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## PROCUREMENT PROCEDURE

# Procurement Procedure

### Procedure Sections

Last Revised: June 2014

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### Reason for Procedure

This procedure outlines the processes for procuring goods and services for the Aspen Center for Physics.

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### Who Should Know This Procedure

- Principal Investigators
- Administrative Staff
- Winter Conference/Summer Workshop Organizers
- Proposal Committee
- Officers
- Trustees
- General Members
- Other: \_\_\_\_\_

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### Contacts

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Subject	Contact
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Procurement Questions

Finance Manager  
Administrative Vice President

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## Applicable ACP Policies

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- Accounting Policies and Procedures
  - Budget Development Procedure
  - Conflict of Interest Policy
  - Financial Reporting
  - Grant Processes
  - Indirect Cost Assessment
  - Property Management Standards and Policy
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## ACP Procurement Procedure

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### Federal Thresholds:

For purchases of less than \$3,000 per transaction, micro-purchases, the sale is usually made via credit card. The decision is made immediately and any employee who has access to the credit card, and is an authorized buyer with the approval of the Administrative Vice President, may make the purchase. A brief purchase justification should be made.

When a transaction is worth between \$3,001 and \$25,000, the Administrative Staff is responsible for following very specific requirements, including asking for three bids and choosing the winning bidder. The decision may be based on low price or best value, and the timeline is usually only a few days. For those transactions of less than \$25,000, it is not required that these offerings be publicly advertised.

The Federal Acquisition Regulations (FAR) require that, in most cases, once the contract value ranges from \$25,000 to \$150,000, the opportunity must be advertised somewhere (such as FedBizOpps.gov) and competing bids invited. The timeline increases to allow for competing bids and the decision-making process may increase to a month or more.

The Federal government stipulates that most contract opportunities that are valued from \$3,000 to \$150,000 be set aside for small business. Of course, there are exceptions to this rule, but the majority of these contracts remain small business opportunities.

Once the value exceeds \$150,000, the contract may be available for full and open competition

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between large and small businesses, unless it is specifically set aside under the small business Goaling Program. These contracts may take many months (and possibly more than a year) to pass through the entire competition process.

Note that some Federal sponsoring agencies may have special procurement guidelines. It is important to review the award agreement, to determine if this is the case, and to make sure the Administrative Staff is aware of special requirements.

### **ACP Small and Large Threshold Guidelines:**

All purchases will follow the guidelines in the ACP Allowable Costs Policy, and are authorized by the Administrative Vice President or the ACP Board of Trustees. The Administrative Vice President is authorized by the ACP Board of Trustees to enter into rental agreements exceeding the usual threshold for purchases over \$15,000. Purchases over this amount require Board approval.

The following non-allowable purchases are disallowed, and are funded only by sources other than Federal grants

- Alcoholic beverages
- Alumni activities
- Bad debts and contingencies
- Contributions, donations and entertainment
- Fines and penalties
- Goods or services for employee's personal use or trustee travel and subsistence costs
- Housing and personal living expenses for employees
- Interest, fund-raising and finance costs
- Losses on other awards
- Lobbying expenses, student activity costs
- Selling and Marketing

Small, allowable purchases are in accordance with standard items consistently purchased every year, and occasionally on a new-need basis. Where possible, items that can be recycled or acquired from other sources are investigated. The best available price, while considering quality and durability, is sought and only items deemed necessary to Center operations are purchased. Purchases are reviewed for quality and vendors are chosen based on ability to deliver, warranty assurances when applicable and user support.

Inventories of ongoing purchases, such as office supplies, are completed prior to the start of the summer and winter programs, and stocks are refilled as necessary.

Both year-round employees of the Aspen Center for Physics have grant award copies on hand and have read grant guides and guidelines, which are also on hand. New year-round employees read appropriate sections of manuals, circulars and guides, which inform them of Federal policy. Summer and part-time staff signs the Procurement Standard.



Equipment, furniture or fixture items under this classification are researched by the staff, by vendor and lease versus purchase options. The findings are then given to the Administrative Vice President. Solicitations are made to small, minority, women's and local business enterprises whenever possible, and purchases are distributed equitably among qualified suppliers who offer competitive prices and suitable customer service, whenever it does not interfere with budgeting or the smooth and efficient running of the Center.

### **Procurement Policy Signed by Employees**

Each employee's personnel file includes a signed procurement policy showing that new hires and existing staff understand procurement guidelines. Should employees diverge from ACP procurement policy, the Administrative Vice President or the President will intervene. See the ACP Employee Manual for more on dismissing staff. The ACP Whistleblower Policy allows employees to report procurement misuse.

### **Procurement Files for Purchases over the Small Purchase Threshold:**

Procurement records and files for purchases in excess of the micro-purchase threshold shall include the following at a minimum:

- basis for contractor selection,
- justification for lack of competition when competitive bids or offers are not obtained, and
- basis for award cost or price.

For purchases over \$25,000 the attached documentation should include:

- Procurement history
- Methods of procurement including contractor selection or rejection
- Basis for contract price
- Verification that procurement provided for full and open competition
- Cost or price analysis, including contract modifications
- Obtaining and reacting to suspension and debarment certifications or equivalent documentation that might prohibit subawardees from receiving Federal funds – go to SAM.gov to search for a specific business to determine suspension or debarment
- How the contractor's performance was monitored

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## **Roles & Responsibilities**

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**Principal Investigator:** Responsible for reviewing purchases over \$15,000 for items other than housing rent



**Administrative Staff:** Responsible for following procurement standards

**Designated Officers:** Responsible for approving purchases over \$15,000

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## Appendix: Applicable Federal Regulations & Criteria

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NSF AAG and to OMB Circular A-110 as posted below:

\_\_\_41 Recipient responsibilities. The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

\_\_\_42 Codes of conduct. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

\_\_\_43 Competition. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.



\_\_\_44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that (1), (2) and (3) apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.



(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority- owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this Circular.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

\_\_\_45 Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

\_\_\_46 Procurement records. Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.



\_\_\_47 Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

\_\_\_48 Contract provisions. The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) 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 obligations under such contract.

(3) 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 statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this Circular, as applicable.

