed evaluation of alternative potential vendors.
- Description of any prior history with the chosen vendor and an explanation of why the Department believes it is in the College's best interest to continue with that vendor.
- Description of any emergency or unique circumstances which the Department has determined would jeopardize a project or otherwise be detrimental to the College if an RFP process were administered.
- Description of the Department's needs for such vendor and the Department's knowledge of the market.

When an RFP is not required because none of the RFP criteria have been met, less formal letters seeking price quotes and service descriptions should be sent to multiple vendors. It is important the vendors all receive the same information.

If it is ultimately determined that an RFP should be prepared, Purchasing will work with the Department to assist with administration of the process. An RFP will generally include the following information:

- overview of the services to be procured
- detailed technical specifications
- proposed method of evaluation
- a model contract, which may be subject to negotiation prior to award of the contract

Purchasing shall guide the issuance of the RFP process. In an effort to help ensure that the largest possible pool of potential vendors is made aware of College needs, Purchasing may also send the RFP directly to vendors they know may be interested.

The following shall serve as a guide for acquiring professional services:

Anticipated Cost of Professional Service	Process to Procure
\$25,000 or greater	Formal RFP process should be administered
\$5,000 to \$24,999	Three written quotes shall be pursued and the Department seeking such services shall provide written documentation/rationale to Purchasing supporting the vendor award recommendation.
Less than \$5,000	Department seeking such services shall provide written documentation/rationale to Purchasing supporting the vendor award recommendation.

In some situations, the College may desire to issue a Request for Qualifications (RFQ). The administration of an RFQ follows a similar path as an RFP. In an RFQ, vendors will be invited to submit a statement of qualifications to perform services on various projects such as College promotion/marketing or architectural design and engineering of College facilities. As a result of the administration of an RFQ, a College department or committee will evaluate the qualifications of each firm responding and may recommend a subgroup of those responding to actually submit a formal proposal.



## 6. VENDOR SELECTION

The selection of a vendor by the Purchasing Department depends upon a number of factors including:

- existence of a relationship with the College
- vendor holds either a state, county, or College issued contract
- vendor's price
- vendor's location
- vendor's ability to provide the desired product/service
- recommendation of the requisitioning department
- prior experience with the vendor
- In an effort to support the local economy, the College makes every effort to do business with vendors that are located in the County of Monroe or at the very least the State of New York.

The College encourages New York State certified Minority and Women Owned Business Enterprises (referred to hereafter as "MWBEs"), Service Disabled Veteran Owned Businesses (referred to hereafter as "SDVOBs") and small businesses to participate in contract opportunities with the College and to afford these businesses an equal opportunity to compete for work on College contracts. Purchasing shall take all reasonable measures to ensure MWBEs, SDVOBs, and small businesses are made aware of contract opportunities for which they may be qualified.

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### Contact Information

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Purchasing and Central Receiving Department