

Maine Community College System
Policy and Procedures Manual

Page: 803 (Page 1 of 13)

SUBJECT: PURCHASING

Effective: June 26, 2012

Section: 803 Competitive Procurement

Competitive Procurement

1. Purpose

The purpose of this procedure is to ensure that MCCS obtains the best value in its procurements by:

- A. Establishing competitive procurement as the standard method of procurement;
- B. Requiring competitive bidding, with appropriately escalating degrees of formality, for procurements of escalating values;
- C. Using the most efficient means for procurements of nominal value; and
- D. Permitting limited exceptions when certain exigencies or operational demands so require.

2. Definition of Procurement

For the purposes of this procedure, “procurement” means the act of buying goods, services or both. Any commitment to expend college resources that is not a payment of wages or wage-related costs qualifies as “procurement.” This procedure recognizes five categories of procurement:

- A. Purchase of “goods” or some other form of physical property;
- B. Commitment to pay for “services” from a company, such as custodial services, snow removal, or maintenance of college owned equipment;
- C. Commitment to purchase “goods and services” in a single contractual agreement, such as the installation of a heating system;
- D. Commitment to acquire “professional services” from licensed professionals, such as architects, engineers or lawyers; and

- E. Commitment to “renovate or construct” a building for MCCS (also known as a Bureau of General Services (“BGS”) Public Improvement under 5 *MRSA §1741*).

3. Definition of Estimated Contract Value

For the purposes of this procedure, “estimated contract value” means the good faith identification of the value of a contract for goods or services as reasonably projected by the employee authorizing the transaction at the time of procurement.

4. Procurement Requirements

This procedure imposes certain requirements based upon the type of procurement and the anticipated total cost of the goods and/or services under consideration. Such types and costs are categorized as follows:

- A. Contracts with an estimated contract value of less than \$1,000;
- B. Contracts to procure goods, goods and services, or services with an estimated contract value of:
 - 1) Between \$1,000 and less than \$10,000;
 - 2) Between \$10,000 and less than \$25,000; or
 - 3) \$25,000 or more;
- C. Contracts to procure professional services with an estimated contract value of:
 - 1) Less than \$25,000; or
 - 2) \$25,000 or more;
- D. Contracts to renovate or construct MCCS buildings; and
- E. Considerations governing the issuance of any RFP or RFQ.

5. Blanket or Bundled Contracts

If a procuring employee knows or reasonably expects at the time of procurement that the need for a particular good or service is likely to reoccur within the same fiscal year, procurement of a blanket or bundled contract for that good or service for at least that fiscal year shall be considered and, if practicable and efficient, shall be sought, preferably at the beginning of a fiscal year. For the sake of efficiency, MCCS may choose to procure goods or services for several years in a single contract. In those instances, MCCS may contract for a period of not more than three years, but may offer up to two one year optional extensions. In any case, MCCS expects to reissue an RFP at least once every five years.

6. Specific Procurement Requirements

A. Contract with an Estimated Contract Value of Less than \$1,000

Selective procurement, in order to achieve net operational and financial efficiency, is required as follows:

- 1) Customary prudence and care shall be exercised;
- 2) Readily available means of market survey, such as internet searching, shall when practicable, be used; and
- 3) If the contract procures goods or services through purchasing agreements arranged by the State of Maine, University of Maine System or other like partner, the purchaser must determine whether the purchasing agreements were secured through processes that applied the essential protections of this subsection.

B. Contract to Procure Goods, Goods and Services, or Services with an Estimated Contract Value of between \$1,000 and less than \$10,000

Competitive bidding is required as follows:

- 1) The requisitioner must obtain price quotations from at least three vendors reasonably believed to be qualified shall be received;
- 2) Such quotations may be received by telephone, email, website, or other means, provided all such quotations are documented in writing in the attached Form (Form attached);
- 3) All such quotations shall be attached to the original requisition and maintained on file with the purchase order; and
- 4) If the contract procures goods or services through purchasing agreements arranged by the State of Maine, University of Maine System or other like partner, the purchaser must determine whether the purchasing agreements were secured through processes that applied the essential protections of this subsection.

In the event that a contract of this estimated value involves the purchase of non-standard or complex material or services, a procurement process like that set forth in *subsection C* or *D* below should be used.

C. Contract to Procure Goods, Goods and Services, or Services with an Estimated Contract Value of between \$10,000 and less than \$25,000

Competitive bidding is required as follows:

- 1) A standard Request for Proposal (RFP) shall be used to solicit bids from at least three vendors reasonably believed to be qualified;
- 2) Where practical, a specifications sheet shall be included in the RFP. Specifications include, but are not limited to quantity, description, delivery requirements, special conditions, drawings or other specifications;
- 3) The criteria or approximate weighting of diverse criteria by which the procure decision will be made such as price, life cycle cost, efficiency gains or processing speed shall be included in the RFP. (See *subsection 9*, below);
- 4) A statement that sets forth MCCS's right to reject any or all proposals shall be included in the RFP;
- 5) The standard "Notice to Bidders" (Notice attached) shall be included in the RFP;
- 6) A timetable with the dates of key events in the decision process shall be established and included in the RFP. The timetable shall, at a minimum, include the location, date and time proposals are due and when the successful bidder will be notified of the award. The RFP may allow for electronic submission of the proposal, but it cannot require electronic submission;
- 7) If replies are to conform to a certain format, that should be clearly stated in the RFP; and
- 8) If the contract procures goods or services through purchasing agreements arranged by the State of Maine, University of Maine System or other like partner, the purchaser must determine whether the purchasing agreements were secured through processes that applied the essential protections of this subsection.

D. Contract to Procure Goods, Goods and Services, or Services with an Estimated Contract Value of \$25,000 or More

Competitive bidding is required as follows:

- 1) All of the requirements set forth in *subsection C* above;
- 2) The RFP must be advertized in, at minimum, a major regional or state-wide news paper such as the Portland Press Herald, Bangor Daily News or Kennebec Journal;
- 3) The procuring college must establish a review committee with the deliberations and decisions of that committee clearly documented;
- 4) The review committee should seriously consider interviewing the highest rated respondents to the RFP before selecting the contractor; and
- 5) If the contract procures goods or services through purchasing agreements arranged by the State of Maine, University of Maine System or other like partner, the purchaser must determine whether the purchasing agreements were secured through processes that applied the essential protections of this subsection.

E. Contract to Procure Professional Services with an Estimated Contract Value of less than \$25,000

Competitive bidding is required as follows:

- 1) When contracting for engineering or architectural services, the authorized requisitioner may identify a qualified firm on the State of Maine Bureau of General Services (BGS) Prequalification List or issue a standard Request for Qualifications (RFQ) to at least three vendors reasonably believed to be qualified;
- 2) Obtain a written confirmation that all required professional credentials are current;
- 3) Provide the professional services firm with a written scope of the project, project schedule, project budget and a request for a written proposal that includes the deadline by which the firm must provide reports, drawings, specifications and other necessary documents in support of timely completion the project together with the total cost of the professional services and related expenses;

- 4) If the college and the professional services firm cannot successfully agree on the cost, scope, content and, or deadline for delivery, the college will so notify the professional services firm and either select another firm from the BGS Prequalification List, select the second ranked firm from the RFQ results or issue a new RFQ and repeat steps 2 and 3 above; and
- 5) Once the college and the professional services firm agree on the cost, scope, content and deadlines the college shall draft a 'rider' to the standard Professional Services Agreement that memorializes the agreements between the professional services firm and the college and have the agreement executed by the college, the professional services firm and, where appropriate, BGS.

F. Contracts to Procure Professional Services with an Estimated Contract Value of more than \$25,000

- 1) All of the requirements set forth in *subsection E* must be fulfilled except that the use of the BGS Prequalification List is prohibited. The requisitioner must issue a standard Request for Qualifications (RFQ) to not less than three vendors reasonably believed to be qualified;
- 2) The RFP must be advertized in, at minimum, a major regional or state-wide news paper such as the Portland Press Herald, Bangor Daily News or Kennebec Journal;
- 3) The procuring college must establish a review committee with the deliberations and decisions of that committee clearly documented; and
- 4) The review committee should seriously consider interviewing the highest rated respondents to the RFQ before selecting the contractor.

G. Renovations and Construction (Public Improvement Projects)

- 1) Any project meeting the statutory definition of a public improvement, (i.e. the construction, alteration or major repair of a building owned or leased by MCCS per 5 MRSA §1741), will follow the procurement standards established by BGS; and
- 2) As soon as a college identifies a project consistent with the aforementioned definition and establishes a funding source, the college will submit a Public Improvement Project (PIP) Request Form online with BGS (See <http://www.maine.gov/bgs/constrpublic/forms/index.htm>) and contact BGS which will oversee the project and procurement process.

H. Considerations governing the issuance of any RFP or RFQ under Section A-G Above

- 1) For large or more complex bids it may be beneficial to hold a bidders' conference, at which time all potential bidders may ask questions. If questions cannot be answered at that time, the purchasing staff must obtain the information and promptly respond, in writing, to all potential bidders;
- 2) During the bid process, vendors may not have access to information regarding other bidders, such as the names of other vendors participating in the bid process or prices already offered by other bidders. After the bid closing date but before the award has been made, information pertaining to bids may not be shared with other vendors. Once an award is made, it becomes public information and may be shared with anyone who requests it. Requests should be made in writing; if copies of documentation are provided, reasonable fees for copying may be assessed;
- 3) Answers to technical questions arising during the bidding process should be provided by the purchasing staff, who must coordinate the reply and ensure that all potential vendors are provided the same information;
- 4) When a change is made to a material specification, all vendors must be notified of the change and given an equal opportunity to bid on the revised specification. Such specifications include, for example, quantities, model numbers, descriptions, delivery and terms;
- 5) If vendors may submit alternative bids, the request for proposal must specify that option, giving all vendors equal opportunity to suggest alternatives;
- 6) After all bids have been received and examined for completeness, a summary sheet may be prepared to note all pertinent data and discrepancies. The following factors in combination, not necessarily listed in their order of importance, should be considered and documented before awarding bids:
 - (a) Prices;
 - (b) Bidder's previous record of performance and service;
 - (c) Ability of bidder to render satisfactory service in this instance;
 - (d) The bidder's service capability, integrity, facilities, equipment, reputation;
 - (e) Availability of bidder's representative to call upon and consult with MCCS user departments;
 - (f) Quality and conformance to specifications; and

- 7) All information gathered should be kept with the purchase order as backup documentation. In cases of bids for estimating purposes, a copy of each bid response is to be sent to the requester along with the bid summary sheet.

I. Procuring Text Books and other Academic Support Materials

Because MCCS recognizes that selection of text books and other academic support materials is integral to academic freedom, selective procurement for text books and other academic support materials is required as follows:

- 1) Reasonable and customary prudence and care for the financial burdens placed on students should be exercised in selecting text books and all supporting materials; and
- 2) The selection, distribution and use of text book and academic support materials must honor and comply with all copyright laws.

J. Contracts for Works of Art Regardless of Value

Selective procurement for works of art, including those MCCS is required to purchase pursuant to *27 MRSA §451 et seq.*, is required as follows:

- 1) Proposals or works from at least three artists shall be considered; and
- 2) Customary prudence and care shall be exercised and a procurement process should be established similar to the process for procuring professional services in *subsections E and F* above dependent on the good faith identification of the estimated contract value for the work of art.

7. Waiver of the Above Procurement Requirements (i.e., Sole Source Justification)

An intentional material deviation in the procurement requirements set forth in *Section 6* above may be authorized (hereinafter “waiver”) only as follows:

- A. Reasons for requesting such a waiver must be detailed on the Contract Procurement Form (attached) prepared and signed by the requesting manager.
- B. One of the following standards must be met. There must be:
 - 1) Only one qualified vendor;
 - 2) Consistency in matters such as style and type with commodities or services previously purchased;
 - 3) Emergency need for the goods or services;

- 4) Manufacturer's direct sales that offer exceptional discounts. Prices from such manufacturers should, however, be checked periodically for comparison;
 - 5) Professional services requiring unique expertise or unique knowledge of MCCS; or
 - 6) Instructional Services Contracts. Due to other inherent controls within the delivery of specialized instruction, neither competitive bidding nor a waiver is required for contracts for instructional services.
- C. The following, by way of example, do not justify a waiver;
- 1) The college has used the vendor for many years;
 - 2) Another college uses the vendor and is pleased with its goods and services; or
 - 3) This is the only vendor who will respond on an ASAP basis.
- D. Waiver of any contract with an estimated or actual value of \$10,000 or more shall not be executed without the following prior approvals. Only the:
- 1) College president or director of finance may approve such a college contract;
 - 2) Director of the Center for Career Development may approve such a Center Contract; and
 - 3) System president or System chief financial officer may approve such a System contract.
- E. Documentation of written justification for sole source awards should be attached to the purchase order.

8. Mistaken Deviation from the Above Procurement Requirements

A mistaken or unintentional material deviation from the procurement requirements set forth in *Section 6* above that is not authorized but that occurs by error or mistake (hereinafter "deviation") shall be reviewed promptly when known. Such deviations shall be evaluated to determine whether process changes, employee training, or employee discipline is appropriate.

9. Criteria in Awarding Contracts

Acquiring goods and services at the lowest total cost is an important objective of the M CCS. Circumstances also arise in which it may be in the best interest of the M CCS to make a bid award on a basis other than lowest apparent cost. Such circumstances may occur when the following elements of total cost are evaluated:

- A. Quality and commodity life-cycle cost;
- B. Transportation;
- C. Service and travel;
- D. Technical assistance;
- E. Willingness to maintain stock;
- F. After-hours availability;
- G. Unique expertise or unique knowledge of M CCS; and/or
- H. Unsatisfactory references of low bidder.

Documentation of written justification for the award of a bid to other than the low bidder must be attached to the purchase order.

10. Certain Contracts Subject to Unique Rules

The following contracts, regardless of estimated value, are subject to the following additional rules:

A. Contracts with Current Employees

Any contract of any value, other than a contract for instructional services, in which a current employee is known to have a substantial personal financial interest shall have been subject to the prior receipt of at least three bids from at least three vendors reasonably believed to be qualified.

B. Contracts Subject to Other Laws

Maine and federal law require M CCS in certain instances to procure goods or services pursuant to their own provisions. These provisions can either be in addition to, or effectively replace, the requirements of this procedure. One example of a federal law that is in addition to this procedure is The American Recovery and Reinvestment Act of 2009 ("ARRA" at *Pub. L. 111-5*). One example of state law that effectively replaces this procedure is the Public Improvements Act (*5 MRSA §1741 et seq.*, giving the Bureau of General Services' jurisdiction, including procurement, over certain M CCS public improvements). For contracts issued under the jurisdiction of such laws, M CCS shall comply with both the law and this procedure.

C. Contracts Subject to Grants or Other Restrictions

Grant or other agreements can require MCCS in certain instances to procure goods or services pursuant to their own provisions. These provisions can either be in addition to, or effectively replace, the requirements of this procedure. Whenever possible, the provisions of this procedure must be complied with in addition to the requirements of such a grant or other restrictive agreement.

11. Interpretation

This procedure shall be interpreted and applied in manners that comply with the requirements of *5 MRSA §12022(3)* as applied to the extent possible consistent with the MCCS' authorizing law, including *20 MRSA §12706(5), (9) and (12)* (Trustees' powers to control expenditures, contracts and purchases), and other governing laws, such as the Public Improvements Act, *5 MRSA §1741 et seq.* (Bureau of General Services' jurisdiction, including procurement, over certain MCCS public improvements).

12. Attached Form(s)

- A. MCCS Standard Contract Procurement Form for All Non-Employment Contracts over \$10,000; and
- B. MCCS Standard Notice to Bidders

**MCCS
CONTRACT PROCUREMENT FORM
FOR ALL NON-EMPLOYMENT CONTRACTS OVER \$10,000**

1. **Briefly Identify the Good or Service Procured:** _____
2. **Identify the Estimated Contract Value:** \$ _____
3. **Identify the Actual Contract Value:** \$ _____
4. **Is this a Blanket or Bundled Contract?** Yes ___ No ___
5. **Does this Procurement Qualify for a Blanket or Bundled Contract?** Yes ___ No ___
6. **Have you complied with the requirements of the attached MCCS Financial Procedure that applies to the type and amount of the contract you seek to award?**
Yes ___ No ___.

If no, please restart the procurement in a compliant manner.

7. **Did you procure bids or price information from at least three vendors reasonably believed to be qualified?** Yes ___ No ___.

If no:

- a. Are you seeking a waiver of competitive bidding rules under section 4 of the Attached Procedure? Yes ___ No ___.

If yes, explain: _____

- b. Are you seeking to award this as a sole source contract? Yes ___ No ___.

If yes, explain: _____

- c. Is this a Contract:

- 1) For instructional services? Yes ___ No ___.

- 2) One in which a current employee is known to have a substantial personal financial interest? Yes ___ No ___.

If yes, have you procured at least three bids from at least three vendors?
Yes ___ No ___.

If no, please restart procurement by obtaining such bids.

- 3) Subject to a state or federal law that require a procurement procedure that is either in addition to (i.e., ARRA), or effectively replaces (i.e., BGS), the MCCS procurement requirements? Yes ___ No ___.

If yes, which law and how have you complied?

8. List the following information regarding at least three vendors reasonably believed to be qualified from whom bids or information were sought:

Names of Vendor: _____
Prices Obtained: _____
Dates of Contact: _____
Means of Contact: _____

Names of Vendor: _____
Prices Obtained: _____
Dates of Contact: _____
Means of Contact: _____

Names of Vendor: _____
Prices Obtained: _____
Dates of Contact: _____
Means of Contact: _____

9. Are you aware of any deviations other than those noted above from the requirements of Section 6 in procuring this contract? Yes ___ No ___.

If yes, explain: _____

10. Are you recommending awarding the contract to a vendor that was not the lowest price? Yes ___ No ___.

If yes, explain why: _____

11. Submitted by:

Printed Name: _____

Date: _____

Signature: _____

**NOTICE TO ALL BIDDERS REGARDING CONDITIONS ON BIDS
STANDARD TERMS AND CONDITIONS APPLICABLE TO ALL MCCS CONTRACTS**

The following Maine Community College System (MCCS) standard contracting terms and conditions are incorporated and shall become a part of any final contract that will be awarded by any college or other operating unit of the MCCS. These terms and conditions derive from the public nature and limited resources of the MCCS. MCCS DOES NOT AGREE TO:

1. provide any defense, hold harmless or indemnity;
2. waive any statutory or constitutional immunity;
3. apply the law of a state other than Maine;
4. procure types or amounts of insurance beyond those MCCS already maintains or waive any rights of subrogation;
5. add any entity as an additional insured to MCCS policies of insurance;
6. pay attorneys' fees or costs for any other entity;
7. promise confidentiality in a manner contrary to Maine's Freedom of Access Act;
8. permit an entity to change unilaterally any term or condition once the contract is signed; and
9. automatic renewals for term(s) greater than month-to-month.

By submitting a response to a Request for Proposal, bid or other like offer to do business with a college or other operating unit of the MCCS, YOUR ENTITY UNDERSTANDS AND AGREES THAT:

1. The above standard terms and conditions are thereby incorporated either expressly or by reference to this notice into any agreement entered into between MCCS and your entity, and that your entity will not propose or demand any contrary terms;
2. The above standard terms and conditions will govern the interpretation of such agreement notwithstanding the expression of any other term and/or condition to the contrary;
3. Your entity will not propose to any college or other operating unit of the MCCS any contractual documents of any kind that are not in at least 11-point font and completely contained in one Word or PDF document, and that any references to terms and conditions, privacy policies or any other conditions referenced outside of the contract will not apply; and
4. Your entity will identify at the time of submission which, if any, portion or your submitted materials are entitled to "trade secret" exemption from disclosure under Maine's Freedom of Access Act; that failure to so identify will authorize MCCS to conclude that no portions are so exempt; and that your entity will defend, indemnify and hold harmless MCCS in any and all legal actions that seek to compel MCCS to disclose under Maine's Freedom of Access Act some or all of your submitted materials and/or contract, if any, executed between MCCS and your entity.