Overview of Key Montclair State Procurement Policies

April 2022
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Procurement Services
(Obtaining goods, services, or works from an external source)

- 21,000 Students
- 5,850 Faculty, Staff & Student Workers
- 750 Cost Centers in Workday
- 433 Procurement “Requestors” in Workday
- 360 Procurement “Approvers” in Workday
- $61 million non-payroll expenditures
- 11,000 Purchase Orders issued a year
- More than 8,000 active suppliers reside in the Procurement Workday module, with additions and changes occurring regularly
- 60 procurements completed through a public bid or waivers of advertising issued by Procurement Services (greater than $35,500)
- 120 procurements completed through delegated waiver of advertising process (greater than $35,500)
- 1,000+ contracts a year that require legal review (excluding all fee for service contracts at our academic centers)

*All numbers are approximates for a full year.*
NJ State Controller’s Best Practices

1. The pool of contractors solicited should be as expansive as possible;
2. Statements of work should be drafted in clear and unambiguous terms;
3. Proposals should be judged on the basis of predetermined, merit-based evaluative criteria, made known to vendors before proposals are submitted;
4. The evaluative criteria should be judged by a qualified evaluation committee;
5. The evaluation process should be explainable to evaluators and competing vendors, and capable of withstanding scrutiny under a protest challenge; and
6. The scoring process and award recommendations should be well-documented and retained.

“At minimum, the use of these best practices, serving as a safeguard against fraud, collusion, bribery, and the like, will make it far more difficult for dishonest participants in the procurement process to achieve their unlawful goals. [They] are aimed at protecting the public by helping to ensure that government gets the best value for services it buys, and by safeguarding against unfair favoritism and inadvertent waste of taxpayer dollars.” (Office of State Comptroller [OSC]).
The Montclair State University Act (the “Act”) incorporates the State Comptroller’s Best Practices

- Establishes bidding requirements.
- Defines when exceptions (“waivers”) can be made to public bidding. **Note:** even when public bidding is waived, competition must still be sought.
- Requires establishment of a board-approved procurement policy.
- MSU’s board periodically reviews and updates its policy, including internal approval requirements and delegation to the President & VP for Finance & Treasurer based on dollar value of the procurement.
- Prohibits contract subdivision to circumvent the dollar thresholds.
Bid Award Methodology: “Price and Other Factors”

- The Act permits procurements, including construction, to be awarded based on the bid most advantageous to the University, “price and other factors” considered.
- The lowest Bidder is presumptively the successful choice before factoring in the technical evaluation of their response.
- However, a mechanism exists to recommend bypass of the lowest bid based on factors other than price, e.g. quality, services, experience; as established by the evaluation committee.
- A justification must be provided for each bypass from the low bidder, based on evaluation criteria and ranking.
# Key Procurement Thresholds

<table>
<thead>
<tr>
<th>Contract Value</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - $6,999</td>
<td>Competition is not required, but is recommended</td>
</tr>
<tr>
<td>$7,000 - $35,499</td>
<td>Minimum of 3 written quotes</td>
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<tr>
<td></td>
<td>*except for limited sole source exceptions</td>
</tr>
<tr>
<td>$35,500 and above</td>
<td>Public Bid, or RFP Waiver of Advertising</td>
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<tr>
<td></td>
<td><em>(if an exception exists)</em></td>
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<tr>
<td>$500,000 and above</td>
<td>Board of Trustees Approval is required for all procurements</td>
</tr>
<tr>
<td>$2,500,000 - $12,499,999</td>
<td>Post award notification must be submitted to OSC within 20 days of award</td>
</tr>
<tr>
<td>Over $12,500,000</td>
<td>Must be submitted to OSC and approved before any procurement is initiated. Post award notification required. <em>(Procurement Services submits all requests to OSC)</em></td>
</tr>
</tbody>
</table>
Typical Spend
(most is under the bid threshold or another easy to procure method)

PERCENTAGE OF REQUISITIONS ENTERED PER TYPE

- Punchout (On-line Catalog) 22%
- Below $7k 36%
- $7k - $35.5k 3%
- Cooperative Contracts 7%
- RFP (University Contract) 22%
- Waiver of Advertising 10%
Cooperative contracts can be beneficial as the competitive process has already taken place. There are four (4) different types of cooperative contracts that are approved for use:

1. State of New Jersey Cooperative Contracts
2. Federal GSA Cooperative Contracts
3. New Jersey Purchasing Agreement Cooperative Contracts
4. National Recognized Cooperative Contracts (lead public agency)

**Procurement Thresholds Do Not Apply to these type of purchases** although justification that the cooperative purchase is most advantageous to the University, cost and other factors considered is still required for these purchases in most instances.

Please refer to the Procurement Services Cooperative Website for more information and threshold information: [https://www.montclair.edu/procurement/cooperative-purchasing-contracts/](https://www.montclair.edu/procurement/cooperative-purchasing-contracts/).

*Cooperative purchases, even those above $35,500, can be “delegated” to the using department, although Procurement can assist for more complex WOA.*
Publicly Advertised Request for Proposal (RFP)

If the potential purchase price for a good and service is likely to be greater than $35,500, a Publicly Advertised Request for Proposal may be required for the procurement. To initiate a Request for Proposal (RFP) with University Procurement Services, a Bid Initiation sheet is provided to Procurement Services. In addition, drafts of the following are required, all of which will be reviewed and honed in collaboration with the requesting school/department:

- A full description of the Scope of Work and Statement of Qualifications that are being sought
- Technical Evaluation criteria (quantitative and qualitative factors, other than price, upon which submissions will be judged)
- Pricing Sheet
- Bid evaluation committee members (if applicable)
- Relevant dates (expected RFP issue date and due date based on when product or service is needed. Procurement will advise on the feasibility of the timeline and appropriate dates for questions, etc.)

Note: Publicly Bid RFPs, and the process that follows issuance, are always managed by Procurement Services, in collaboration with the requesting school/department.
Publicly Advertised RFP (continued)

Procurement Services will work proactively with the school/department to develop the RFP document, and will manage the process from release of the public bid to receipt of bids and contract award. Once bids are received, a member of the Procurement team will first review them for “responsiveness,” and walk the using department through the following steps:

- Review of proposals
- Schedule oral presentations, if needed/desired
- Supplier evaluation and selection
- Contract finalization and execution

Recent examples of procurements that were publicly bid:
- Laundry Services
- Trash Removal & Single Stream Recycling Services
- Office Supplies
- Autobody Repairs
- Various Construction Projects

Typically, the timeline for a public bid from the issuance date to award is about 45 days; BOT approval is required for RFPs over $500,000
Waiver of Advertising (does not require a Public Bid)

- A method to procure a good or service with a dollar value greater than $35,500, without issuing a publicly advertised RFP.
- Must meet one of the 33 statutory waivers to public bidding. All listed on page 11 of the Procurement Policies and Procedures.
  - Examples: Professional Services (those that require a license such as attorneys and architects); Information Technology (software/hardware); Library Materials; or a Sole Source supplier.
- A Board Waiver means that the RFP does not have to be publicly advertised, but it does not eliminate the requirement to competitively bid.
- Waivers of Advertising (WOA) can be “delegated” to the using department, although Procurement can assist with more complex WOA.
- Purchases under $500,000 can be submitted on a rolling basis, while those over $500,000 need to be approved by the Board of Trustees.
Waiver of Advertising
(issued by Procurement Services or Delegated)

1. RFP Waiver of Advertising issued by Procurement Services:
   • Process is often very similar to a public RFP and typically the timeline from issuance date to award is about 45 days; review of Scope of Work/Specifications with the requesting school/department may require additional time.
   • Procurement Services will collect all forms and requirements through this process.

2. RFP Waiver of Advertising issued by internal customers:
   • The procurement cycle is completed by the department in this instance.
   • Collection of all forms and requirements are delegated when completed by the internal customer but Procurement Services is available to assist in securing these documents as needed. Please refer to the Waiver of Advertising Form for a full listing of requirements. When there is a contract that requires University Counsel’s review, include the Contract Approval Sheet (CAS) with the BOT package.
   • This includes providing the Scope of Work/Specifications for the Waiver of Advertising, proposals obtained through the competitive process, a summary of the procurement process and rationale for the selected supplier.
**Board of Trustees (BOT) Approval Thresholds**

<table>
<thead>
<tr>
<th>Value</th>
<th>Requirement</th>
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<tbody>
<tr>
<td>$35,500 - $199,999</td>
<td>Contracts pursuant to a Waiver of Advertising are delegated for approval to</td>
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<td></td>
<td>the Vice President for Finance &amp; Treasurer and reported at the next BOT</td>
</tr>
<tr>
<td></td>
<td>Meeting</td>
</tr>
<tr>
<td>$200,000 - $499,999</td>
<td>Contracts pursuant to a Waiver of Advertising are delegated to the University</td>
</tr>
<tr>
<td></td>
<td>President and reported at the next BOT Meeting</td>
</tr>
<tr>
<td></td>
<td>• All purchases over $200,000 require Budget Office approval</td>
</tr>
<tr>
<td></td>
<td>• Academic Affairs purchases require University Provost approval</td>
</tr>
<tr>
<td></td>
<td>• IT purchases require VP for Information Technology approval</td>
</tr>
<tr>
<td>$500,000 and above</td>
<td>Contracts must be submitted to the Board of Trustees for approval</td>
</tr>
<tr>
<td></td>
<td>• This applies for all purchases and contracts (regardless if done by</td>
</tr>
<tr>
<td></td>
<td>Waiver of Advertising, Public RFP, or a Cooperative Contract)</td>
</tr>
<tr>
<td></td>
<td>• It is expected that the full and complete package is submitted to the</td>
</tr>
<tr>
<td></td>
<td>Chief of Staff through Procurement Services four (4) weeks before the BOT</td>
</tr>
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<td></td>
<td>meeting.</td>
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Additional notes:

- The effective date of a contract cannot be before the date the Board of Trustees adopts a resolution approving the contractor or, when appropriate, the President or Vice President for Finance and Treasurer approve the waiver documents. No contractor shall be permitted to perform work prior to contract execution.
- BOT meeting schedule can be found at: [http://www.montclair.edu/board-of-trustees/agenda-and-schedule/](http://www.montclair.edu/board-of-trustees/agenda-and-schedule/).
- Following all required approvals, Procurement Services issues a BOT Waiver number for each approved contract as a way to identify the procurement methodology.
- Approval thresholds are for the aggregate amount (includes prior BOT approval if contract increase is needed or previous spend even if under a threshold if the same contract is being increased).
New Jersey or Federal Requirements
(MSU cannot process procurements without these)

• New Jersey Business Registration required for cumulative purchases greater than 15% above the public bid threshold (i.e. $5,325 - which is 15% of $35,500)*
• Chapter 51 “No Pay to Play Certification” for cumulative purchases over $17,500*
• New Jersey AA/EEO Employee Information Certificate (AA302 for goods and services, AA201 and AA202 for construction)*
• For new suppliers, include a vendor-completed W-9 for entities within the U.S. or a vendor-completed W-8 Form for Foreign Entities, as well as a Supplier Create/Maintain Form*
• Public Works Registration (over $2,000, where applicable)

*The supplier file can be accessed in Workday to check if these requirements are on file.
Additional Requirements - Continued
(Other requirements for publicly bid RFPs and Waivers of Advertising include)

• Always required:
  • MSU Standard Terms and Conditions (MSU ST&C), signed by supplier
  • Ownership Disclosure Form
• All required but obtained through signature on MSU ST&C as of April, 2022:
  • Disclosure of Investments in Iran
  • Conflict of Interest Form
  • Source Disclosure Certification Form
  • Non-Collusion Affidavit
  • Russia/Belarus Certification
  • MSU Terms & Conditions Related to COVID-19 Vaccination and Testing /EO 271
    (only applicable if supplier is coming on campus) – Still required to be signed separately for construction projects
• When applicable:
  • EUGDPR Data Protection Addendum (when applicable, only required when receiving personal data collected or processed in the EU, typically relates to SaaS)
  • China Data Protection Addendum (when applicable, only required when receiving personal data collected or processed in the People’s Republic of China, typically relates to SaaS)
  • Supplier’s MBE, WBE, SBE, DVBE, and VBE Certificate (if applicable)
Legal Review and Contract Approval Sheet (CAS)

- Regardless of contract value, if a supplier is proposing its own T&Cs or changes to our T&C’s then the University’s Legal Counsel needs to review and approve prior to signature by the proper signatory authority.
- In these cases, the end user must complete a Contract Approval Sheet (CAS) and submit it with the contract to Procurement Services for the Office of University Counsel to review.
  - **All vendors should be strongly encouraged to accept the University’s Purchase Order as the contract instead of going through the CAS process when possible.**
- Procurement Services reviews to ensure that the Using Department adhered to the Procurement Policies and Procedures. Additionally, Procurement Services ensures the CAS is signed by all applicable individuals that are shown on the CAS. Once both are confirmed Procurement Services will sent to University Counsel.
- University Counsel will redline where necessary and send back the contract to the initiating department and copy Procurement Services.
- This process can take up to 17 days to complete due to volume (7 days for Procurement Services to conclude if all requirements are met and 10 days for University Counsel’s review).
- The Vice President for Finance & Treasury and the President are the only signatory authorities for the University for goods and services contracts. **No other individuals have the authority to enter into a goods and services contract on behalf of the University.**
• Requisitions must be submitted to Procurement Services and converted to purchase orders PRIOR to the vendor performing any work. Must state a clear description of the goods and services, include all relevant information including any contract #’s, quote #’s, contract term, etc., and attach backup documentation (written quotes, contract, etc.).

• Individual faculty and staff members are not authorized to procure any goods or services on behalf of the University: Ensuring purchase orders are provided prior to the vendor performing any work allows the University’s Terms & Conditions to be connected to the purchase and allows for review to ensure compliance with University policy and appropriate State laws, regulations, policies and procedures.

Requisitions & Procure-to-Pay Cycle

Correct Procurement Process

Incorrect Procurement Process
Contract Administration

• Once a contract is executed, the using department takes responsibility for managing the relationship with the awarded contractor.
• This includes ensuring all terms and conditions are met: timeliness, quantity, and quality of deliverables/services, billing is consistent with agreed upon amounts and frequency, etc.
• All contract discrepancies should be communicated in writing to the contractor and maintained in a file.
• All amendments / changes to the contract must be through an official amendment document.
• Procurement Services should be contacted if identified problems are not promptly cured after bringing them to the vendor’s attention.
Risks of Noncompliance with Applicable Laws and Policies

• Audits by New Jersey are performed, penalties can be assessed
• Violations of the governing law, our own Board’s procedures, and our Procurement Policy can have serious repercussions for individuals and for the institution.
• Protests by vendors claiming non-compliance with procedures, differential information provided to vendors, unfair evaluation, etc. can lead to – has led to – expensive and time-consuming litigation or threats of litigation.
• Performance accountability issues with vendors where the RFP, which serves as the basis for the contract, is unclear about deliverables and standards.
• Adverse publicity with regard to controversial procurements, particularly if acquired without following established procedures.
Steps to Improve the Effectiveness of the Procurement Process

• Redouble efforts to train existing and new employees on our policies, procedures, and the Workday workflow – geared to their role in the process.
• Considering implementing a “supplier portal” to allow vendors to self-submit some or much of the documentation now obtained through manual means.
• Considering a contract management system to serve as the repository for documents, to more efficiently move the process from one step to the next, and to remind participants of milestones, due dates, expirations, etc.
• Considering a model with a Procurement Liaison in each Division and School to serve as the individual who is best informed about Procurement Policies and Procedures, can collaborate with Procurement Services on issues of common concern, and who can be consulted by their colleagues where they may be able to easily resolve some questions or issues.
• Adding to liability coverage to make legal review move faster if require indemnification.
• Adding additional on-line catalogs (punchouts) to make a larger number of commodities easier to obtain.
Questions?