



**UNIVERSITY OF ARKANSAS, FAYETTEVILLE (UAF)**

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**PROCUREMENT POLICY AND PROCEDURE MANUAL  
(INCLUDING USE OF FEDERAL FUNDS)**

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## **PURPOSE**

The purpose of this manual is to provide a useful summary of rules, regulations, policies, and procedures relevant to procurements in accordance with Arkansas Procurement Law, University of Arkansas policies, and as applicable, FTA Circular 4220.1F and the FTA Best Practices Procurement Manual. The Board of Trustees has legal control and responsibility for the University of Arkansas, governed by provisions in the Arkansas Constitution and by certain Arkansas Statutes.

To the extent permitted by law, the core purposes of this manual are:

- to permit the continued development of procurement policies and best practices;
- to provide for increased public confidence in the procurement policies followed by UAF;
- to promote purchasing and contracting opportunities for minority and women-owned businesses, both as prime contractors and subcontractors;
- to maximize to the fullest extent practicable the purchasing value of public funds through UAF's procurement activities;
- to obtain in a cost-effective and responsible manner the quality materials, services, and construction required by UAF to better serve the UAF community;
- to foster open and effective competition;
- to maintain procurement processes and procedures that uphold quality and integrity;
- to provide for the timely and impartial resolution of protests, contract disputes and all other procurement issues; and
- to handle confidential or proprietary information with proper consideration of the ethical and legal ramifications of disclosure.

The provisions of this manual are subject to all applicable federal and state laws and regulations and all applicable policies of the University of Arkansas. In the event of a conflict between the summary furnished in this manual and applicable law or policy, the applicable law or policy shall control. Because this manual is intended to be a useful summary of information, it is not comprehensive and should not be relied solely upon.

## **PROCUREMENT DEFINED**

UAF maintains procurement practices under Arkansas Procurement Law. Under Arkansas Procurement Law, the buying, purchasing, renting, leasing, or otherwise obtaining of any commodities or services is called Procurement, Ark. Code Ann § 19-11-203(20)(A).

## **ARKANSAS PROCUREMENT LAWS AND ETHICS**

Procurement laws provide requisitioners, buyers, and other procurement officials an ethical and legal framework for purchasing and contracting on behalf of the public. The primary collection of [Arkansas Procurement Laws](#) can be found in Title 19, Chapter 11, Subchapter 2 of the Arkansas Code Annotated titled "Arkansas Procurement Law." With certain exceptions, Arkansas Procurement Law applies to every State agency expenditure of public funds under any contract.

## **CODE OF ETHICS - [UAF Procurement Policy/Guidelines](#)**

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust. It is a breach of ethical standards for any employee to participate directly or indirectly in any matter pertaining to any contract, subcontract, or purchase order in which the employee or any member of his/her immediate family has a financial interest.

Additionally, and in accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars (\$20,000): "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except

for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.”

## **PROCUREMENTS USING FEDERAL FUNDS**

Procurements involving the use of federal assistance grant funds will be conducted in accordance with Arkansas Procurement Law and requirements of the Federal Transit Administration (FTA). In the instance of FTA grants, the requirements contained in the grant itself, FTA Circular 4220.1F, and any other requirements of the Federal Government will be followed.

- [UAF Standard Terms and Conditions](#)
- [UAF Procurement Policy/Guidelines](#)

## **Code of Federal Regulations, Clauses and Certifications – Procurement Standards**

Depending on the nature and value of the procurement, where procurements involve federal funds, the UAF Office of Procurement and applicable receivers of federal funds (e.g., UAF Transit) collaborate to ensure that all the required federal clauses, provisions, representations, and certifications have been appropriately incorporated, as outlined in FTA’s Circular 4220.1F or any other applicable federal laws or regulations. No purchase authorization shall be given until all federal requirements are met.

### **§200.317 Procurement By States**

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with [§§ 200.321](#), [200.322](#), and [200.323](#) and ensure that every purchase order or other contract includes any clauses required by [§ 200.327](#). All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).

UAF follows the procurement standards in §§ 200.318 through 200.327.

### **§200.318 General Procurement Standards**

#### **Contract Oversight, Monitoring and Administration**

##### **(1) Contract Development (Procurement)**

- Ensure the contract documents are developed in accordance with appropriate state and federal laws and that required federal clauses are included when applicable.
- Assist UAF departments in establishing proper and compliant contracts.

##### **(2) Contract Monitoring (UAF Departments)**

- Responsible for monitoring of the day-to-day contract activities to ensure deliverables and obligations are met.
- Identify and document each contract deliverable, specification, method of evaluation (i.e., report, delivery, and inspection) expected results, timeframe, budget, and performance criteria.
- Conduct careful monitoring of contractor performance and maintain written records.
- Conduct contractor performance evaluations as needed.
- Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. When issues arise, departments notify the UAF Office of Procurement with contractor performance record, and record is reported to the state.

##### **(3) Contract Files**

- Formal signed contracts relevant to procurement transactions are uploaded and stored in UAF’s Procurement and Financial Management System (Workday) and Imaging System (Perceptive Content).
- UAF Departments have access to formal contracts within Workday and Perceptive Content.

## **Standards of Conduct/Conflict of Interest**

These policies are designed to prompt faculty and staff to consider various aspects of conflict of interest/conflict of commitment to ensure that employees fully disclose activities (including foreign activities) falling under the relevant Board and campus policies and that such activities are properly managed. This also helps the campus continue to meet its obligations to federal sponsors and maintain compliance with export control requirements.

- [Fayetteville Policy and Procedure 404.0](#)
- [UA System Board Policy 330.1](#)

## **Unnecessary or Duplicative Items**

To determine the most economical approach, and when applicable, UAF reviews procurements to avoid the purchase of unnecessary supplies and services, duplicative items and quantities, or options not intended for use or where use is unlikely. Consideration is given to consolidating procurements to obtain a more economical purchase, however split procurements are not acceptable in circumventing the competitive bid process.

## **Efforts to Promote Cost-Effective Use of Shared Services**

UAF utilizes state, cooperative, and local intergovernmental agreements when available and appropriate for procurement or use of common or shared goods and services. UAF also promotes the use of UAF resultant contracts by other agencies:

INTERGOVERNMENTAL/COOPERATIVE USE OF COMPETITIVELY BID PROPOSALS AND CONTRACTS: In accordance with Arkansas Code Annotated § 19-11-249, any State public procurement unit, including any University of Arkansas System campus or unit, may participate in any contract resulting from this solicitation with a participating addendum signed by the contractor and approved by the chief procurement officer of the procurement agency issuing this solicitation.

Competition requirements are met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

## **Lobbying Activity and Federal Grants – [Fayetteville Policy and Procedure 317.1](#)**

### **Contracting with Responsible Contractors**

It is always the intent UAF to award a Contract to the Respondent(s) deemed to be the most qualified and responsible firm(s), who submits the best overall Proposal based on an evaluation of all Proposal responses, and who possesses the ability to perform successfully under the terms and conditions of the proposed procurement. Selection shall be based on UAF assessment of the Respondent's ability to provide adequate service, as determined by the evaluation committee elected to evaluate proposals. Consideration will be given to such matters as contractor integrity, compliance with public policy, respondent qualifications, and financial and technical capacities.

### **Contracting Authority and Signature Limits**

- [Fayetteville Policy and Procedure 220.0](#)
- [UA System Board Policy 330.1](#)

### **Maintenance of Written Procurement History**

UAF maintains detailed records of the history of all procurements within Workday. Depending on the type of the procurement, records include, but are not limited to:

- Appropriate method of procurement
- Appropriate business process
- Selection of appropriate contract type and spend category
- Evaluation criteria and method
- Competitive price/cost value

- Record Retention
  - [Fayetteville Policy and Procedure 218.0](#)
  - [Record Retention Guidelines](#)

### **Use of Time and Material Contracts**

To the extent permitted by law, UAF Departments may use time and materials contracts only:

- (1) After a determination that no other type of contract is suitable;
- (2) The contract specifies a ceiling price, and the contractor shall not exceed that price except at own risk;
- (3) The justification and determination for the appropriate method of procurement must be submitted to the Office of Procurement and included with the file for this type of contract.

### **Contract Dispute Resolution**

In accordance with best practice and sound business judgment, UAF is responsible for the settlement of all contractual and administrative issues arising out of UAF procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims:

DISPUTES: Contractor and UAF agree that they will attempt to resolve any disputes in good faith. Contractor and UAF agree that the State of Arkansas shall be the sole and exclusive jurisdiction and venue for any litigation or proceeding that may arise out of or in connection with any Contract. The Respondent acknowledges, understands and agrees that any claims, demands, suits, or actions for damages against UAF may only be initiated and pursued in the Arkansas Claims Commission, if at all. Under no circumstances does UAF agree to binding mediation or arbitration of any disputes or to the payment of attorney fees, court costs or litigation expenses.

### **§200.319 Competition**

UAF practices open and effective competition. All purchases, whether by formal bid or other means, shall be made on a competitive basis to the maximum practicable extent. Contracts and purchases will be made or entered into with the lowest cost responsible bidder meeting or exceeding specifications and/or best value.

Purchases and contracts are extended to only those responsible contractors and suppliers that meet UAF needs to fulfill the contract, with a record of satisfactory performance and integrity, in addition to other criteria as specified within the competition event. In compliance with FTA regulations, competitive bidding is required whenever FTA funds are used.

- [UAF Formal Bid Process](#)
- [UAF Formal Bid Solicitations](#)
- [RFP Sample](#)
- [IFB Sample](#)
- [UAF Construction Bids](#): Suppliers interested in working with Facilities Management (FAMA) on future projects can view current Requests for Qualifications. These bids are administered by FAMA.
- [State Bid Opportunities](#): Suppliers can explore further bid opportunities with the state. These bids are not administered by UAF.
- [UAF Procurement Policy/Guidelines](#): As an entity of the State, UAF follows the State procurement policy regarding [Protests and Protest Resolutions](#).
- Geographic Preference:
  - *Public Funds*. Use of geographic preferences in advertising or evaluating bids or proposals is generally discouraged because it may limit full and open competition or may be prohibited by applicable laws or regulations. Where geographic preferences are used, UAF shall prepare a written record showing the basis for the decision and the record shall be retained as part of the procurement file.
  - *Federal Funds*. As with public funds, and to ensure the avoidance of geographical preferences when federal funds are used, applicable procurements depending on the nature and value shall be advertised on UAF public solicitation website ([Hogbid](#)).

- **Qualifications of Respondent:**  
UAF may make such investigations as deems necessary to determine the ability of Respondents to meet all requirements as stated within formal competition, and Respondent shall furnish to UAF all such information and data for this purpose that UAF may request. UAF reserves the right to reject any bid if the evidence submitted by, or investigations of, such Respondent fails to satisfy UAF that such Respondent is properly qualified to carry out the obligations of the Contract.
- **Freedom of Information - [UA Board Policy 270.1](#)**

### **§200.320 Methods of Procurement**

UAF Procurement Methods are designated by Arkansas Procurement Law to uphold best practice and transparency. Depending on the complexity and dollar amount of the procurement, purchases and contracts will be established through the appropriate method with the responsible contractor meeting or exceeding specifications or on the basis for best value.

- [UAF Purchasing Methods and Guidelines](#)
- [State of Arkansas Typical Procurement Methods](#)

### **§200.321 Contracting with Small, Minority, and Women’s Businesses**

UAF promotes contracting opportunities with Minority and Women-Owned Businesses (MWOB) and how to do business with UAF. The [UAF Minority and Women-Owned Business Resource](#) site and video are instruments developed to also bring more awareness to campus to be intentional about seeking MWOB’s in their procurements. Additionally, relevant information is included in all UAF formal bid documents, public solicitations website ([HogBid](#)) and [UAF Procurement Policy/Guidelines](#) site.

### **§200.322 Domestic Preferences for Procurements**

As appropriate and to the extent consistent with law, UAF applies preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States in all contracts and purchase orders.

### **§200.323 Procurement of Recovered Materials - [UAF Environmental Health & Safety](#)**

### **§200.324 Contract Cost and Price**

- **Cost/Price Analysis**  
UAF Departments in conjunction with the Office of Procurement perform a cost/price analysis to ensure pricing on items procured are fair and reasonable. For acquisitions above \$20,000 the [UAF Procurement Methods](#) apply along with UAF internal controls and risk evaluation. The method and degree of analysis and negotiation depends on the facts surrounding the procurement, such as complexity of work, risk, costs or cost estimates, qualifications, and performance history.
- **Negotiation of contractor profit**  
When applicable for construction or facility improvement contracts, Construction negotiations are handled by [UAF Facilities Management](#), considering direct costs, overhead, profit, and any authorized contingency to cover additional costs arising from changes in the scope of work.
- **Estimated Costs**  
Costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable.
- **Cost plus a percentage of cost**  
Pursuant to Procurement Law 19-11-237. Cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee contracts.

Cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee system may be used under the authority of the State Procurement Director when:

- (1) There exists no other economically practicable price arrangement to secure the commodity;
- (2) A cost saving may be proved over the least expensive alternative; or

- (3) The pricing schedule involved is tied to an industry standard or other reliable system of cost prediction.

### **§200.325 Federal Awarding Agency or Pass-through Entity Review**

UAF and UA System Procurement and Financial Management System (Workday) complies with state and federal controls and requirements, in lieu of submitting to certain pre-procurement reviews. This includes the preparation of reports required by general and program-specific terms and conditions, the review and approval of appropriate business processes, and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. More specifically, 2 CFR §§ 200.317–200.327 Procurement Standards; Federal laws, regulations, and requirements applicable to FTA procurements; and other applicable Federal guidance.

### **§200.326 Bonding Requirements**

When applicable for construction or facility improvement contracts, Construction engagements are handled by [UAF Facilities Management](#). UAF minimum requirements are as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **§200.327 Contract Provisions**

When applicable for contracts entered under Federal Award, UAF minimum requirements comply with Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Applicable contract terms include, but are not limited to:

- **Non-Discrimination**. Vendor agrees to adhere to any and all applicable Federal and State laws, including laws pertaining to non-discrimination. In particular, consistent with the provisions of Act 954 of 1977, as amended and codified at Ark. Code Ann. § 25-17-101, the vendor agrees as follows: (a) the vendor will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap or national origin; (b) in all solicitations or advertisements for employees, the vendor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; (c) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and this contract may be canceled, terminated or suspended in whole or in part; (d) the vendor will include the provisions of items (a) through (c) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.
- **Conflict of Interest**. Vendor recognizes that University of Arkansas Board of Trustees Policy 330.1 provides that the University shall not, without approval of the Chancellor or Vice President for Agriculture, enter into a contract with a current or former state employee, member of the Arkansas General Assembly, state constitutional officer or board or commission member, or the immediate family member thereof, or any entity in which such a person holds an ownership interest of 10 percent or greater.
- **Contract and Grant Disclosure and Certification**. Any contract, or amendment to any contract, executed by the University which exceeds \$25,000.00 shall require the vendor to disclose information consistent with the terms of Arkansas Executive Order 98-04, and any amendments or replacements, and the regulations pursuant thereto. No contract, or amendment to any existing contract, that falls

under Order 98-04, will be approved until the vendor completes and returns the disclosure form. d. Anti-Boycott Israel Notice. In accordance with Ark. Code Ann. § 25-1-503, Vendor hereby certifies to University that Vendor (a) is not currently engaged in a boycott of Israel and (b) agrees for the duration of this Agreement not to engage in a boycott of Israel. A breach of this certification will be considered a material breach of contract. In the event that Vendor breaches this certification, University may immediately terminate this Agreement without penalty or further obligation and exercise any rights and remedies available to it by law or in equity

### **Prohibition of Exclusionary or Discriminatory Specifications**

Federal funds may not be used to support a procurement that uses an exclusionary or discriminatory specification.

### **Compliance with Buy America**

FTA's Buy America requirements apply to third-party procurements by FTA grant recipients. When tangible property (steel, iron, or manufactured goods and construction materials) including labor and options will be acquired at a total contract amount exceeding \$150,000, to the extent consistent with law, UAF includes in formal bids and other applicable procurements an appropriate notice of the Buy America provision. Under limited circumstances, Buy America requirements may be waived if:

- application of Buy America is inconsistent with the public interest;
- the steel, iron, and goods produced in the U.S. are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; or
- including domestic material will increase the cost of the overall project.

### **Funding Sources and Best Practice**

Regarding the applicability of certain procurement laws and regulations to purchases that are 100% funded by grant, private, or gift dollars, best practice remains the objective. In general, transactions should follow the procurement process required by law for public funds regardless of funding source.

Arkansas law defines "public funds" as follows:

Ark. Code Ann. § 19-11-203(23) (emphasis added):

- (A) "Public funds" means all state-appropriated and cash funds of state agencies, as defined by applicable law or official ruling
- (B) Without necessarily being limited thereto, "public funds" does not include:
  - (i) Grants, donations, research contracts, and revenues derived from self-supporting enterprises that are not operated as a primary function of the agency, no part of which funds are deposited into the State Treasury; and
  - (ii) Revenue derived from patient care and self-supporting hospital enterprises of an academic medical center.

Although state procurement laws expressly exempt such purchases from statutory procurement requirements, the University generally requires these transactions and purchase processes to be approved by the Office of Procurement prior to purchase. Upon request of the department or unit, the University *may* elect to exempt transactions funded wholly with non-public funds from certain procurement requirements, such as bidding or other processes prescribed for transactions purchased with public funds. However, there is no automatic or blanket approval for exemptions based on these funding sources so any exemptions will be determined on a case-by-case basis. Purchases funded by revenues derived from self-supporting enterprises that are not operated as a primary function of the agency shall not require additional approval for exemption, but it is strongly recommended that the procurement process required by law for public funds also be applied to these transactions when practical as a matter of best practice.