

Attachment 1.

Fermilab Procedure

Commercial Procurements

1. **PURPOSE:**

This document establishes procurement procedures for commercial item purchases at Fermilab. It is the policy of Fermilab to procure commercial items using this procedure at every applicable opportunity. In the event of a conflict between this and other Procurement department procedures, this procedure will take precedence when commercial item acquisitions are accomplished.

2. **SCOPE:**

This procedure applies to all commercial items (as defined in Section 3 below) purchased at Fermilab using fixed-priced acquisition documents. It does not apply to:

- A. Services procured on an hourly basis without a definite task;
- B. Cost-reimbursement, labor-hour, or any other type of contract that is other than a fixed-price or fixed-price with economic price adjustment provisions;
- C. Construction,
- D. Research and Development work.
- E. Architect – Engineering Services

3. **DEFINITIONS:**

COMMERCIAL ITEMS - are:

- A. Any item, other than real property, that is of a type customarily used for non-governmental purposes and that:
 - 1. has been sold, leased, or licensed to the general public; or
 - 2. has been offered for sale, lease or license to the general public.
- B. Any item that evolved from an item described in paragraph A of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a government solicitation;
- C. Any item that would satisfy a criterion expressed in paragraphs A or B of this definition, but for:
 - 1. modifications of a type customarily available in the commercial marketplace; or
 - 2. minor modifications of a type not customarily available in the commercial marketplace made to meet federal government requirements. “Minor” modifications means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the final product. Dollar values and percentages may be used as guidelines, but are not conclusive evidence that a modification is minor.

- D. Any combination of items meeting the requirements of paragraphs A, B, C, or E of this definition that are of a type customarily combined and sold in combination to the general public;
- E. Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs A, B, C, or D of this definition, and if the source of such services:
 - 1. offers such services to the general public and the federal government contemporaneously and under similar terms and conditions; and
 - 2. offers to use the same work force for providing the federal government with such services as the source uses for providing such services to the general public.
- F. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
- G. Any item, combination of items, or service referred to in paragraphs A through F, notwithstanding the fact that the item combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
- H. A non-developmental item, if developed exclusively at private expense and sold in substantial quantities on a competitive basis, to multiple state and local governments.

FIXED PRICE ACTIONS - Are those for a definite sum with specific delivery or performance periods which may include economic price adjustment provisions.

ADEQUATE PRICE COMPETITION - for commercial items exist when:

- 1. Two or more offerors submit independently priced offers; or
- 2. There was a reasonable expectation, that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation's expressed requirement, even though only one offer is received and it was reasonable to conclude that the offer was submitted with the expectation of competition.
- 3. Price Analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.

4. **OPERATING PROCEDURES:**

ALL COMMERCIAL ITEM PURCHASES

- A. Commercial Determination will be made by the Procurement Administrator. All actions will be considered "commercial" unless they meet the criteria shown within Section 2, Scope, of this procedure. Every effort will be made to utilize suppliers holding Pricing Agreements and Blanket Orders.
- B. Procurement Credit Cards (Pro-Cards) are the preferred way to purchase low dollar value commercial items. A detailed procedure is on file within the Procurement Department. Cardholders may use the Pro-Card for the acquisition of commercial goods and services priced up to \$2,500.

- C. Competition is the preferred method of acquiring commercial items. Commercial items in excess of \$10,000 procured non-competitively require justifications.
- D. Price Reasonableness Determinations is to be documented on every action. Procurement signatures on purchase orders \$10,000 or less signify that the Procurement Administrator has determined price reasonableness. Actions in excess of \$10,000 require a price analysis to determine price reasonableness. Certified cost and price data is not required for any commercial item procurement. The depth and detail of price reasonableness documentation should increase as the dollar magnitude and overall complexity of the procurement increases.
- E. Purchase Requisition
A purchase requisition authorizes procurement personnel to initiate a purchase order or to effect changes to existing purchase orders.
1. The requisitioner will set forth the requirement, obtain the required approvals, attach applicable drawings or technical specifications, delivery requirements and forward the requisition to Procurement.
 2. Procurement will check the requisition for completeness. If incomplete corrective action will be taken.
 3. Upon receipt of an approved requisition, a Procurement Administrator is assigned and the requisition checked for content.
 4. Requisitions shall contain dollar estimates. Changes require re-approval in accordance with the following:
 - a. Increases of \$5,000 or more to existing requisitions must be re-approved, i.e. returned to the requisition preparer noting the reason for return. Increases less than \$5,000 may be authorized via telephone, e-mail, memo, or Procurement Administrator discretion. The latter is meant to cover the majority of requisition increase situations.
 - b. Decreases do not require re-approval. The Procurement Administrator will advise the requisition preparer or budget officer of significant (\$5,000 and over) decreases by E-Mail or telephone.
 5. The Procurement Administrator will not authorize a change to the quantity without the approval of the requestor. If the requested delivery cannot be met within a reasonable tolerance of time, the requestor will be contacted. Technical specifications may only be changed if approved in writing by the requisitioner.
- F. Solicitation Procedures for Commercial Items.
1. For requisitions of \$10,000 or less, solicitation of one source is sufficient. Additional sources may be solicited at the discretion of the Procurement Administrator;
 2. For requisitions in excess of \$10,000 any of the means defined under “Adequate Competition” as found in this procedure will suffice as will any of the following exemptions from competition:
 - a. Justification for Non-Competitive Procurement, approved by Procurement;
 - b. Utility Service available from only one source;
 - c. Educational service from a non-profit institution;

- d. Supply or Service available from Government Supply Sources, including other government-owned contractor-operated laboratories, DOE directed procurements, awards made under the Small Business Administration 8(a) Program priced at less than \$3 million; or
- e. Follow-on awards to existing purchase orders or agreements covering:
 - i. Incremental funding actions;
 - ii. The exercise of pre-priced options identified in the original agreement;
 - iii. changes within the general scope of the purchase order as directed by Procurement; or
 - iv. task orders or awards entered into under blanket agreements where the blanket agreements or tasks were competed.
3. Oral or written solicitations are acceptable for actions expected to be 1) awarded on price alone and 2) less than \$50,000. Solicitations expected to result in actions valued at \$50,000 or more shall be in writing.
4. FL-5, "Purchase Order Terms and Conditions" shall be used for commercial procurements less than \$10,000.
5. FL-200, "Terms and Conditions for Commercial Items" apply to all commercial purchases. They should be used for commercial purchases \$10,000 or more.
6. For all actions less than \$10,000, the Procurement Administrator shall obtain written or oral verification of the supplier's size, socioeconomic status (EEO compliance if over \$10,000), and determine if a foreign made end product is being offered.
7. Written representations and certifications are required for actions in excess of \$10,000. Form FL-201, "Representations, Certifications and Acknowledgements" is to be used. A supplier is required to submit one FL-201 annually. In the event the supplier is to be awarded additional subcontracts in excess of \$10,000 it may attest to the validity of the information contained on the FL-201 in Fermilab's possession rather than being required to submit a new form.
8. Certain commercial purchases may require additional terms and conditions. As applicable, the Procurement Administrator will ensure appropriate terms and conditions such as "Insurance", and "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, are incorporated into commercial awards when applicable.
9. Solicitation Closing Date
The time allotted for the submittal of offers will be commensurate with the complexity of the requirement.
10. Amendments to the Solicitation
In the event it becomes necessary to issue an amendment to a solicitation, all prospective offerors must be notified.
11. Cancellation of a Solicitation
When a solicitation is being cancelled, all sources on the solicitation list shall be notified as soon as possible.
12. Modifications/Withdrawal
Offers may be modified or withdrawn by written notice, if the Laboratory receives such notice before the solicitation closing date.

13. Late Offers
Except as otherwise stated in a solicitation, offers, including their withdrawal or modification, received by the Laboratory after the closing date shall be considered late.

G. Evaluation Procedures

1. Only responsive and responsible offerors shall be considered for award.
 - a. Supplier responses to commercial solicitations will not require a technical review, unless it cannot be ascertained that the offer is responsive to the solicitation or the requestor and or administrator determine that such review is needed.
 - b. Offers received in response to Best Value Solicitations or deemed by the Procurement Manager to be a significant procurement, require review of the technical requirements in accordance with the solicitation's evaluation criteria by the designated evaluator(s).

H. Negotiation

1. Procurement Administrators may decide to undertake negotiations on any procurement. Such negotiations shall take place after initial evaluation and the establishment of a competitive range.
2. Negotiations shall be held within the competitive range.

I. Award

1. For award actions of \$25,000 or less hard copy purchase orders and paper files are not required unless requested by the supplier or determined to be necessary by the Procurement Administrator.
2. Actions in excess of \$25,000 require a hard copy purchase order and paper file.

J. File Documentation

1. All hard copy award actions shall be tabbed and assembled in a file folder in the following order:
(Include all that apply)

- File review comments
- Purchase order
- Purchase order Attachments
- Procurement Approval
- Purchase Requisition
- Technical Evaluation
- Successful Offeror's Proposal
- Representations and Certifications
- Unsuccessful Offeror's Proposal
- Solicitations with attachments and modifications
- Miscellaneous documentation

K. Approvals

1. Over \$100,000
The file is routed from the Procurement Administrator to the Group Leader to the Procurement Manager to Legal then back to Procurement and the Business Manager. All of the above initial the "Procurement Approval Form" and the Administrator and Business Manager sign the purchase order.
2. Over \$25,000 to \$100,000

The file is routed from the Procurement Administrator to the Group Leader. Both Initial the "Procurement Approval Form" and sign the purchase order.

L. Distribution of Award Documents

1. Less than \$10,000

Purchase orders are electronically distributed within the Laboratory. If requested by the supplier or determined to be necessary by the Administrator, a hard copy is provided.

2. \$10,000 or more

Purchase orders are electronically distributed within the Laboratory. Suppliers shall be sent a hard copy.

M. Post Award Information to Offerors. Unsuccessful offerors may be given written notification of the name of the successful offeror and dollar amount on awards in excess of \$100,000. The same information may be verbally given on awards less than \$100,000.

1. Debriefing

When a procurement is awarded on a basis other than price alone, unsuccessful suppliers, upon their request, shall be provided meaningful comments specifically related to the weaknesses (and strengths) of their proposal as noted by the technical evaluator(s). The individual merits of a competitor's proposals shall not be divulged. The debriefing shall be the responsibility of the Procurement Administrator. Technical representatives will attend as appropriate.

N. Administration Guidelines

Subcontract administration is the duty of the responsible Procurement Administrator.

O. Closeout Guidelines

1. A purchase order is complete when:

a. All goods and services have been received and the Laboratory has inspected, accepted and paid for them.

b. In the case of orders with option provisions when the time frame to exercise the option has expired; and

c. In the case of orders involving government-furnished property, all inventories and reconciliations are completed.

d. When the "Subcontractor Completion Checklist" as required, is complete.

2. Document Retention

a. Procurement records for awards valued at \$25,000 or less shall be retained for three (3) years;

b. Procurement records for awards valued in excess of \$25,000 shall be retained for six (6) years and three (3) months.

c. Procurement records for construction awards in excess of \$2,000 shall be retained for six (6) years and three (3) months.