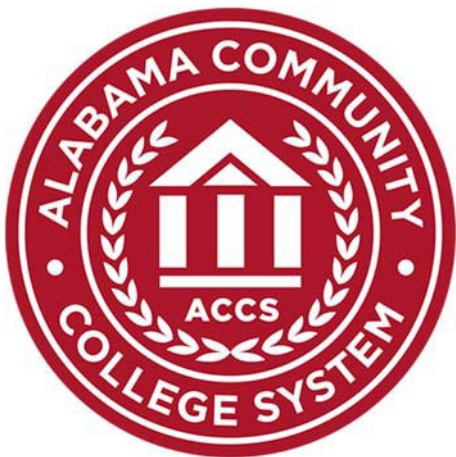


**ALABAMA COMMUNITY COLLEGE SYSTEM**

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# System Purchasing Manual



**Jimmy H. Baker, Chancellor**

A successful purchasing program begins with the budgeting process. The Southern Association of Colleges and Schools Commission on Colleges' Criteria for Accreditation states that the budget should be developed in conjunction with the deans, working cooperatively with department heads, appropriate members of the faculty and administration, and representatives of the business office. A purchasing department should be organized to support the basic objectives of the college by providing faculty, staff, and students with the necessary supplies, services, and equipment.

Purchasing procedures must be included in each institution's procedures manual. The procedures must be ethical, comply with all State laws and regulations, as well as policies of the ACCS Board of Trustees, and provide accountability for purchases. An institution's policies may be more restrictive than the following procedures but may not be less restrictive.

Laws regarding the use of public funds are very specific, so it is important that purchasing procedures be carefully followed. All expenditures must be institutionally prudent and directly benefit the Institution. The System, nor the Institution, will assume liability for the payment of purchases that were not made through approved purchasing procedures. The System's procurement policies shall be interpreted in a manner that continues to comply with all other applicable Alabama state laws, federal laws, regulations, and guidelines.

## 1. Definitions

**Banner:** System-wide enterprise resource planning system.

**BDM/Xtender:** Banner Document Manager. The imaging and document management system that is connected to Banner to save and link documentation to activity in Banner.

**Bid:** A formal offer made by suppliers after the Purchasing Department has issued a Request for Bid (RFB) or a Request for Proposal (RFP). If the Institution accepts a bid, it can then become a contract. In compliance with The Alabama Community College System's System Purchasing Manual Section 4.02, purchases involving \$50,000 or more require that the purchase that meets the Board's designated bid threshold of \$50,000 or more be based on competitive, formal, sealed bids. Bids are opened and publicly read aloud and become a matter of public record after the award of a purchase order (PO) contract.

**Bid Security:** A monetary assurance guaranteed by a bank or other third party that (i) if the bidder withdraws their bid prior to the end of the bid validity period or, (ii) refuses to sign the contract if selected, the bidder will automatically forfeit the bid security amount to the institution.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.

**Capital Equipment:** Tangible personal property that can be appraised for value, is not disposable or consumable, is stand-alone, and has a useful life of more than one year.

**CFO:** Chief financial officer or person designated to be responsible for the daily financial activities of the agency or institution.

**Change Order:** A written modification or addition to a purchase order which amends the originally issued PO in some way (source of funding, adding or deleting items, canceling the order). The need for processing the Change Orders must be fully documented, reviewed, and appropriately approved by fiscal services and all other pertinent approvers and issued to the applicable vendor in writing BEFORE the vendor can take action on it.

**Contingency Fee Contract:** An agreement, express or implied, for litigation legal services of an attorney or attorneys, including any associated counsel, under which compensation is contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement. The payment may be in an amount that either is fixed or is to be determined under a formula.

**Contingency Fee Counsel:** An attorney or attorneys performing services under a contingency fee contract.

**Contract:** 1) A legally enforceable promise; 2) a relationship, a legal obligation resulting from the parties' agreement to mutual consideration; or 3) an agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration.

**Contract Modification:** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by the mutual action of the parties to the contract.

**Contracting Agency:** The Governor, Attorney General, or director of a state agency, department, bureau, commission, authority, public corporation, public educational institution, or instrumentality of the State of Alabama that seeks to enter a contract.

**Contractor:** Any person having a contract with a governmental body.

**Cooperative Purchasing:** Procurement conducted by, or on behalf of, one or more public procurement units.

**Cost-Reimbursement Contract:** A contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this article, and a fee, if any.

**Data:** Recorded information, regardless of form or characteristic.

**Delegated Signature Authority:** In order to carry out the day-to-day business of the Institution, the President may delegate signature authority to certain departments and individuals occupying unique positions at the Institution. Those departments/individuals are said to have “delegated signature authority”. Signing documents without such delegated signature authority is prohibited and can result in personal liability and/or risk to the Institution.

**Designee:** A duly authorized representative of a person.

**Electronic:** Electrical, digital, magnetic, optical, electromagnetic, or other similar technology.

**Emergency:** Failure to anticipate or plan for a need is not considered an emergency. For purchasing purposes, an emergency is a circumstance in which damage creates a threat to public health, welfare, or safety to Institution programs, faculty, staff, and the student will result if prompt action is not taken. Emergency Purchase Orders are considered on their merits. They will be processed as emergencies only when the Purchasing Department determines that it is necessary, based on your written explanation. If approved, the Purchasing Department will either submit the PO by phone or issue a PO number to use in placing the order.

An emergency condition is a situation that may arise because of floods, epidemics, riots, equipment failures, or other reasons. The existence of such condition creates an immediate and serious need for supplies or services that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- The functioning of the institution;
- The preservation or protection of property; or
- The health or safety of any person.

Emergency procurement shall be limited to those supplies or services necessary to meet the emergency.

**Enterprise Resource Platform (ERP):** A system used to manage and integrate the essential parts of business operations. The Alabama Community College System utilizes Ellucian Banner as the standard ERP system.

**An ERP software system can also integrate planning, purchasing inventory, sales, marketing, finance, human resources, and more.**

**Established Catalogue Price:** The price included in a catalog, price list, schedule, or other form that does all of the following:

- Is regularly maintained by a manufacturer or contractor.
- Is either published or otherwise available for inspection by customers.
- States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

**External Procurement Activity:** A buying organization not located in the state which, if located in this state, would qualify as a public procurement unit. The term includes agencies of the United States and any other state.

**FOB:** The requirement of the seller to deliver the goods at the seller’s expense.

**Governmental Body:** Except as otherwise provided in this article, an agency, department, board, bureau, commission, committee, institution, corporation, authority, or office of this state. The term does not include the legislative or judicial departments of the state or a legislative or judicial agency, the Alabama State Port Authority, municipalities, or the county commission and governing boards of instrumentalities of counties including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions.

**Grant:** The furnishing of a sum of money by a governmental body or other grant-awarding entity, whether financial or otherwise, to any person to support a program authorized by law. The term does not include an

award with the primary purpose of procuring an end product, whether in the form of supplies or services.

**Intent to award notice:** A public notice posted for a period of 10 calendar days, informing all prospective bidders about the institution's evaluation of bids received. This notice also includes a statement regarding the bidder's right to protest. Awards may not proceed until this 10-day period has been completed.

**Invoice:** An original, itemized bill that includes a description and unit price of the items purchased, an invoice number, invoice date, vendor name, and address for remittance.

**Lease-Purchase:** A lease that represents the purchase and/or financing of equipment. Contact the Purchasing Department or the Director of Accounting for assistance in determining if a transaction constitutes a lease purchase.

**Like Items:** Goods or services that are similar in nature, function, and quality.

In order to be considered "like," items must meet the following criteria:

- They must serve the same purpose and function similarly.
- They must be of comparable quality, as determined by relevant industry standards and/or the needs of the purchasing organization.
- They must be reasonably interchangeable with one another.
- When soliciting bids for "like items," the purchasing organization must provide a clear and detailed description of the goods or services being sought, including any relevant specifications or requirements.

**Local Public Procurement Unit:** Any of the following:

- A unit that is governed by 41-4-124 and is also a municipality or other political subdivision of the state;
- An agency of any political subdivision, public authority, educational, health, or other institution;
- Any nonprofit corporation operating a charitable hospital; or
- To the extent provided by law, any entity that expends public funds for the procurement of supplies or services is governed by 41-4-124.

**Minority Individual:** An individual who is a citizen or lawful permanent resident of the United States, and who is any of the following:

- African American: an individual having origins in any of the black racial groups of Africa;
- Hispanic: an individual of Mexican, Puerto Rican, Cuban, Central or Southern American, or other Spanish culture or origin, regardless of race;
- Asian American: An individual having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or
- Native American: An individual having origins in any of the original peoples of North America.

**Minority-Owned Business:** A for-profit business that is headquartered or has its principal place of business in the state, and that is any or either of the following:

- An independently owned and operated business that is at least 51 percent owned or controlled by one or more minority individuals, a majority of whom have their permanent place of residence in the state.
- A publicly owned business of which at least 51 percent of the stock is owned and controlled by one or more minority individuals and whose daily management and operations are under the control of one or more of these minority individuals, a majority of whom have their permanent place of residence in the state.

**Other Contractual Services:** A contract that engages the time and effort of a contractor whose primary purpose is to perform an identifiable task that is not highly specialized or does not require specialized training. Some

examples include maintenance of plant, equipment repairs, and communications services.

**Person:** An individual, corporation, association, partnership, limited liability corporation, union, committee, club, other organization, or group.

**Pre-Approval Travel:** A standard submission for a travel request prepared by the traveler to process requests for permission to travel and to encumber travel expenses against the department's budget.

**Preferred Vendor:** A person that is granted preference according to the following:

- **PRIORITY #1.** Produces or manufactures the product within the state.
- **PRIORITY #2.** Has an assembly plant or distribution facility for the product within the state.
- **PRIORITY #3.** Is organized for business under the applicable laws of the state as a corporation, partnership, or professional association and has maintained at least one retail outlet or service center for the product or service within the state for not less than one year prior to the deadline date for the competitive bid.
- **PRIORITY #4.** Is physically located in the state and is more than 50 percent owned by a person who was discharged or released under conditions other than dishonorable and who has at least 24 months of active service in the United States military, naval, or air service, or who has less than 24 months of active service in any of the foregoing and was separated with a service-connected disability, or a national guardsman or reservist who completed active federal service for purposes other than training or who served at least 180 days of continuous service for purposes other than training.

**Procurement:** Buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. The term includes all functions that pertain to the obtaining of any supply or service, including a description of requirements, selection, and solicitation of sources, preparation, and award of contracts, and all phases of contract administration. The term does not include the leasing of real property.

**Procurement Officer:** Any person authorized by the head of the institution to enter into and administer contracts and make written determinations concerning those contracts. The term includes an authorized representative acting within the limits of authority.

**Professional Service Contract (PSC):** Used for all professional services provided by individuals with specialized knowledge or expertise. The contractor is responsible for completing the work specified in the contract and will not be supervised or controlled by the Institution. Examples of professional services include legal services, consulting, architecture, speaking engagements, performances, medical services, and security.

**Professional Services:** The services of marketing and advertising professionals, physicians, architects, engineers, landscape architects, land surveyors, geoscientists, attorneys, teachers, artists, appraisers, and other individuals, or business entities offering the services of those individuals, who possess a high degree of scientific or specialized skill and knowledge where the experience and professional qualification of the service provider are particularly relevant to the provision of the required service.

**Protester:** Protester means any bona fide actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

**Public Advertisement:** A public posting on an Institution's website and/or the ACCS website to reach an adequate number of viewers. Public advertisements are required for Request for Bids (RFB) and Request for Proposals (RFP). An audit trail of documentation should be maintained to include the posting date, location, and RFP/RFB identification.

**Public Funds:** Money, regardless of its source, that is owned or held by an institution or system office.

**Public Notice:** The distribution or dissemination of information to interested parties using reasonably available

methods, including, but not limited to, publication in newspapers of general circulation, electronic or paper mailing lists, and websites designated by ACCS and maintained for that purpose.

**Public Procurement Unit:** Any one of the following:

- A local public procurement unit;
- An external procurement activity;
- A state public procurement unit; or
- Any not-for-profit entity comprised of more than one unit or activity listed above.

**Purchase Description:** The words used in a solicitation to describe the supplies or services to be purchased. The term includes any specifications attached to or made a part of the solicitation.

**Purchase Order (PO):** The form that the Purchasing Department generates and sends to a vendor which formally states all terms and conditions of a proposed transaction as submitted by the department on a Purchase Requisition. Each Purchase Order reflects the unique PO number assigned to that purchase. Purchase orders are used for any product purchase or trade service. Trade services include those provided by dealers, distributors, merchants, or other sellers that are necessary for supporting Institution programs, including auxiliary services related to sponsored research. Examples of trade services include plumbing, electrical work, maintenance and repair, roofing, tree trimming, automotive repair, and security systems.

**Purchasing Agency:** A governmental body, other than the State Office of the Procurement Officer, that is authorized by this article, its implementing procedures, or by a delegation from the Procurement Officer to enter into contracts.

**Purchasing Department:** A purchasing department is the department, division, or financial personnel identified to support the basic objectives of the college by providing faculty, staff, and students with the necessary and reasonable purchase of supplies, services, and equipment to conduct the business of the institution.

**Quotation (or Quote):** A quotation or quote is provided by a seller to a prospective buyer. It is a specific statement of price, terms of sale, and description of the goods or services which the seller offers. The Request for Quotation (RFQ) is used by the Purchasing Department to obtain less formal oral or written offers from vendors. These are used for like-item purchases of less than \$50,000 (fiscal year total) which do not involve official advertising or sealed bids.

**Requisition (Req.):** The online form that a department sends to the Purchasing Department (electronically via the institution's ERP system) which describes the requested materials or services and is the basis for the PO issued by Purchasing Department.

**Request for Bid (RFB):** A request by the Purchasing Department to potential suppliers (vendors) for a bid on goods or services to be purchased. An RFB is a solicitation in which the terms, conditions, and specifications are described, and responses are not subject to negotiation.

**Request for Proposal (RFP):** A competitive vehicle used by buyers to purchase goods and services where requirements are not often clear or easily specified, allowing suppliers to question and interpret what is being requested. The proposal is the supplier's interpretation of the buyer's solution to its needs. The lowest price is not necessarily the determining criterion.

**Responsible Bidder or Offeror:** A person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability to assure good faith performance.

**Responsive Bidder or Offeror:** A person who has submitted a bid or offer that conforms in all material respects to the invitation for bid or request for proposal.

**Sealed Bid:** A vendor offer submitted in response to a Request for Bid (RFB) or a Request for Proposal (RFP) issued by the Purchasing Department for the purchase of goods or services. By law, such bids are submitted in sealed envelopes which must be opened and read aloud in a public setting at the time, day, and location specified in the RFB/RFP document.

**Services:** The furnishing of labor, time, or effort by a contractor. The term does not include the delivery of a specific end product, other than reports that are merely incidental to the required performance.

**Signature:** A manual signature or an electronic signature.

**Single (or Sole) Source Purchase:** A unique item or product that can only be purchased from a single supplier. Few purchases fit this definition. "Proprietary item" is a related term for an item or product produced exclusively by one firm.

**Small Business:** A for-profit business that is headquartered or has its principal place of business in the state; that is independently owned and operated; and that employs no more than 50 individuals on a full-time basis, a majority of whom have their permanent place of residence in the state.

**Small or Disadvantaged Business:** A small business, a minority-owned business, or a women-owned business that is licensed to do business in the state.

**Solicitation:** Any request to submit quotes, bids, or offers to the agency or institution for the procurement of supplies or services. The term includes requests for bids and requests for proposals.

**Specifications:** A standard of workmanship, materials, conditions, etc., required to be met in a piece of work or the provision of a service.

**State Public Procurement Unit:** The State Office of the Chief Procurement Officer or the equivalent officer of any other state and any purchasing agency of this state or any other state.

**The System:** The Alabama Community College System office.

**Travel Expense Report:** A request for reimbursement of travel expenses that is submitted by the traveler, upon return from the business-related event. The completion of the Travel Expense Report will release the original encumbrance on the department's budget and complete the remittance to the employee for the allowable travel costs.

**Vendor:** One who sells something; a "seller" or supplier.

**Woman-Owned Business:** A for-profit business that is headquartered or has its principal place of business in the state, and that is either of the following:

- An independently owned and operated business that is at least 51 percent owned or controlled by one or more women, a majority of whom have their permanent place of residence in the state; or
- A publicly owned business of which daily management and operations are under the control of a woman or group of women, a majority of whom have their permanent place of residence in the state and who own and control at least 51 percent of the stock of the business or an equivalent ownership stake.

## 2. Purchasing Overview

The procedure described below must be followed for the acquisition of all materials, supplies, equipment, repair, rent, services, contracts, and other financial obligations of the institution:

### Types of Institutional Expenditures

Each type of expenditure is handled differently. These include:

- Purchases that require a departmental Purchase Requisition and the creation of a Purchase Order:



- Purchases for which funds are to be encumbered.
- Purchases that require bids (generally \$50,000 or more on state contracts).
- Purchases from petty cash.
- Professional service contracts
- Student stipends

## **2.01 Requisition**

Generally, a requisition should be used for all purchase requests, except for maintenance contracts, utilities, travel, and professional services.

The requisition should originate from and be prepared by the department requesting an item or service. The items requested should be listed, giving a full description, catalog name, part number, size, weight, estimated cost, contract numbers as applicable, and other relative information. If the requesting department wishes to suggest a vendor source, the name, address, and telephone number should be attached to the request.

The department making the request is responsible for verifying that funds are available in the appropriate budget unit. If funds are not available, an approved budget amendment must be submitted via Banner before submission to the purchasing agent.

The Board of Trustees requires that there be public competition for purchases involving total annual purchases for like-items of more than \$50,000 when the approved National Joint Purchasing Agreements (NJPA), State of Alabama Purchasing Contracts (State Contracts), or ACCS Joint Purchasing Agreement (ACCSJPA) are not utilized. Alabama Department of Corrections and Alabama Institute for the Deaf and Blind are exempted from competitive purchasing requirements under the State of Alabama Code Title 14, Chapter 7, and Title 21, Chapter 2, respectively.

Preparation of specifications for items to be purchased through competitive bids will be the joint responsibility of the purchasing agent and the requesting unit.

## **2.02 Purchase Order**

A properly executed purchase order, if accepted, constitutes a contract binding to both the college and the vendor. All purchase orders, adjustments, cancellations, and/or revisions to purchase orders must be approved in writing from the purchasing agent and recorded in Banner. The following procedures apply to all PO Forms:

Prepare the requisition in Banner using the Banner Requisition function.

- Indicate the name and complete address of the vendor, along with the vendor number. If using a new vendor, a completed W-9 Form is required before a vendor number can be assigned.
- Provide an adequate description of the material or services requested by indicating the quantity, size, color, catalog reference number, and any other pertinent data needed to properly identify the item(s) to be purchased.
- If using a purchasing contract or bid (i.e., State Contract, Approved NJPA, ACCSJPA) the contract name and contract or bid number must be referenced.
- List the cost per item of goods or services to be purchased, along with the total amount to be expended.
- Indicate the Fund, Organization, Account, and Program (FOAP) to be charged.
- Approval from the applicable division director and final level approver.
- Separate purchase requests should be prepared for each vendor.
- Submit your purchase requisition in sufficient time to allow the Business Office to process your request and for the vendor to deliver the item(s) to meet your required delivery date.
- If a purchase request is travel related (i.e., registration), please ensure to note the registration

expenses in travel pre-approval.

- If purchase requests are incorrect or incomplete, the request may be returned to the department for correction. Failure to follow the procedures for processing purchase requests which have been returned for correction will result in further delays or denial of payment.

All negotiations with the vendor pertaining to prices, terms, conditions, substitutes, deliveries, etc. are to be handled through the purchasing agent.

The purchasing agent should maintain a current list of vendors for materials, supplies, equipment, services, and other categories to be purchased.

The purchasing agent should allow for the consolidation of purchases whenever possible to obtain quantity discounts for volume purchases.

The recommended distribution path of a completed purchase order is as follows:

- Vendor copy to vendor.
- File to the purchasing agent and record reporting (BDM/Xtender).
- One copy to the dept. where the purchase request originated, and/or Central Receiving. (Note: Upon receipt of merchandise or service, this copy is to be signed and returned to the purchasing agent.)

## **2.03 Freight**

When making any purchase that will require shipping, you should have an understanding of whether shipping charges are to be paid by the supplier or the department. Your Purchase Requisition should include the approximate costs of charges to be paid by the department. When possible, avoid paying freight by specifying FOB of your institution.

### **2.03.1 Freight Terms:**

- Destination - This term indicates that the Institution assumes responsibility for goods only when they have been delivered in satisfactory condition unless otherwise stated.
- Shipping Point - The Institution assumes responsibility for the goods when they have been delivered to a common carrier. It does not waive the Institution's rights to refuse the goods if they are not in an acceptable condition.
- Prepaid - The shipper pays for delivery.
- Prepaid/Add to Invoice - The Institution pays for delivery. The shipper will pay costs and then bill the Institution. The cost will either be included on the invoice with purchased items or billed separately.
- Collect - The Institution pays the carrier directly for shipping costs.
- Delivered/Installed - The vendor pays delivery costs and installs the goods.
- Payment of Freight - Freight charges should be coded the same as the item purchased.

Other terms may specify the method of shipment, the common carrier, and the responsible party.

## **2.04 Receiving**

When the merchandise is received, the responsible employee should immediately open and inspect the shipment to verify the quantity and condition of the items received. If all items received are in acceptable condition, the receiving copy of the purchase order or other appropriate affirming documentation (such as an invoice or an email referencing the related purchase order with a certification statement that indicates that the goods were received in acceptable condition) is forwarded to the accounts payable section, compared with the vendor's invoice, and placed in line for payment. If discrepancies are found during the process, they should be called to the attention of the purchasing agent for correction.

The purchasing agent should coordinate with the property manager to assign and attach an inventory number

to each item of moveable equipment, which costs \$5,000 or more and has a useful life of at least one year. The treatment of these purchases is governed by the ACCS Fiscal Procedures Manual and the institution's policies and procedures related to capital asset purchases.

## **2.05 Payments to Vendors**

In order to process a payment, appropriate documentation is necessary. The documentation must include a copy of the purchase order (if applicable) and an invoice; additional certification is required that details: the date the product was received, the total quantity received, and the signature of the employee that acknowledges receipt of goods. These may be included on the PO, invoice, or packing slip.

Validation of all payments must reflect the information provided during the vendor setup. Vendor file maintenance, including set-up and changes, must be finalized through the Business Office.

The contract must include the name of the company or individual, the vendor, the mailing address, the amount of the fee, the nature of the services, a notation of applicable expenses, and the date of services. Payee information on the voucher and professional services contract must be consistent with that on the vendor record. When applicable, invoices must correlate to the contract terms.

## **2.06 Purchases of Equipment**

Consideration should be given to purchases of products and services that are: metrically measured, conserve natural resources, protect the environment, are energy efficient, and, where practical, may be obtained through small, minority, and/or women-owned businesses.

Avoid requesting items that are available from other departments or may be obtained through Surplus Property.

Competitive bidding or auctions through govdeals.com are to be used when used equipment costs exceed \$50,000.

- Purchases of Used Equipment. Used equipment of suitable quality may be purchased when it saves money. A requisition for used equipment should state that:
  - The requester has inspected the equipment;
  - The equipment is in suitable condition; and
  - The Institution's best interests will be served by the purchase of this equipment.

The Purchasing Department is responsible for assuring that the purchase price is reasonable. Competitive bidding or govdeals.com are to be used when used equipment costs exceed \$50,000.

- Purchases from State Agencies, Government Surplus, and Live Work. System institutions may purchase government surplus through GovDeals.com, Alabama State Agencies, Alabama City and County Municipalities, and System Institutions without competitively bidding.

The Purchasing Department is responsible for assuring that the purchase price is reasonable.

## **2.07 Prepayment of Purchase Orders and Contracts**

It is generally the policy of the System not to pay for an item before it is received. There are no general provisions of law authorizing or legalizing prepayments other than Section 40-2-9, Code of Alabama, 1975, which provides advance travel for Examiners of the Department of Revenue. The State Constitution reads "nor shall any officer of the State bind the State to the payment of any sum of money but by authority of law." In the absence of a law to the contrary, there is no authority for prepayment. There is also no authority allowing the institution to pay for purchases made by an employee who has not received proper written approval by the institution. The institution is responsible for establishing internal controls that prohibit this practice. Prepayment of purchases is made only with the approval of the Chief Financial Officer for the following examples:

- Subscriptions, including software, as required.
- Institutional memberships.
- Registration fees for conferences and official meetings.
- State Surplus Property (requires a PO).
- Customized equipment purchases
- Insurance and other industry-standard required pre-payments.

Performance bonds or other guarantees may be required in such instances of prepayments.

## **2.08 Memberships**

The System encourages faculty and staff memberships in organizations that will promote the advancement of instruction, research, and public service and enhance the professional standing and development of its faculty and staff. With the approval of the dean or corresponding non-academic area head, faculty and staff memberships that are within the budget and guidelines outlined below are allowable.

Faculty and staff memberships paid for with departmental funds should return justifiable benefits to the division/department in terms of its mission. In general, memberships must be in the name of the Institution with no benefits accruing to any particular individual or department.

However, in cases where an individual membership will benefit the Institution, individual membership will be allowable. The benefits to the Institution through both institutional and individual memberships should include:

- Receipt of scholarly journals, professional publications, and employment information;
- Professional development;
- Exchange of information with other professionals in the area of interest;
- Instructional enhancement.

Institutions may establish more restrictive guidelines for the payment of individual memberships within the guidelines presented above.

## **2.09 Contracting Services**

Contracts for the purchase of personal property or contractual services other than personal services shall be let for periods not greater than five years. Any contract that generates funds or will reduce annual costs by awarding for a longer term than a period of one year which is let by or on behalf of a System institution may be let for periods not greater than ten years. A contract awarded for a term of fewer than ten years may be extended for a period not to exceed ten years from the initial awarding of the contract provided that the terms of the contract shall not be altered or renegotiated during the period for which the contract is extended. An opt-out clause with at least an annual opportunity to opt-out is required for all contracts.

Functions and services which might be contracted include:

- Operation and maintenance of grounds (may be subject to the Code of Alabama, Title 39)
- Operation and maintenance of buildings (subject to the Code of Alabama, Title 39)
- Architectural services
- Bookstore
- Computing services
- Construction; including Roofing – Code of Alabama, Title 39
- Custodial services
- Elevator maintenance
- Engineering services
- Fire and burglar alarm services
- Food services

- Garbage and trash collection
- Office equipment maintenance
- Painting
- Pest control
- Printing services
- Telephone maintenance
- Television cable
- Security services
- Travel

All contracts and service agreements must, if practical, include the Alabama Community College System's additional terms and conditions (Appendix A) and include a termination clause of at least 15 days' notice of termination by either party, by written notice.

Contracts for routine grounds maintenance (mowing and trimming) or janitorial services do not require treatment as public works under Title 39. Landscaping and any other improvement that requires a licensed contractor should be treated as public works under Title 39.

### **2.10 Capital Asset Purchases**

Each institution shall capitalize all property acquired by the institution in accordance with the amount prescribed by the Alabama Community College System Fiscal Procedures Manual.

### **2.11 Reimbursement for Travel**

The Code of Alabama 1975, Section 41-4-57 states, "All officers and employees who travel at the expense of the state or any of its departments, agencies, boards, bureaus, or commissions shall file with the Comptroller an itemized statement of expenses incurred including those for transportation in connection with such travel at the expense of the state agency, institution, board, bureau, or commission, verified by affidavit before any warrant shall be issued for such expenses." Note: as the System institutions are under the direction of the Chancellor, per Board of Trustee Policy 102.01, and the System Office is a body corporate agency, per Act 2017-171, the Chancellor has the approving authority for System Office policies. Reimbursements will be routed per the Institution's established approval paths and not the State Comptroller. Documentation should include meeting agendas, program brochures, or other appropriate documentation.

### **2.12 Purchases from petty cash**

Colleges are permitted to maintain a petty cash fund to facilitate the reimbursement of small expenses incurred by employees in accordance with College policy. It is the responsibility of the colleges to establish and implement proper procedures to govern these transactions and to ensure the appropriate and legitimate use of these funds.

### **2.13 Student Stipends**

Financial support provided to students to cover the expenses associated with attending conferences, seminars, workshops, academic events, or participating in athletic events. These stipends are typically awarded based on the student's participation in such events, the relevance of the event to their field of study, and the availability of funds from the college or specific academic departments.

The stipend may cover various travel-related expenses, including transportation costs (such as airfare or train tickets), accommodation, meals, and registration fees for the event. The amount of the stipend may vary depending on the distance of travel, the duration of the event, and the specific policies of the college or department providing the support. It is the responsibility of the colleges to establish and implement proper procedures to govern these transactions and to ensure the appropriate and legitimate use of these funds.

### 3. Types of Contracts

Alabama Law allows many types of contracts so long as the interests of the state are promoted, with cost-plus-a-percentage-of-cost being prohibited. Cost-reimbursement contracts are allowed when a written determination is made that either the cost-reimbursement contract is likely to be more cost-effective than any other type of contract or it is impractical to obtain the services or supplies required under another contract type.

Permitted contract types including, but not limited to, the following:

- Fixed price contracts (with contract-specified adjustments)- A type of contract where the total price of the contract is determined upfront and remains fixed unless specified adjustments are made based on predetermined criteria. These adjustments can be related to specific factors such as changes in material costs, labor rates, or other predefined variables that may affect the overall contract price. The purpose of incorporating contract-specified adjustments is to ensure that the contract remains fair and equitable in the face of changing circumstances.
- Firm fixed-price contracts- A contract that provides for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price, or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for an equitable adjustment or other revision of the contract price under stated circumstances.
- Cost-reimbursement contracts-A contract that provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of the total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Contracting Officer.
- Time and materials contracts-A contract that provides for acquiring supplies or services on the basis of:
  - Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
  - Materials at cost, including, if appropriate, material handling costs as part of material costs.

Note: Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

- Leases-The conveyance to the Government of the right of exclusive possession of the property for a definite period of time by the owner. It may include operational services provided by the owner.
  - ACCS Board of Trustees Policy 500.01 The Board authorizes the Chancellor to approve leases of College/ACCS property and leases of property from third parties for terms of 3 years or less and having annual lease payment amounts of \$165,000 or less. Leases more than this amount or greater in length of term must have Board approval. The Chancellor is also authorized to approve the renewal of leases previously approved by the Board and leases with State of Alabama agencies. The Board further authorizes the Chancellor to execute all documents necessary to effectuate the leases so approved.
- Lease with purchase option- The conveyance to the Government of the right of exclusive possession of the property for a definite period of time by the owner to include the option to purchase the property at the end of the lease term. It may include operational services provided by the owner.

#### 3.01 Contract Periods, Renewals, and Extensions

Alabama law allows contracts for supplies and services to have a term that serves the best interest of the state, however long that may be. As long as the terms of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal year at the time of the contract. Payment and performance for any year after will be subject to availability and appropriation of funds.

Contracts for more than a year can be used when the estimated requirements cover the contract period and are reasonably firm and continuing, and the contract serves the best interests of the state by encouraging effective competition or promoting economies in state procurement.

If funds are not appropriated or made available to support the continuation of the contract in a future fiscal period, the contract should be canceled, and the contractor reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for that purpose.

#### **4. State Contract Award Methods**

All state contracts must be awarded using one of the following methods unless otherwise authorized by law:

##### **4.01 Small Purchase Procedures**

- The purchase amount cannot exceed the small purchase amount of \$50,000.
- The cumulative amount of like items cannot exceed \$50,000 per fiscal year to qualify as a small purchase.
- Any procurement not exceeding the small purchase amount established by procedure may be made in accordance with small purchase procedures.
- A procurement may not be artificially divided so as to constitute a small purchase under this section.

##### **4.02 Purchases Involving \$50,000 or More**

Code of Alabama 41-4-124 (b)(1) provides the Alabama Community College System Board of Trustees all rights, powers, duties, and authority relating to the procurement of supplies and services for the System, excluding those purchases subject to the Code of Alabama, Title 39 for Public Works. The Board of Trustees requires that there be public competition for purchases involving total annual purchases for like-items of more than \$50,000 when the approved [National Joint Purchasing Agreements \(NJPA\)](#), State of Alabama Purchasing Contracts (State Contracts), or ACCS Joint Purchasing Agreement (ACCSJPA) are not utilized. An approved list of NJPAs is available on the ACCS website under the Fiscal Services section of the resource library. Competitive sealed bids are required if the item or service is not already covered through an existing approved NJPA, State Contract, or ACCSJPA contract and the total annual purchase prices will exceed \$50,000. Because of the competitive bid requirements, this process can take 30 or more days to complete; advanced planning is required for such purchases. The process may take significantly longer if the user review of bids is delayed or if the bid responses are inadequate and the bid must be reposted (see No Bid/Proposal). For purchases less than \$50,000 that do not occur through approved NJPA contracts, State Contracts, or ACCSJPA contracts, it is recommended that when possible, at least three quotes be obtained, to ensure reasonable, allowable, and allocable use of institutional funds.

Purchases involving \$50,000 or more cannot be divided into smaller purchases in an effort to circumvent the bid requirement. For example, multiple copies of the same or “like-item” should be grouped into one requisition. An item is considered to be a “like-item” if the output or use is interchangeable, with little to no degradation. When planning the purchase of equipment, the department is responsible for ensuring that suitable equipment is not available for use elsewhere on campus.

The purchasing procedures for advertisement and specialized professional services do not require bidding; however, all purchases must comply with State ethics laws, Board of Trustee-approved policies and procedures, and institutional policies and procedures.

When awarding bids, institutions should consider if any conflict of interest is present with college or System officials, the possible existence of an agreement or collusion among bidders, and items excluded from the bid law. Contracts entered into in violation of the Board of Trustee’s policies and procedures or with public competitive bid requirements shall be void.

Bid specifications, terms of awarding the bid, and other requirements must be clearly stated in a Request for Bid. Specifications for the item(s) requested must be detailed and clearly stated to allow vendors to submit an accurate bid. Clearly stated specifications will assist administrators when deciding to award the contract.

A BID FILE and a BID REGISTER should be established. A file for each bid should contain at least the following:

- A record of vendors from whom a quotation was requested;
- Documentation of the public advertisement of the bid to include the posting date, location, and RFP/RFB identification (i.e., dated screen print from the Institutional website).
- A copy of the bid specifications;
- All bids received;
- A tabulation of the bids received;
- Documentation of the public advertisement of the intent to award to include the posting date, and RFP/RFB identification (i.e. dated screen print from the Institutional website).
- A copy of the purchase order issued; and
- Documentation of reasons, if the contract was not awarded to the lowest responsible bidder.

The department should contact the Business Office for guidance prior to preparing the Purchase Requisition required to initiate the purchasing process.

- **Competitive Sealed Bid Process (Required method unless otherwise noted in this section)**
  - Request for Bids-Used to initiate procurement through competitive sealed bids and must include all contractual terms and conditions, description of the purchase, bid evaluation criteria, location of when and where the intent to award will be posted, and statement of the bidder's right to protest. If multiple awards can be awarded on one invitation to bid, the request for bid must include a notice that multiple awards may be made and specific technical compatibility or operational requirements.
  - Public Notice-Public notice of the request for bid must be provided at a reasonable time, of at least 14 calendar days, before the date for the opening of bids.
  - Bid Opening-Must be performed publicly with at least one witness at the time and place specified in the invitation to bid. The amount of each bid, the name of each bidder, and any other required information must be recorded. The record along with each opened bid should be maintained and open to public inspection except for records that meet a listed exception (see Public Record).
  - Bids must be unconditionally accepted without alteration or correction, except as authorized within this manual. Bids must be evaluated according to the requirements specified in the invitation to bid, which can include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for particular purposes. Any criteria that will affect the bid price and be considered in the evaluation for determining the award must be objectively measured, such as discounts, transportation costs, and total or life cycle costs. The request for bid must outline the evaluation criteria to be used.
    - When a bid is submitted with an error, the Procurement CFO or head of the purchasing agency may authorize the correction or withdrawal of the bid or can cancel the award of the contract. The authorization of the correction or withdrawal must be done in accordance with the procedures adopted by the ACCS (see Error in Bids).
    - After a bid is opened, except for price negotiations, with the lowest responsible bidder, no changes in bid prices or other provisions of bids are permitted unless they are for the benefit of the state or fair competition.
  - Absent any compelling reason to reject a bid, a notice of intent to award to the lowest, responsive, and responsible bidder whose bid meets the requirements detailed in the request



for bid should be given by posting a notice in the location specified in the request for bid for a minimum of 10 calendar days.

- Prior to posting the notice of intent to award, the Procurement Officer or head of purchasing may negotiate with the lowest responsive and responsible bidder to lower the bid price within the scope of the invitation to bid. The request for bid and notice of intent to award must contain a statement of the bidder's right to protest.
- The Procurement Officer may award multiple purchase contracts resulting from a single request for bid where the specifications of the items of supplies or services intended to be purchased by the requisitioning agency are determined, in whole or in part, by technical compatibility and operational requirements. In order to award multiple contracts, the awarding authority must include in the invitation to bid, a notice that multiple awards may be made and the specific technical compatibility or operational requirements necessitating multiple awards.
- When it is considered impractical by the Procurement Officer to initially prepare a purchase description to support an award based on price, a request for bid may be issued requesting the submission of unpriced offers to be followed by a request for bid limited to those bidders whose offers have been qualified under the criteria outlined in the first invitation to bid.
  - Prior to the solicitation beginning, the Procurement Officer may authorize the issuance of a request for qualifications from prospective bidders. The request should contain, at a minimum, a description of the scope of work to be solicited by the invitation to bid, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided above (14 days).
  - After receipt of the responses to the request for qualification from prospective bidders, all qualifications from prospective bidders, all qualified bidders, as determined by the Procurement Officer, should have the opportunity to bid. The determination regarding which bidders are qualified is not subject to review.
- **Competitive Sealed Proposal Process**-Allowable when the Procurement Officer or head of purchasing agency, in accordance with procedures, determines competitive sealed bids are not practicable or advantageous to the purchasing agency.
  - Proposals must be solicited through a request for proposals. Must state the importance of price and other factors, if any.
    - Prior to soliciting proposals, the Procurement Officer may authorize the issuance of a request for qualifications from prospective offerors. The request should contain, at a minimum, a description of the scope of work to be solicited by the request for proposal, the deadline for submission of information, and how prospective offerors may apply for consideration. The request shall require information concerning the prospective offerors' product specifications, qualifications, experience, and ability to fulfill the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided above under the Competitive Sealed Bid Process section (14 calendar days).
  - Adequate public notice of the request for proposals must be given in the same manner as competitive sealed bid procedures.
  - Proposals must be opened to avoid disclosure of contents to competing offerors prior to awarding the contract. A register of proposals must be prepared in accordance with the procedures and opened for public inspection after the contract is awarded.

- Discussions may be conducted with responsible offerors who submit proposals determined by the Procurement Officer or purchasing agency to be reasonably competitive for award to ensure a full understanding of, and responsiveness to, the solicitation requirements. Offerors must be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after submissions and prior to award to obtain the best and final offers. When conducting discussions, there may not be any disclosure of any information derived from proposals submitted by competing offerors.
- Contracts must be awarded to the responsible offeror whose proposal meets the requirements outlined in the request for proposals and is determined, in writing, to be the most advantageous for the purchasing agency, taking into consideration, price and the evaluation factors listed in the request for proposals. No other factors or criteria shall be used in the evaluation. Public notice of the award of the contract shall be given promptly.
- The Procurement Officer may provide debriefings that provide the basis for the source selection decision and contract award.
  - After receipt of the responses to the request for qualification from prospective offerors, all qualifications from prospective offerors, all qualified offerors, as determined by the Procurement Officer, should have the opportunity to bid. The determination regarding which offerors are qualified is not subject to review. However, the records of termination must be maintained by the institution.
  - If a professional service provider is prohibited by law or policy from submitting proposals in response to a request for proposals, the Procurement Officer or head of the purchasing agency may utilize the request for qualifications process to determine the awardee.

- **Sole Source Procurement**

The Procurement Officer can determine, in writing, that there is only one source for the required supply or service.

Per Code of Alabama 41-4-135, the contract cannot exceed one year unless the Procurement Officer determines, in writing, that there continues to only be one source for the required supply or service.

- Conditions for Use of Sole Source Procurement:

- Sole source procurement is not permissible unless a required supply or service is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances that could necessitate sole-source procurement:
  - where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
  - where a sole supplier's item is needed for trial use or testing; and
  - where a sole supplier's item is to be procured for resale. The determination as to whether a procurement shall be made as a sole source shall be made, in writing, by the head of the purchasing agency. The CFO or head of procurement may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a purchasing agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.
- Negotiation in Sole Source Procurement: The Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.
- Record of Sole Source Procurement: A record of sole source procurements shall be

maintained that lists:

- each contractor's name;
- the amount and type of each contract;
- a listing of the supplies procured under each contract; and
- the identification number of each contract file. The records for each fiscal year shall be available for public inspection, except where disclosure would be detrimental to the safety or security of persons or property or to the public interest as determined by the Procurement Officer.

- **Emergency Procurement**

- The head of the purchasing agency can make emergency procurements if there is a threat to public health, welfare, or safety when emergency conditions (see glossary) are present.
- Procurement must be made with as much competition as practicable.
- Authority may not be delegated, per Code of Alabama 41-4-136.
- Written determination must be included in the contract file.
- Definition of Emergency Conditions: An emergency condition is a situation that creates a threat to public health, welfare, or safety such as may arise because of floods, epidemics, riots, equipment failures, or such other reasons. The existence of such condition creates an immediate and serious need for supplies or services that cannot be met through normal procurement methods and the lack of which would seriously threaten:
  - the functioning of the institution or agency;
  - the preservation or protection of property; or
  - the health or safety of any person.
- Scope of Emergency Procurements: Emergency procurement shall be limited to those supplies or services necessary to meet the emergency.

- **Special Procurement**

- The Procurement Officer or head of the purchasing agency can, with prior public notice and **approval of the Chancellor**, initiate procurement over the small purchase threshold when the Procurement Officer has determined that an unusual or unique situation is present which makes the application of all requirements of competitive sealed bidding and competitive sealed proposals contrary to the public interest.
- Procurement must be made with as much competition as practicable.
- Written determination must be included in the contract file and for the selection of the contractor.
- Per Code of Alabama 41-4-137, an annual report is required to be published regarding all determinations made under this section during the prior calendar year.

- **Errors in Bids:** In general, Bid correction or withdrawal by reason of an apparent, inadvertent mistake is permissible but only to the extent it is not contrary to the interest of the Institution and the fair treatment of other bidders.

- Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided below. The Procurement Officer has no duty to inspect bids for mistakes or to notify bidders of potential mistakes in bids before bid opening.
  - Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening. An electronic modification or withdrawal received from the bidder prior to the time and date set for bid opening will be effective provided that there is objective evidence confirming that the message was received prior to the time and date set for bid

opening.

- Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.
- Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.
- Mistakes Discovered At or After Bid Opening But Before Award.
  - When the Procurement Officer concludes that a mistake has been made, the bidder shall be asked to confirm the bid. Situations in which confirmation should be requested include obvious inadvertent or clerical errors on the face of the bid or a bid that is unreasonably low compared to other bids.
  - The following types of mistakes discovered at or after bid opening may be corrected as follows:
    - Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible or non-existent. The Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State. Examples include the failure of a bidder to:
      - (i) return the number of signed bids required by the Invitation for Bids;
      - (ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or
      - (iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if
        - (A) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
        - (B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.
- Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- Mistakes Where Intended Correct Bid is Not Evident. A bidder may be permitted to withdraw a low bid if:
  - a mistake is clearly evident on the face of the bid document, but the intended correction is not similarly evident; or
  - the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
- Mistakes Discovered After Award. Mistakes shall not be corrected after awarding the contract except where the Chief Procurement Officer or the head of a Purchasing Agency makes a written determination that it would be unconscionable not to allow the mistake to be corrected. Any corrections made after award must be accomplished through an amendment to the contract, or alternatively, the contract may be terminated, and a new solicitation be issued for the required supplies and services.
- **No Bid/Proposal Received:** If no offers or proposals are received, or if all bids or proposals are rejected in response to an invitation for bids solicitation, then the Purchasing Department has several options:

- The Purchasing Department may choose to seek quotes that adhere to the terms and conditions of the solicitation,
- The Purchasing Department may cancel the solicitation altogether, or
- If the Purchasing Department determines in writing that the need for the supply or service continues, and seeking quotes responsive to the solicitation would likely be unsuccessful, then the procurement may be conducted under Sole Source Procurement or Emergency Procurements, as appropriate.
- **Cancellation or Rejection of Bids, Proposals, Etc.:** When it is determined to be in the best interest of the System or Institution, as specified by procedure, an invitation to bid, a request for proposals, or other solicitation under this article may be canceled, and any or all bids or proposals received may be rejected.
- **Written Determination of Nonresponsibility of Bidder or Offeror:** A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with procedures adopted by the Procurement Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the bidder or offeror.

Confidential information furnished by a bidder or offeror under this section may not be disclosed outside of the office of the Procurement Officer or the purchasing agency without the prior written consent of the bidder or offeror.

- **Prequalification of Prospective Suppliers:** Prospective vendors may be prequalified for bidder lists, but the distribution of the solicitation shall not be limited to prequalified vendors, nor may a prospective vendor be denied award of a contract simply because such vendor was not prequalified. The fact that a prospective vendor has been prequalified does not necessarily represent a finding of responsibility.
- **Standards and Use of Specifications:** When using federal funds, CFR 200.319 (b) requires contractor performance remain objective and eliminate unfair competitive advantage. Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

The Procurement Officer shall obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and shall not be unduly restrictive. Specifications may be prepared by persons other than state employees when necessary. The Procurement Officer shall exercise diligence to assure that any third party who prepares specifications or requirements does not have a conflict of interest or an unfair competitive advantage in any subsequent procurement. Vendors that participate in the drafting of specifications for the state shall disclose the same on its vendor disclosure statement required by Section 41-16-82.

## 5. Professional Service Agreements

(Payment to Non-Institution Personnel for Professional Services)

A Professional Service Agreement is used when the services of firms or individuals outside the Institution are required to undertake a project requiring that individual's or organization's expertise. The contractor is responsible for accomplishing the work called for in the contract and will not be supervised or controlled by the Institution.

To aid departments in determining when it is appropriate to obtain services through a PSA rather than through

a purchase requisition (Req.)/purchase order (PO), the following guidance is provided:

Because independent contractors are not employees of the Institution, neither they nor their work is covered by the Institution's insurance. Some types of services require specific types and levels of insurance.

Those service providers must provide written proof of that insurance to us. Please contact the Business Office for additional guidance on this issue.

A Professional Services Agreement may only be initiated with an institutional employee when the work performed under the service contract meets the definition of an independent contractor according to the IRS's Common Law Rules listed in Publication 15-A. However, this procedure should not bypass Institution's employment policies or provide a service that is available through existing Institution resources.

IRS standards strictly limit who may be classified as an independent contractor. IRS Publication 15-A can assist you in determining whether a person providing services should be classified as an employee or an independent contractor. Upon review of the professional service agreement, the Business Office will determine if the relationship complies with IRS guidelines regarding independent contractor vs. employee status. Questions regarding Independent Contractor status should be routed to the Business Office. A Professional Service Agreement must be completed and approved by the Business Office prior to the beginning of the service and will be used to support the payment after the services are completed. A single Professional Service Contract may be submitted to cover recurring small dollar services related payments during the course of one fiscal year.

#### **5.01 Professional Service Agreement Payments**

It is recommended that Professional Service Agreements are structured to provide a lump sum amount inclusive of professional service fees and travel expenses. This alleviates the contractor of providing travel receipts to the Institution. However, if travel expenses must be paid separately, travel expenses and professional service fees should be submitted by the contractor on a signed, itemized statement for preparation of payment.

A copy of the Professional Services Agreement, any relevant correspondence (if applicable), with a signed statement of travel expenses (if applicable) must be attached to the voucher. If travel expenses are paid separately the expenses should be itemized. Receipts are required for commercial transportation, lodging, and meals. Authorized transportation expenses will be reimbursed following standard Institution guidelines and must comply with State of Alabama travel laws.

#### **6. Contract Records Maintenance**

The Procurement Office should maintain a record listing of all contracts for the latter of o 1 year or Federal and State compliance audits have been completed. The record should include each contractor's name, amount, and type of contract, and a list of supplies or services procured under each contract.

A copy of the records should be available for public inspection, except where disclosure would be detrimental to the safety or security of persons or property or to the public interest as determined by the Procurement Officer.

#### **7. Exemptions**

The Code of Alabama provides exemptions from competitive bid requirements of Title 41, Chapter 4, Article 5. The following exemptions are applicable unless otherwise ordered by rule and approval of the Governor:

- Works of art for museum or public display,
- Published books in any format (ex: digital, audio, hardcopy), maps, periodicals, and technical pamphlets,
- Utility services where no competition exists or where rates are fixed by law,
- Purchases of products made or manufactured by the blind or visually handicapped under the

direction or supervision of the Alabama Institute for Deaf and Blind in accordance with Chapter 2 of Title 21,

- Photographs purchased from a federal agency,
  - Barter transactions by the Department of Corrections,
  - The purchase of insurance and supplies or services related to the purchase of insurance,
  - Supplies and services that by their nature are impossible to award by competitive process, as determined by the Procurement Officer.
- 
- The purchasing procedures for advertisement and specialized professional services do not require bidding; however, all purchases must comply with State ethics laws, Board of Trustee-approved policies and procedures, and institutional policies and procedures. **(Note: Federal Purchasing does not exempt professional services from competitive procurement.)**

The Code of Alabama also provides a provision allowing the purchase of supplies or services negotiated on behalf of two-year institutions without competitive bidding so long as no state revenues, appropriations, or other state funds are expended or committed and when it is determined by the Board that there is a financial benefit. Further, when an entity is organized under the laws of the State of Alabama and is available to supply the product or service purchased or negotiated under the above-referenced exemptions, that entity should receive preference unless the product or service supplied by the foreign entity is significantly different or superior to the product or service supplied by the Alabama entity. The purchasing agency is required to provide public notice within 10 days of the execution of the contract under these provisions. The public notice should include, at minimum, the terms and conditions of the products or services that are contracted through negotiation without being competitively bid and the name and address of the recipient of the contract, per Code of Alabama 41-4-126 j (3).

These exemptions **DO NOT** apply to public works projects governed by Title 39.

Governmental bodies may purchase supplies from any vendor that offers the item at a price at least ten percent below the price established on a statewide contract by the State Office of the Procurement Officer for the same item, provided that each purchase for like-items does not exceed \$5,000. The Procurement Officer shall confirm that the terms and conditions of the purchases are substantially similar to those of the statewide contract for the same item prior to the approval of any purchase under this subsection. If the purchaser is to take possession of the purchased supplies at the vendor's physical location, any acquisition of supplies under this subsection may be purchased only from vendors physically located within the state. The price of any supplies purchased under this subsection shall be the market price readily available to the public at large. The acquisition of supplies under this subsection is subject to the supervision and administration of the Procurement Officer. A written determination should be made and retained, as required.

## **8. Vendor Disclosure Statement**

In compliance with Alabama State Law Act 2001-955, Section 4(a) (1), (2), and (3), the Institution requires the disclosure of certain information regarding vendors and their relationships with the institution. When submitting their bid, contract, proposal, or grant and the intended or actual contract value exceeds \$5,000, vendors should print and complete a detailed Vendor Disclosure Statement and submit it to the Procurement Officer. Forms and additional information may be found at:

<https://www.alabamaag.gov/forms-and-links/> In the case of competitive bids, this disclosure is only required from the winning bidder. Contracts will not be awarded to any person who refuses to complete the form. Departments should be aware that this law applies to ALL vendors with whom a contract exceeds \$5,000 including those on Professional Service Contracts and Purchase Orders.

Pursuant to Act 2001-955, any person who knowingly provides misleading or incorrect information on a disclosure statement shall be subject to a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000. Also, the contract or grant shall be voidable by the awarding entity.

## **9. Certification for Alabama State and Local Sales, Use, and/or Lease Tax**

Act 2006-557 added Section 41-4-142 to the Code of Alabama 1975 to further ensure that vendors, contractors, and their affiliates doing business with the State comply with the State's tax laws. This section requires that each vendor, contractor, or affiliate offered a contract to do business with a state agency must certify that it is registered to collect and remit sales, use, and lease taxes and submit to that state agency the certification required by the Alabama Department of Revenue.

Alabama Law (Section 41-4-142, Code of Alabama 1975) provides that every bid submitted and contract executed shall contain a certification that the vendor, contractor, and all of its affiliates that make sales for delivery into Alabama or leases for use in Alabama are registered, collecting and remitting Alabama state and local sales, use, and/or lease tax on all taxable sales and leases into Alabama. By submitting this bid, the bidder is certifying that they are in full compliance with Act 2021-296. They are not barred from bidding or entering into a contract pursuant to Section 41-4- 116 and acknowledge that the awarding authority may declare the contract void if the certification is false.

## **10. Other Procurement Related Topics**

### **10.01 Code of Ethics**

The college's purchasing procedures cannot be used for personal acquisitions for faculty, staff, or students. A code of ethical conduct should be established and stated in college publications. Any institution's employee involved in purchasing goods or services must fully comply with the following Code of Ethics. The following principles are adopted by the National Association of Educational Procurement, and shall be used as a guide:

- Priority will be given to the objectives and policies of the System and Institution.
- Seek maximum value for all expenditures.
- Do not accept any personal gifts or gratuities.
- Give each supplier fair and equal consideration, within the parameters of State and Federal law and Institution Policy.
- Foster ethical trade practices and conduct business honestly and with good faith. Demand the same standards from suppliers.
- Receive consent of originator of proprietary ideas and designs before using for other than the purchasing purposes.
- Make every reasonable effort to negotiate an equitable and mutually agreeable resolution of controversy with a supplier; and/or be willing to submit any major controversies to a third-party review, insofar as the established policies of my institution permit.
- Accord a prompt and courteous reception insofar as conditions permit to all who visit on business missions.
- Cooperate with trade, industrial and professional associations, and with governmental agencies for the purposes of promoting and developing sound business methodology.
- Foster fair, ethical and legal trade practices.
- Employees discharge their duties and responsibilities fairly and impartially and shall maintain a standard of conduct that will instill public confidence in the integrity of the institution.



## 10.02 Conflict of Interest

Any institution employee involved in procuring or approving the contract for procurement of goods or services must not make purchases from a vendor with whom he/she has a significant financial interest.

## 10.03 Debarred/Suspended Vendors

- After reasonable notice to the person or entity involved and reasonable opportunity for that person or entity to be heard, the Board, after consultation with the using agency, may do either of the following:
  - Terminate existing contracts and debar a person or entity for cause from consideration for award of contracts. The debarment may not be for a period of more than three years.
  - Suspend a person or entity from consideration for award of contracts if there is probable cause for debarment. The suspension may not be for a period exceeding three months.
- The ACCS may suspend or debar a person from consideration for award of contracts under this subsection 10.03 for any of the following:
  - Conviction of a criminal offense that is in connection with obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract.
  - Conviction under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty as a state contractor.
  - Conviction under state or federal antitrust law arising out of the submission of bids or proposals.
  - Violation of a contract provision of a character that is regarded by **the ACCS** to be so serious as to justify debarment action, including either of the following:
    - Deliberate failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract.
    - A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts that was not caused by acts beyond the control of the contractor.
  - Violation of the ethical standards set forth in Code of Alabama 36-25.
  - Violation of an order of the Board.
  - Any other cause the ACCS determines to be serious and egregious misconduct.
- Any decision by the ACCS to debar or suspend a person shall be in writing. The writing shall state the reasons for the action taken.
- A copy of the decision made shall be mailed or otherwise furnished immediately to all of the following:
  - The debarred or suspended person;
  - Any other party intervening; and
  - All state procurement officials governed by this article with contracting authority who shall decide whether the suspension or debarment warrants termination of existing contracts with the suspended or debarred person or entity.
- Contracts may not be awarded to the suspended or debarred person during the suspension or debarment period established by the Board.
- A decision under subsection 10.03 shall be final and conclusive, unless fraudulent, or the debarred or suspended person appeals administratively to the ACCS Chief Financial Officer in accordance with Section 10.10.
- The Board shall maintain a list of suspended or debarred persons or entities and make it reasonably available for inspection.

## Debarred/Suspended Vendors Procedures

- Application: This procedure applies to all debarments or suspensions of persons from consideration for award of contracts imposed by the Board of Trustees.
- Suspension:
  - Initiation: After consultation with the affected Using Agency and, where practicable, the contractor or prospective contractor who is to be suspended, and upon written determination by the ACCS that probable cause exists for debarment as set forth in Section 10.03, a contractor or prospective contractor shall be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall state that: 1. the suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a debarment decision but not for a period in excess of three months; 2. bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and 3. if a hearing has not been held, the suspended person may request a hearing in accordance with the procedures in 10.03
  - Effect of Decision: A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the Board of Trustees but otherwise shall only be ended when the suspension has been in effect for three months or a debarment decision takes effect.
- Initiation of Debarment Action: Written notice of the proposed debarment action shall be sent by certified mail or other method that allows a return receipt, with return receipt requested, to the contractor or prospective contractor. This notice shall:
  - state that debarment is being considered;
  - set forth the reasons for the action;
  - state that if the contractor or prospective contractor so requests a hearing will be held, provided such request is received by the ACCS within ten days after the contractor or prospective contractor receives notice of the proposed action; and
  - state that the contractor or prospective contractor may be represented by counsel. Such notice shall also be sent to the affected Using Agency. The affected Using Agency is that agency that has used the supplies or services supplied by the contractor. If more than one affected Using Agency is involved the ACCS may designate one or more representatives to be consulted with respect to this action.
- Request for Hearing: A contractor or prospective contractor that has been notified of a proposed debarment action may request in writing that a hearing be held. Such request must be received by the ACCS proposing the action within ten days of receipt of notice of the proposed action under subsection 10.03-Initiation of Debarment Action. If no request is received within the ten-day period, a final determination may be made as set forth in subsection 10.03-Determination of Hearing Officer; Final Decision after consulting with the affected Using Agency.
- Notice of Hearing: If a hearing is requested, the ACCS may appoint a hearing officer to conduct the hearing and recommend a final decision. The hearing officer shall send a written notice of the time and place of the hearing. Such notice shall be sent by certified mail or other method that allows a return receipt, with return receipt requested, and shall state the nature and purpose of the proceedings. Copies shall be sent to the Using Agency.
- Authority of Hearing Officer: The hearing officer, in the conduct of the hearing, has the power, among others, to:
  - Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of

the parties or upon such officer's own motion;

- Require parties to state their positions with respect to the various issues in the proceeding;
- Require parties to produce for examination those relevant witnesses and documents under their control;
- Rule on motions, and other procedural items or matters pending before such officer;
- Regulate the course of the hearing and conduct of participants therein;
- Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- Fix time limits for submission of written documents in matters before such officer;
- Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:
  - Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
  - Excluding all testimony of an unresponsive or evasive witness; and
  - Expelling any party or person from further participation in the hearing;
- Take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice; and
- Administer oaths or affirmations.
- Hearings Procedures: Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The hearing officer may require evidence in addition to that offered by the parties.
- A hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record.
- Determination of Hearing Officer: Final Decision: The hearing officer shall prepare a written determination recommending a course of action. Such determination shall be given to the ACCS. Copies shall also be sent to the contractor or prospective contractor and the affected Using Agency. The contractor or prospective contractor shall have five days to file comments upon the hearing officer's determination. The ACCS may request oral argument. After consultation with the affected Using Agency, the ACCS shall issue a final decision. Both the hearing officer's determination and the final decision shall recite the evidence relied upon. When debarment is recommended or ordered, the length of the debarment (not to exceed three years), the reasons for such action, and to what extent affiliates are affected shall be set forth. In addition, the final determination shall inform the debarred person of its rights to administrative review Section 10.10 regarding Legal and Contractual Remedies.
- Effect of Debarment Decision: A debarment decision will take effect upon issuance and receipt by the contractor or prospective contractor. After the debarment decision takes effect, the contractor shall remain debarred until the ACCS orders otherwise or until the debarment period specified in the decision expires.
- Maintenance of List of Debarred and Suspended Persons: The ACCS shall maintain and update a list of debarred and suspended persons. The list shall be available to all ACCS Institutions. Such list shall be available to the public in accordance with this Code and the Alabama Open Records Act.

#### **10.04 Sales & Use Tax Exemption**

Institutions in the Alabama Community College System are exempt from Alabama Sales and Use Tax, under the Alabama Code, Section 40-23-4. The Department of Revenue furnishes information that defines the role of schools and vendors in the tax process where contracts are let for labor and materials.

#### **10.05 Public Record**

Procurement information is public record and shall be available for public review except:

- Commercial or financial information obtained in response to a solicitation that is designated as privileged or confidential by the person or entity submitting the information in compliance with instructions in the solicitation or marking information exempt from public disclosure. Information not marked as required is a public record.
- Evaluative documents, bids, or proposals prior to award.
- When the public disclosure or procurement information would be detrimental to the safety or security of persons or property or to the public interest as determined, in writing, by the Procurement Officer.
- Any procurement information identified by the ACCS as protected procurement information.

The ACCS shall establish a process for identifying and protecting procurement information that is exempt from disclosure.

#### **Audit or Examination of Books and Records-Requirements**

Any person who receives a contract, change order, or contract modification for which data is required under Section 41-4-141 shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

**10.06 Use of Electronic Media**-The use of electronic media is allowed along with the acceptance of electronic signatures as long as all of the following are present:

- Appropriate security measures are used to prevent unauthorized access to the bidding, approval, and award processes;
- Accurate retrieval or conversion of electronic forms of such information into a medium that permits inspection and copying; and
- Has been tested and reviewed by the Alabama Community College System.

#### **10.07 Collusion or Other Anti-Competitive Practices**

When for any reason collusion or other anti-competitive practices are suspected during the procurement process, a notice of the relevant facts shall be transmitted to the Attorney General and, if applicable, to the Ethics Commission.

#### **10.08 Filing of Protests, Resolutions, and Administrative Review**

- A bona fide prospective bidder or offeror who is aggrieved in connection with the solicitation of a contract may protest to the ACCS within 14 days of the date of issuance of the solicitation or any amendment to it, if the amendment is at issue.
- Except as provided in the below paragraph, a bona fide actual bidder or offeror who is aggrieved in connection with the intended award or award of a contract may protest to the ACCS within 14 days of the date the award or notification of intent to award, whichever is earlier, is posted in accordance with this article.
  - A matter that could have been raised under subdivision (1) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

- A protest filed under bullet points one and two shall be in writing, be filed with the ACCS, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.
- The ACCS, or its designee, may settle and resolve the protest of a bona fide actual or prospective bidder or offeror concerning the solicitation or award of a contract in accordance with procedures adopted under this article.
- If the protest is not resolved by mutual agreement within 10 days after the protest is filed, the ACCS shall commence an administrative review of the protest and issue a decision in writing within 14 days of the review.
- A copy of the decision under this subsection shall be mailed or otherwise furnished immediately to the protestor and any other party intervening.
- A decision under this subsection shall be final and conclusive, unless fraudulent, or a party adversely affected by the decision appeals administratively to the Chief Financial Officer of The Alabama Community College System in accordance with the Appeals Section.
- In the event of a timely protest under subsection 10.08 or an appeal under Section 10.20, the state may not proceed further with the solicitation or with the award of the contract until five days after notice of the final decision is provided to the protestor, except that solicitation or award of a protested contract is not stayed if the ACCS, after consultation with the head of the using agency or the head of a purchasing agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the state.

#### **Procedure for Filing Protests, Resolutions, and Administrative Review**

- Filing of Protest:
  - When Filed. A protest is considered filed when received by the ACCS.
  - Subject of Protest. Protesters may file a protest on any phase of a solicitation or award including but not limited to specifications preparation, bid solicitation, request for proposal, or award. Protesters may also protest the disclosure of information marked confidential in the bid or offer if the disclosure provided a party with an unfair competitive advantage.
  - Form: The written protest shall include, as a minimum, the following:
    - The name and address of the protestor and the email address of the protestor's representative;
    - Appropriate identification of the procurement, and, if a contract has been awarded, its number, if any;
    - A statement of the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided; and
    - Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.
- Stay of Procurements During Protest: When a protest has been timely filed and before an award has been made, the Procurement Officer or the head of a Purchasing Agency shall make no award of the contract until the protest has been settled unless the ACCS makes a written determination, after consulting with the head of the Using Agency or the head of the Purchasing Agency, that the award of the contract without delay is necessary to protect substantial interests of the State.
- Decision by the ACCS: A decision on a protest shall be made by the ACCS as expeditiously as possible after receiving all relevant, requested information. The decision of the ACCS shall be final.
- Effect of Judicial or Administrative Proceedings: If an action concerning the protest has commenced in court, the ACCS shall not act on the protest but refer the protest to the Attorney General. After

consulting with the Attorney General, the ACCS may proceed with a solicitation or award of a contract in accordance with Code of Ala. 1975, §41-4-161(f). This Section shall not apply where a court requests the decision of the ACCS.

## **10.09 Dispute Resolution**

The ACCS, by rule, shall establish procedures to resolve disputes between the Alabama Community College System or its institutions, and a contractor that arise under, or by virtue of, a contract between them, including disputes based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

### **Procedures for Dispute Resolution**

- General: It is the ACCS and Institutions policy to try to resolve all controversies by mutual agreement without litigation. In the event of any dispute between the Institution and a contractor, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, a contractor's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For all other disputes arising under the terms of a contract which are not resolved by negotiation, the dispute will be resolved by the ACCS and the decision on the dispute will be final. The procedures to be followed for the resolution of disputes shall be prescribed by the ACCS and will depend on the complexity of the matter.
- The ACCS's Decision:
  - Before issuing a final decision, the ACCS shall:
    - Review the facts pertinent to the controversy; and
    - Secure any necessary assistance from legal, fiscal, and other advisors.
  - Final decision. The ACCS shall immediately furnish a copy of the decision to the contractor by a method that provides evidence of receipt, and include in the decision:
    - A description of the controversy;
    - A reference to pertinent contract provisions;
    - A statement of the factual areas of agreement or disagreement; and
    - A statement of the ACCS's decision, with supporting rationale.
  - Failure to Timely Issue Final Decision. If the ACCS does not issue a written decision within 120 days, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.
  - Payments of Amounts Found Due. The amount determined payable pursuant to the decision, less any portion already paid, should be paid without delay.
- Controversies Involving Institution Claims Against the Contractor: All controversies involving claims asserted by the Institution against a contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the ACCS.
- Disputes Clause: All contracts entered into under the ACCS Purchasing Manual shall include a statement that disputes shall be resolved by utilizing the dispute resolution procedures set forth in this Procedure.

## **10.10 Appeals**

- A party that receives an adverse decision from the ACCS under subsection 10.08 or subsection 10.03 may appeal the decision to the Alabama Community College Systems Chief Financial Officer.
- An appeal to the Alabama Community College System Chief Financial Officer shall be made in writing within five days of receipt of the adverse decision from the ACCS.
- The Alabama Community College System Chief Financial Officer shall hold unlawful and set aside any decision issued by the ACCS that the CFO finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

- The Alabama Community College System Chief Financial Officer shall issue a written decision within 14 days of receipt of the appeal.
- A copy of the decision under subsection 10.10 shall be mailed or otherwise furnished immediately to the parties.
- A decision under subsection 10.10 shall be final and conclusive unless fraudulent.

### **11. Public School and College Authority Funds (PSCA)**

The PSCA was established by Act No. 93, Second Special Session, 1963. This statute authorizes the formation of a public corporation for the purpose of providing funds for the purchase of equipment and capital improvements at community and technical colleges and institutions of higher learning. Colleges receiving PSCA funds must submit projects to the Chancellor's office for coordination with the State Finance Department.

### **12. Procurement Assistance for Small and Disadvantaged Businesses**

The procurement office should provide reasonable procurement assistance to small and disadvantaged businesses in Alabama.

- The Procurement Officer should identify and utilize programs that aid small and disadvantaged businesses in procurement activities that can include staff assistance, special publications, source lists, solicitation mailing lists, and training programs.
- The Procurement Officer may also reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent necessary, to encourage procurement from small and disadvantaged businesses for Title 41 expenditures; Title 39 expenditures must comply the Title 39 bonding requirements.
- The Procurement Officer may make special provisions for progress payments as he or she determines to be reasonably necessary to encourage procurement from small and disadvantaged businesses.

The Procurement Officer shall make reasonable efforts to do all of the following:

- Obtain from the Secretary of State, the Department of Labor, and other available sources information regarding the small and disadvantaged businesses operating in the state, and maintain a database of the information received.
- Identify and record the goods or services that may reasonably be purchased by the institution from the small or disadvantaged businesses operating in the state.
- Determine what proportion of procurement contracts under this article are awarded to the small and disadvantaged businesses in the state based upon the records and information obtained by the Procurement Officer.

### **13. Prudent Use of Federal Funds**

All expenditures must be prudent and directly benefit the System institution. Documentation as to this benefit should be made available, regardless of the types of funds (e.g., gift, state, foundation) used to pay expenditures. In addition, only purchases for business purposes are allowed. Purchases of items for personal gain and/or the purchase of items expressly prohibited by the State (e.g., alcoholic beverages) are not allowed. The following expenditures are frequently questioned and may require special attention to ensure that expenditures charged to a grant are allowable, reasonable, and properly substantiated:

1. Travel,
2. Salaries and benefits,
3. Equipment purchases,
4. Cost allocations, and
5. Grants to subrecipients.

Please note that contract or grant restrictions may be more stringent than those imposed by the State and the Institution. When spending contract or grant funds, it is the responsibility of the college program or division manager to make sure that all expenditures are made in accordance with all restrictions.

### **13.01 Contract and Non-Federal Grant Restrictions (Federal Funds)**

Restrictions imposed by a grantor or contractor may be more stringent than those imposed by the State and Institution. It is the responsibility of the Principal Investigator to make sure that all expenditures are made in accordance with State and Institution restrictions, as well as meeting all conditions imposed by the granting or contracting agency. When differences exist between institutions and contract/grant policies/provisions, the more restrictive policy prevails.

### **13.02 Federal Grant Restrictions (Federal Funds)**

OMB 2 CFR, Part 200: An Institution must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or sub-award. The Institution's documented procurement procedures must conform to the procurement standards identified in §200.317 through §200.327.

- The Institution must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.
- The Institution's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
- To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the Institution is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- The Institution is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. (<https://adeca.alabama.gov/surplus-property-program/>)
- The Institution is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
- The Institution must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
- The Institution must maintain records sufficient to detail the history of procurement.
- When allowable through Title 39, the Institution may use a time-and-materials type contract only after a determination that no other contract is suitable and 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 an Institution is the sum of:
  - The actual cost of materials; and
  - Direct labor hours are 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, each contract must set a ceiling price that the contractor exceeds at its own risk.

- The Institution alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of



procurements.

- All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of §200.319 and §200.320.

### 13.03 Methods of Procurement with Federal Funds

The Institution must have and use documented procurement procedures, consistent with the standards of sections §200.317-§200.320 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- **Informal Procurement Methods (Federal Funds):** When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1, or a lower threshold established by an Institution, formal procurement methods are not required. The Institution may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
  - **Micro-purchases (Federal Funds):**
    - Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in §200.1). To the maximum extent practicable, the Institution should distribute micro-purchases equitably among qualified suppliers.
    - Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the Institution considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase/credit cards can be used for micro-purchases if procedures are documented and approved by the Institution.
    - Micro-purchase thresholds. The Institution is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the Institution must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with this section.
    - Non-Federal entity increases the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The Institution may self-certify a threshold of up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
      - A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
      - An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
      - For public institutions, a higher threshold is consistent with State law.
    - Unless the System/institution annually declines, in writing, the micro-purchase threshold of \$50,000, the purchasing certification memo released by the System Office and published on the System Office website will provide the annual self-certification

commitment for all System institutions. Presidents of each System institution retain the authority to make purchasing thresholds more restrictive, however, they are not authorized to make purchasing thresholds exceed ACCS Policy and/or State of Alabama law.

- Non-Federal entity increases to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- **Small Purchases (Federal Funds):**
  - Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the Institution.
  - Simplified acquisition thresholds. The Institution is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the Institution must be authorized or not prohibited under State, local, or tribal laws or regulations.
- **Formal Procurement Methods (Federal Funds):** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by an Institution, formal procurement methods are required. Formal procurement methods require the following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or in this section. The following formal methods of procurement are used for the procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the Institution determines to be appropriate:
  - **Sealed Bids (Federal Funds):** A procurement method in which bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction.
    - In order for sealed bidding to be feasible, the following conditions should be present:
      - A complete, adequate, and realistic specification or purchase description is available;
      - Two or more responsible bidders are willing and able to compete effectively for the business; and
      - 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.
    - If sealed bids are used, the following requirements apply:
      - Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids and, for local and tribal governments, the invitation for bids must be publicly advertised;
      - The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
  - 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 costs, and life cycle costs must be considered in determining which bid is the lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - Any or all bids may be rejected if there is a sound documented reason.
- **Sealed Proposals (Federal Funds):** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - The Institution must have a written method for conducting technical evaluations of the proposals received and making selections;
  - Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the Institution, with price and other factors considered; and
  - The Institution may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used in the procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.
- **Noncompetitive Procurement (Federal Funds):** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
  - The item is available only from a single source;
  - The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
  - The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the Institution; or
  - After solicitation of a number of sources, competition is determined inadequate.
- **Special Procurement (Federal Funds):** Special Procurements may be initiated when an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. The Purchasing agent shall determine when Special Procurements may be utilized, and when so utilized, the Head of Purchasing must prepare a written determination describing why the method was used to be included in the purchasing file.

#### **13.04 Retention of Written Determination (Federal Funds)**

In compliance with section 41-4-113 of the Code of Alabama, each institution is required to maintain written

determinations in the appropriate official contract file.

### **13.05 Uniform Purchases (Federal Funds)**

Based on apparel guidelines set forth by the Internal Revenue Service (IRS) only clothing items that comply with the following can be purchased using Institutional funds:

- The employee must wear the clothes as a condition of employment, i.e. for identification purposes, for safety, or as protective clothing.
- The clothes are not suitable for everyday wear.
- The Institution retains protective clothing and outerwear after the termination of employment.

Prior approval from the Business Office must be obtained before making apparel purchases.

Questions concerning the appropriateness of any expenditure of Institution funds should be directed to the Business Services Office. Apparel purchases, such as coveralls and work shirts, shall include the name and/or Institution logo.

### **13.06 Debarred/Suspended Vendors (Federal Funds)**

When using Federal funds for purchases expected to meet or exceed \$20,000, the System does not conduct business with vendors or individuals who have been debarred, suspended, or declared ineligible as defined in the Code of Federal Regulations CFR Title 2, Chapter 1, Part 180.

### **13.07 Unfair Competitive Advantage (Federal Funds)**

CFR 200.319 (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

Appendix A

**Additional Terms and Conditions**

**The following provisions shall take precedence over any and all contrary or conflicting provisions of the agreement between the parties and shall govern the rights and obligations of the parties:**

This agreement shall be governed by and construed in accordance with the laws of the State of Alabama without giving effect to any choice-of-laws or conflict- of- laws, provisions, or rules (whether of the State of Alabama or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Alabama.

It is further agreed that the terms and commitments contained herein shall not constitute a debt of the State of Alabama in violation of Section 213 of the Constitution of Alabama of 1901, as amended by Amendment Number 26. If any provision of this agreement shall contravene any statute or constitutional provision, either now in effect or which may be enacted during the term of this agreement, then the conflicting provision of this agreement shall be deemed null and void. The contracting party understands, acknowledges, and agrees that its sole and exclusive remedy for any claim which may arise from or relate to this agreement is to file a claim with the Board of Adjustment of the State of Alabama.

By signing this contract, the contracting parties affirm, for the duration of this agreement, that they will not violate federal immigration law or knowingly employ, hire, for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of this agreement and shall be responsible for all damages resulting therefrom.

This agreement constitutes the sole and entire agreement of the parties to this agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, negotiations, and agreements, both oral and written, with respect to such subject matter. In accordance with the recommendations of the Governor and the Attorney General of the State of Alabama, the parties shall consider settling all disputes arising from or related to this agreement by using appropriate forms of non-binding alternative dispute resolution.

In the event of proration of the fund from which payment under which this agreement is to be made, the agreement will be subject to termination. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be the same agreement.

In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

Notwithstanding anything herein to the contrary, either party may terminate this Agreement by providing fifteen (15) days written notice to the other party. In the event of termination under this provision, the contractor shall pay the Consultant for all services rendered and all out-of-pocket expenses incurred through the effective date of the termination.

It is understood that there is no entitlement to any state merit system benefits to anyone working under this agreement.

Appendix B

**Recommended Memo to Self-Certify increased Micro Purchase Limit**

2 CFR §200.320(a)(1)(iv) allows non-federal entities to establish a threshold higher than the micro-purchase threshold provided in FAR. Public institutions that are non-federal entities are permitted to increase their micro-purchase threshold of any amount up to \$50,000 annually.

Further, the Code of Alabama §41-4-124 allows educational institutions, governed by a board of trustees, to establish their own procurement office and adopt their own procedures related to purchasing and procurement. The Alabama Community College System, governed by a board of trustees, has established the Alabama Community College System Purchasing Manual which maintains a bid threshold of \$50,000.

As provided in 2 CFR §200.320(a)(1)(iv), Code of Alabama §41-4-124, and the Alabama Community College System's Purchasing Manual, **insert school name**, is certifying that the institution qualifies as a non-federal, public institution and is electing to increase its micro-purchase threshold to \$50,000.