

All purchases for property and services made using federal funds must be conducted in accordance with all applicable federal, state, and local laws and regulations; the Uniform Grant Guidance; and MC²'s written policies and procedures.

Procurement of all supplies, materials equipment, and services paid for from Federal funds or MC² matching funds shall be made in accordance with all applicable federal, state, and local statutes and/or regulations; the terms and conditions of the Federal grant and MC² policies and procedures.

The Executive Director shall maintain a procurement and contract administration system in accordance with the USDOE requirements (2 CFR 200.317-.327) for the administration and management of Federal grants and Federally-funded programs. MC² shall maintain a contract administration system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall also conform to the provisions of MC²'s documented general purchase policy, DJB.

MC² avoids situations that unnecessarily restrict competition and avoids acquisition of unnecessary or duplicative items. Individuals or organizations that develop or draft specifications, requirements, statements of work, and/or invitations for bids, requests for proposals, or invitations to negotiate, are excluded from competing for such purchases. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis shall be made to lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

Contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration is given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. No contract is awarded to a contractor who is suspended or debarred from eligibility for participation in federal assistance programs or activities.

Purchasing records are sufficiently maintained to detail the history of all procurements and must include at least the rationale for the method of procurement, selection of contract type, and contractor selection or rejection; the basis for the contract price; and verification that the contractor is not suspended or debarred.

To foster greater economy and efficiency, MC² may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

- A. **Competition:** All procurement transactions shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgment. In order to promote objective contractor performance and eliminate unfair competitive advantage, MC² shall exclude any contractor that has developed or drafted specifications, requirements,

statements of work, or invitations for bids or requests for proposals from competition for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

1. Unreasonable requirements on firms in order for them to qualify to do business;
2. Unnecessary experience and excessive bonding requirements;
3. Noncompetitive contracts to consultants that are on retainer contracts;
4. Organizational conflicts of interest;
5. Specification of only a "brand name" product instead of allowing for an "or equal" product to be offered in describing the performance or other relevant requirements of the procurement; and/or
6. Any arbitrary action in the procurement process.

Further, MC² does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless (1) an applicable Federal statute expressly mandates or encourages a geographic preference; (2) MC² is contracting for architectural and engineering services, in which case geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

To the extent that MC² uses a pre-qualified list of persons, firms, or products to acquire goods and services, the pre-qualified list must include enough qualified sources to ensure maximum open and free competition, and MC² must allow vendors to apply for consideration to be placed on the list as requested.

- B. **Solicitation Language:** MC² shall require that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it shall conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated; and the solicitation shall identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.

The Board will not approve any expenditure for an unauthorized purchase or contract.

- C. **Procurement Methods:** MC² shall utilize the following methods of procurement:
1. **Micro-purchases:** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000. To the extent practicable, MC² shall distribute micro-purchase equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive

quotes if the Executive Director considers the price to be reasonable and MC² maintains evidence of this reasonableness in the records of all purchases made by this method.

2. Small Purchases (Simplified Acquisition): Small purchase procedures provide for relatively simple and informal procurement methods for securing services, supplies, and other property which is acquired above the *aggregate dollar* micro-purchase threshold and but not exceeding the competitive bid threshold of \$250,000. Small purchase procedures require that price or rate quotations shall be obtained from an adequate number of qualified sources.
3. Sealed Bids: Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment amounts to \$250,000 and when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility the cost of which will exceed \$250,000.
 - a. In order for sealed bidding to be feasible, the following conditions shall be present:
 - i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. Two (2) 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.
 - b. When sealed bids are used, the following requirements apply:
 - i. Bids shall be solicited from an adequate number of qualified suppliers, in accordance with the provisions of State law, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
 - ii. The invitation for bids will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.
 - iii. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.
 - iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.
 - v. The Board reserves the right to reject any and all bids for sound documented reason.
 - vi. Bid protests shall be handled pursuant to the process set forth in DAF-3.I
4. Competitive Proposals: Procurement by competitive proposal, normally conducted with more than one source submitting an offer, is generally used when conditions are not appropriate for the use of sealed bids or in the case of a recognized exception to the sealed bid method.

If this method is used, the following requirements apply:

- a. Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
- b. Proposals shall be solicited from an adequate number of sources.
- c. MC² shall conduct technical evaluations of the proposals received when selecting recipients.
- d. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

MC² may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- 5. Noncompetitive Proposals: Procurement by noncompetitive proposals allows for solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from MC²; and/or
 - d. After solicitation of a number of sources, competition is determined to be inadequate.

D. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms: MC² must take necessary

affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- 5. 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
- 6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

- E. **Contract/Price Analysis:** MC² shall perform a cost or price analysis in connection with every procurement action in excess of \$250,000 (i.e., the Simplified Acquisition/Small Purchase limit), including contract modifications. (See 2 CFR 200.324. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, MC² shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, MC² shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- F. **Time and Materials Contracts:** MC² shall use a time and materials type contract only (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to MC² is the sum of the actual costs of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, MC² sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, MC² shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls, and otherwise performs in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

- G. **Suspension and Disbarment:** MC² will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of MC² and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, MC² shall consider such factors as (1) contractor integrity, (2) compliance with public policy, (3) record of past performance, and (4) financial and technical resources.

The Executive Director shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. MC² is subject to and shall abide by the non-procurement debarment and suspension regulations implemented in Executive Orders 12549 and 12689, 2 CFR Part 180.

Suspension is an action taken by MC² that immediately prohibits a person from participating in covered transactions under the Federal Acquisition Regulation (48 CFR Chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (See 2 CFR Part 180 Subpart G).

Debarment is an action taken by the Executive Director to exclude a person from participating in covered transactions under the Federal Acquisition Regulation (48 CFR Chapter 1). A person so excluded is debarred. (See 2 CFR Part 180 Subpart H).

MC² shall not subcontract with or award sub-grants to any person or company who is debarred or suspended. For contracts over \$25,000 MC² shall confirm that the vendor is not debarred or suspended by either checking the federal government's System for Award Management ("SAM"), which maintains a list of such debarred or suspended vendors at www.sam.gov (which replaced the former Excluded Parties List System or EPLS), or collecting a certification from the vendor. (See 2 CFR Part 180 Subpart C).

Documentation that debarment/suspension was queried must be retained for each covered transaction. This documentation should include the date(s) queried and copy(ies) of the SAM result report/screenshot, or a copy of the certification from the vendor. It should be attached to the payment backup and retained for future audit review.

H. Additional Requirements for Procurement Contracts Using Federal Funds:

1. Clause for Remedies Arising from Breach: For any contract using federal funds under which the contract amount exceeds the upper limit for Simplified Acquisition/Small Purchases (see DAF-3.C.2), the contract must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for sanctions and penalties. (See 2 CFR 200, Appendix II(A))
2. Termination Clause: For any contract using Federal funds under which the contract amount exceeds \$10,000, it must address MC²'s authority to terminate the contract for cause and for convenience, including the manner by which termination will be effected and the basis for settlement. (See 2 CFR 200, Appendix II(B))
3. Anti-Pollution Clause: For any contract using Federal funds under which the contract amount exceeds \$150,000, the contract must include clauses addressing the Clean Air Act and the Federal Water Pollution Control Act. (See 2 CFR 200, Appendix II(G))
4. Anti-lobbying Clause: For any contract using Federal funds under which the contract exceeds \$100,000, the contract must include an anti-lobbying clause, and require bidders to submit an Anti-Lobbying Certification as required under 2 CFR 200, Appendix II (I)
5. Negotiation of Profit: For each contract using Federal funds and for which there is no price competition, and for each Federal fund contract in which a cost analysis is performed, MC² shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's past performance, and industry profit rates in the surrounding geographical area for similar work. (See 2 CFR 200.3243(b))
6. Domestic Preference" Requirement: MC² must provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States, to the greatest extent practicable. This requirement applies whether MC² is purchasing the products directly or when the products are purchased by third parties on MC²'s behalf (e.g. subcontractor,

food service management companies, etc.). It also generally applies to all purchases, even those below the micro-purchase threshold, unless otherwise stipulated by the Federal awarding agency.

7. **Huawei Ban:** MC² may not use Federal funds to procure, obtain or enter into or renew a contract to procure or obtain equipment, services or systems which substantially use telecommunications equipment or services produced by Huawei Technologies Company or ZTE Corporation or any of their subsidiaries.

- I. **Bid Protest:** MC² maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request for Proposals (RFPs) or the individual bid specifications package for resolution. Bid protests shall be filed in writing with the Executive Director within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Executive Director shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

- J. **Maintenance of Procurement Records:** MC² shall maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and records regarding debarment/suspension queries or actions. Such records shall be retained consistent with MC² policies: EHB and EHB-R.

Revision History:

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