

Doc. T92-031, Appendix A, as amended

Passed by the Board of Trustees

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**UNIVERSITY OF MASSACHUSETTS
PROCUREMENT POLICY**

I. INTRODUCTION

This Procurement Policy (Policy) governs the procurement of all Goods and Services by the University. In accordance with the provisions of Section 3 of Chapter 75 of the General Laws, as amended, all procurements by the University irrespective of the method of procurement or source of funds, shall be governed by this Policy subject to subsequent amendment, revision, or repeal, by the Board of Trustees.

This Policy does not supersede any of the provisions of the Senior Vice President for Administration & Finance and Treasurer's Delegations, Doc. T97-014. All University employees must follow Doc. T08-028, the Policy on Codes of Conduct for University/Vendor Relationships.

All persons responsible for procuring Goods and Services governed by this Policy shall confer with the Office of the General Counsel as advisable in order to assure compliance with this Policy.

II. THE STANDARDS

The President shall issue Administrative Standards for the Procurement Policy (Doc. T92-031) (Standards). The Senior Vice President for Administration & Finance and Treasurer shall recommend such Standards for the President's action. Capitalized terms used herein, if not otherwise defined in this Policy, shall be defined as set forth in the Standards. The Senior Vice President for Administration & Finance and Treasurer shall confer on a regular basis with the CPO, the Vice Chancellors of Finance and Administration and the General Counsel to determine whether revisions to the Standards are appropriate to comply with University policies or law, and to assure that the University is using best practices to procure its Goods and Services.

III. POLICY STATEMENT

A. Shared Services Procurement:

There shall be within the President's Office a unified procurement organization, the Unified Procurement Services Team (UPST), which shall be responsible for, inter alia, the management of the procurement of Goods and Services and other related administrative functions as required by the Campuses and the University President's Office. UPST will be led by a Chief Procurement Officer (CPO).

B. Competitive Procurement Practices:

The University shall procure all Goods and Services covered by this Policy at the best overall value to the University, consistent with the necessary specifications, quantities, quality, durability, availability, serviceability, and other factors affecting the use of the Good or Service by the University. In complying with this Policy, the cost of acquisition, as well as other factors (such as the delivery time required, supplier diversity, and prior performance) may be considered. All procurements must: (1) have prior approval of the CPO or the CPO's designee; and (2) must follow applicable delegation and signatory authority in accordance with this Policy and the associated Standards.

To encourage open and fair competition, advertisement for, and receipt of, competitive bids shall be used whenever practicable, or when required by law. The University's commitment to the principles of Affirmative Action shall be applied to procurements with the objective of: (1) achieving and fostering greater participation in University procurement activity by minority-owned small business, small disadvantaged business, women-owned small business, HUBZone small business, Veteran-owned small business, and service-disabled Veteran-owned small business enterprises; and (2) encouraging socially or economically disadvantaged business owners to respond to invitations to bid on University business.

C. Delegations of Authority:

1. **To the President**, with authority to re-delegate to the Senior Vice President for Administration & Finance and Treasurer, or any member of the President's Office as the President may determine:
 - a. Authority to require the campuses to utilize a system-wide or multi-campus procurement or existing contract for any purchase covered by this Policy. A Chancellor who believes such procurement would not be in the best interest of his/her Campus shall be entitled to request not to participate in such procurement, but the President shall make the final decision.
2. **To the President**, for President's Office, multi-campus or system-wide procurements, and Campus-specific procurements with prior approval of the Campus, with authority to re-delegate to the Senior Vice President for Administration & Finance and Treasurer, and/or such other designees as the President shall determine:
 - a. Authority to enter into and execute Purchase Agreements for Goods not otherwise delegated pursuant to Article III (C)(2)(c-d).
 - b. Authority to enter into and execute Purchase Agreements for Services not otherwise delegated pursuant to Article III (C)(2)(c-d).
 - c. Authority to enter into and execute Purchase Agreements for labor and materials for repair or construction, including design services, of real property used by the President's Office subject to any applicable requirements under M.G.L. ch.7C, M.G.L. ch.30, or M.G.L. ch.149.

- d. Authority to enter into and execute Purchase Agreements, leases or licenses of any items, including but not limited to, equipment, vehicles, information technology hardware/software, and/or library materials including electronic journals. Procurement of information technology, hardware/software, or peripherals must comply with the Information Technology Acquisition Policy, Doc. T08-086.
 - e. Authority to enter into and execute Real Property Agreements relating to the use of Real Property by the President's Office. All agreements for the use and disposition of Real Property must be in compliance with the University's Capital Planning, Land and Facilities Use Policy, Doc. T93-122 and with the Treasurer's Delegations, Doc. T97-014.
3. **To the Chancellors**, for Campus procurements with authority to re-delegate to such University Personnel as the Chancellor may determine:
- a. Authority to enter into and execute Purchase Agreements for Goods not otherwise delegated pursuant to Article III (C)(3)(c-d).
 - b. Authority to enter into and execute Purchase Agreements for Services not otherwise delegated pursuant to Article III (C)(3)(c-d).
 - c. Authority to enter into and execute Purchase Agreements for labor and materials for repair or construction, including design services, of real property used by the Campus subject to any applicable requirements under M.G.L. ch.7C, M.G.L. ch.30, or M.G.L. ch.149.
 - d. Authority to enter into and execute Purchase Agreements, leases or licenses of any items, including but not limited to, equipment, vehicles, information technology hardware/software, and/or library materials including electronic journals. Procurement of information technology, hardware/software, or peripherals must comply with the Information Technology Acquisition Policy, Doc. T08-086.
 - e. Authority to enter into and execute Real Property Agreements relating to the use of Real Property by the Campus. All agreements for the use and disposition of Real Property must be in compliance with the University's Capital Planning, Land and Facilities Use Policy, Doc. T93-122 and with the Treasurer's Delegations, Doc. T97-014.

All sub-delegations of authority pursuant to this Policy shall be made in writing and forwarded to the office of the Senior Vice President for Administration & Finance and Treasurer and to the General Counsel.

4. **To the General Counsel**, with authority to re-delegate to an attorney in the Office of the General Counsel as the General Counsel may determine, authority to enter into Legal Services agreements and agreements for any other services performed by external lawyers or law firms. Any retention or hiring of lawyers or law firms external to the University providing any legal or other advice or services to the University (and any of its University related entities and affiliates), must be directed to and coordinated with the University's Office of General Counsel. Any such lawyer and/or law firms shall be retained by, and work under the continuing supervision of the General Counsel pursuant to the Office of General Counsel's standard operating procedures.

D. Legal Review:

1. The General Counsel, or an attorney in the Office of the General Counsel as the General Counsel may determine, shall review and determine legal acceptability of the following Purchase Agreements (including, but not limited to, multi-campus or system-wide procurements, entered into by the President's Office or the Campuses) prior to execution as set forth in this Policy and the Standards. Review by the Office of the General Counsel under this Policy and the Standards is in addition to any other internal approvals that may be required under other University policies.
 - a. Purchase Agreements with a Cost of \$100,000 or more.
 - b. Regardless of Cost:
 - i. Real Property Agreements.
 - ii. Lobbying Services Agreements.
 - iii. Purchase Agreements and/or amendments thereto which contain language that conflicts with, modifies, deletes, adds to, or otherwise alters the University's standard Purchase Agreement terms and conditions.
2. The responsible procurement or contracting official for UPST shall confer with the General Counsel when advisable to assure compliance with this Policy.

UNIVERSITY OF MASSACHUSETTS
ADMINISTRATIVE STANDARDS FOR THE PROCUREMENT POLICY
(Doc. T92-031, Appendix A)
(as of March 4, 2020)

A. Procurement Administration

The Senior Vice President for Administration & Finance and Treasurer, under the direction of the President, is designated as the officer of the University responsible for issuing procurement standards (“Standards”) applicable to the five campuses and the President’s Office. The General Counsel’s Office in conjunction with the Chief Procurement Officer shall regularly review these Standards and propose any changes to the Senior Vice President for Administration & Finance and Treasurer.

All procurements of goods, materials, commodities, and services by the University, including but not limited to, vehicles, equipment, library materials, software, design services, , whether procured by purchase order, contract, license, lease, or other form of agreement (collectively “Procurements”) regardless of the source of funds must comply with the University’s Procurement Policy, Doc. T92-031 as amended, and these Standards.

All Procurements must follow appropriate delegation and signatory authority in accordance University policies and campus or President’s Office procedures to bind the University. Pursuant to the authority delegated to the President in Article II, Section B(1)(a), all Procurements by the five campuses and the President’s Office exceeding \$49,999.00 shall be completed using a system-wide procurement process implemented by the University’s Unified Procurement Services Team (UPST).

B. Definitions

Chief procurement/purchasing officers should consult with the General Counsel’s office if clarification is needed for any of these definitions.

1. Consultant services: Services provided by an individual, company, or entity in a specific specialized field(s) with little or no University direction or supervision. Consultant services shall include lobbying services as defined by state or federal law.
2. Contract: The University’s contract for services including consultant services, purchase order, or any other written, legally binding agreement between the University and an external individual or entity.
3. Independent Contractors: Contracts with individuals engaged to perform services or consultant services for or on behalf of the University under a Contract or Sub-contract, other than in an employment status, and minimally supervised by University personnel. These individuals engaged must meet the requirements for independent contractors under state and federal law, including G.L. ch.149, section 148B. Questions or guidance concerning independent contractor status should be directed to Human Resources.

4. Legal services: Attorneys or law firms retained to provide legal advice or representation for the University, a campus, or University employees in matters relating to their official duties. Any legal counsel retained by the University on a permanent, temporary, or consultant basis shall be approved and retained by, and subject to the continuing supervision of, the General Counsel of the University, pursuant to the vote of the Board of Trustees, May 1, 1974.
5. Services: Duties, work, or activities performed by an individual, company, or entity for the University under a written contract; or on behalf of the University under a written sub-contract; or performed by the University for a third party under a written contract. Services as defined in this subsection shall not include consultant or legal services.
6. Sub-contracts: The University, through the President's Office, or any campus may enter into contracts with other persons or entities, including other governmental agencies, by which the University agrees to provide services. In order to fulfill these contractual obligations, the University may enter into sub-contracts with persons or firms. These sub-contracts shall be subject to the Procurement Policy and any standards or campus guidelines developed pursuant to the Procurement Policy in the same manner as if the University were procuring goods and services for itself, unless other contractual terms apply.

C. Competitive Procurement

Competitive procurement is the acquisition of Procurements through fair and open competition. Acceptable methods of competitive procurement include invitations to bid, requests for proposals, requests for quotes, or a combination of these (collectively "Invitations").

Invitations shall be written in a manner to encourage fair and open competition. All Invitations issued shall include specifications and all contractual terms and conditions applicable to the particular procurement. Invitations may include language for the submission of samples that may be examined, tested, and analyzed to determine if they meet the stated specifications provided for in the Invitations.

1. Procurement specifications should be written in clear, simple language and provide an accurate description of the physical, technical, or functional characteristics of the Procurement. Procurement specifications shall be as detailed as practical presenting a clear statement of the required standards of workmanship, materials, services and/or performance of the Procurement to be procured. Specifications shall set out the essential characteristics of the Procurement being procured so that potential responders are responding to the Invitations on the same terms.
2. Invitations shall include the contractual terms and conditions relative to the Procurement being procured. All responders must be advised of those specific terms and conditions required by the University and which will not be negotiable.
3. Invitations for Procurements shall be posted on a publicly displayed bulletin board at the respective University campus, or University campus website and when deemed desirable, or as required by law, may be advertised in newspapers and trade journals in the State, Comm-Buys or other appropriate public internet websites. Advertisement for design and building construction must be in compliance with G.L. ch.7C, G.L. ch.149 and G.L. ch.30, section 39M.

4. University personnel responsible for purchasing shall, to the greatest extent possible, inform themselves of prices and specifications of items available through the Commonwealth of Massachusetts, Operational Services Division (“OSD”) and its contract price agreements and may utilize those agreements whenever it would be to the advantage of the University. When utilizing OSD, for Procurements, other consortia, or group purchasing organizations, the University must comply with the procedures and terms and conditions set forth for the procurement; including any requirements for obtaining quotes from multiple vendors.
5. Contracts of other consortia and group purchasing organizations may also be utilized when approved by the University Purchasing Council based on evidence of consortia’s sound competitive and ethical procurement practices whenever it would be to the advantage of the University.
6. When practicable, requisitions and orders shall be grouped to take advantage of quantity discounts.
7. Competitive Procurement is required for purchases of materials, goods, commodities, leases (including equipment or real property) and licenses (including software, electronic journals, or real property) which exceed ten thousand dollars (\$10,000) per fiscal year; and for services contracts including consultant contracts, and sub-contracts which exceed fifty thousand dollars (\$50,000) per fiscal year.
8. All Labor and Materials construction projects must be bid in compliance with G.L. ch. 149 and G.L. ch. 30, section 39M.
9. Services for Building Projects (as defined in ch. 7C) must be bid in compliance with G.L. ch7C.

D. Exceptions to Competitive Procurement

Subject to the Procurement Policy, procurements made without advertising or some competitive procurement process should be limited to:

1. Purchases of materials, goods, commodities, leases (including equipment or real property) or licenses (including software or real property) less than ten thousand dollars (\$10,000) in value.
2. The best over-all value based on a minimum of two with a preferred three quotes for purchases of materials, goods, commodities, leases (including equipment or real property) and licenses (including software) between ten thousand dollars (\$10,000) and fifty thousand dollars (\$50,000) in value.
3. Consultant, services contracts, or sub-contracts with fees of fifty thousand dollars (\$50,000) or less per fiscal year.
4. Those instances where competitive bidding would be impracticable; and in all such instances, any department requesting the procurement must provide a written memorandum of "No Bid Justification," which must include the benefits and circumstances for procurement without competitive bidding. In those instances where competitive bidding is impossible and would have no practical value because of the nature of the Procurement, the campus chief procurement

officer or chief purchasing officer, at his/her discretion, may determine whether a “No Bid Justification” is necessary.

E. Procedures

1. A University standard contract form agreement shall be used whenever possible for procuring consultant or other services under the Procurement Policy.
2. A purchase order may be used for procuring services, including consultant and sub-contract services with projected fees of ten thousand dollars (\$10,000) or less per fiscal year.
3. A purchase order may be used for Procurements publicly administered by the Commonwealth of Massachusetts, Operational Services Division.
4. A University standard amendment form or an amendment in substantially the same form as the University standard amendment form shall be used whenever possible when amending a contract or sub-contract.
5. Change orders should be made in accordance with the terms of a contract or subcontract. A change order is a written order issued by a duly authorized individual who approves a change in the work, contract time and/or amount in accordance with the terms of the written contract.
6. Contracts for consultant or other services should include the University’s insurance requirements identifying the appropriate insurance coverages required under the contract.
7. When a procurement of services, regardless of dollar value, for maintaining, disclosing, transmitting, accessing, using, or storing personal information or personally identifiable information (PI) as defined under state or federal law, or protected health information (PHI) as defined under the Health Insurance Portability and Accountability Act of 1996 as amended, the campus may need to either enter into an additional agreement or provide sufficient language in the existing agreement that outlines the obligations of a party in safeguarding PI or PHI from unauthorized disclosure or use. Questions about potential liabilities or other legal concerns should be directed to the Office of General Counsel.
8. A campus must notify the President or designee about any proposed campus contract for consultant services which will exceed \$300,000 annually.

F. Legal Consultation and Review

1. Legal Review: Prior review and approval by the General Counsel’s office is required for the following agreements.
 - a. Agreements relating to any interest in real property.
 - b. Sub-contracts, consultant or other service contracts which exceed \$100,000 per fiscal year.
 - c. Contracts for lobbying services.

- d. Amendments which contain language that conflicts with, modifies, deletes, adds to, or otherwise alters the University's standard contract terms and conditions.

In addition to the preceding, the General Counsel's Office may review any agreement, including; but not limited to contracts, sub-contracts, or consultant contracts and amendments, which a campus reasonably believes requires legal review.

2. Exceptions to Required Legal Review:

- a. The purchase of services for the necessary and routine operations or daily activities of the University and/or the repair or maintenance of University property or facilities.
3. Consultation: The General Counsel's office should be consulted regarding any interpretation or application of these Standards or the Procurement Policy. Attorneys in the office can provide review and advice for any aspect of procurement, including development of Invitations/RFP/RFQ, responses from bidders, post-award de-briefs and protests, proposed contract terms, and negotiations.

Attorneys in the General Counsel's office should be consulted regarding any contractual terms implicating the University's trademarks, copyrights, or intellectual property, or any terms which may require the University to indemnify, hold harmless, warranty, or otherwise agree to protect a third party from risk of loss in any respect.