



<b>Policy Number and Title:</b>	<b>200.107 Procurement Policy</b>		
<b>Approval Authority:</b>	Board of Regents	<b>Date Effective:</b>	September 1, 2002
<b>Responsible Office:</b>	Accounting	<b>Responsible Office Contact:</b>	Vice President for Business and Finance

**1. POLICY STATEMENT/REASON FOR POLICY**

The purpose of this Policy is to provide for the fair and equitable treatment of all persons or firms involved in purchasing by Bay Mills Community College (BMCC); assure that supplies, services and construction are procured efficiently, effectively, and at the most favorable prices available to BMCC; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that BMCC purchasing actions are in full compliance with applicable Federal standards, Tribal, and local laws. To the extent that a particular matter is not covered specifically by this policy, the provisions of OMB circular A-110 shall apply.

**2. ENTITIES AFFECTED BY THIS POLICY**

All BMCC Departments.

**3. WHO SHOULD READ THIS POLICY**

Administrators, Department Heads and all those responsible for procurement.

**4. WEB SITE ADDRESS FOR THIS POLICY**

-This policy can be found at:  
<http://www.bmcc.edu/about-bmcc/governance-administration/college-policies>

**5. FORMS/INSTRUCTIONS**

No forms required.

**6. HISTORY**

-Amended: March 14, 2003  
-Next Review Date: March 14, 2019  
-BMCC reserves the right to revise policies at any time.

## 7. THE POLICY

### PROCUREMENT POLICY OF BAY MILLS COMMUNITY COLLEGE

Originally put into operation on September 1, 2002 per President's action in response to the audit finding of June 30, 2002. The original separate Procurement Policy is now revised and approved by Board action on March 14, 2003.

This Policy is intended to comply with the procurement standards of OMB circular A-110.

#### I. GENERAL PROVISIONS

##### A. PURPOSE

The purpose of this Policy is to provide for the fair and equitable treatment of all persons or firms involved in purchasing by Bay Mills Community College (BMCC); assure that supplies, services and construction are procured efficiently, effectively, and at the most favorable prices available to BMCC; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that BMCC purchasing actions are in full compliance with applicable Federal standards, Tribal, and local laws. To the extent that a particular matter is not covered specifically by this policy, the provisions of OMB circular A-110 shall apply.

##### B. APPLICATION

This Policy applies to all contracts for the procurement of supplies, services, equipment, and materials entered into by BMCC after the effective date of this Policy. It shall apply to every expenditure of funds by BMCC for public purchasing, irrespective of the source of funds; however, nothing in this Policy shall prevent BMCC from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. When both Federal and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified. Indian preference regulations shall be applied to all projects. The term "procurement", as used in this Policy, includes both contracts and modifications (including change orders) for construction services, as well as the purchase, lease, or rental of supplies and equipment.

#### II. PROCUREMENT AUTHORITY AND ADMINISTRATION

- A. All procurement transactions shall be administered by the President, or such other individual that he or she has authorized.
- B. The President or his/her designee shall ensure that:
  1. procurement requirements are subject to an annual planning process to assure efficient and economical purchasing.
  2. solicitation procedures for construction contracts are conducted in full compliance with Federal standards, OMB circular A-110, and Indian preference requirements.
  3. contract award is made to the responsive and responsible bidder offering the lowest price, consistent with Indian preference requirements (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value to BMCC, considering price, technical, and other factors as specified in the solicitation, including Indian Preference; unsuccessful firms are notified within ten days (or other time period required by Tribal or local law) after contract award.
  4. procedures for inventory control, storage and protection of goods and supplies, and issuance of, or other disposition of, supplies and equipment are established in accordance with applicable Federal regulations.
  5. This Policy and any later changes shall be submitted to the Board of Regents for approval.

### III. PROCUREMENT METHODS

#### A. SELECTION OF METHOD

When satisfying its need by procurement, BMCC shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement.

#### B. PURCHASES NOT OVER \$25,000

Purchases not exceeding this limit may be made without securing competitive quotations.

#### C. PURCHASES OVER \$25,000

1. The President or his/her designee shall solicit quotations from a reasonable number of qualified sources to ensure that the purchase is advantageous to BMCC, price and other factors considered including administrative cost of the purchase.
2. Generally, quotations should not be solicited orally if one of following applies:
  - a. A large number of line items is included in a single proposed acquisition;
  - b. Obtaining oral quotations is not considered economical or practical;
  - c. Special specifications are involved; e.g. the product is different from that normally or previously purchased; or
  - d. The suppliers are located outside the local trade area.
3. Generally, solicitations should be limited to three suppliers. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations.
4. The following items influence the number of quotations required in connection with any particular purchase:
  - a. The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively non-competitive.
  - b. Information obtained in making recent purchases of same or similar item.
  - c. The urgency of the proposed purchase.
  - d. The dollar value of the proposed purchase.
  - e. Past experience concerning specific dealer's prices.
5. Notification to unsuccessful suppliers shall be given only if requested.

#### D. DATA TO SUPPORT SMALL PURCHASES OVER \$25,000

1. The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included with the purchase order request giving the basis of the determination of fair and reasonable price.
2. If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available from only one source or of educational services from nonprofit institutions.
3. The following illustrates the extent to which quotation information should be recorded:
  - a. Oral solicitations: The President shall establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. Handwritten notations on the purchase order request (brown sheet) are satisfactory for this purpose.
  - b. Written solicitations: Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.

4. The accounting department shall retain the data supporting small purchases in the vendor file to the minimum extent and duration necessary for management review purposes.

#### **E. SMALL CONTRACT PROCEDURES - \$100,000 OR LESS**

1. General. Any procurement for a contract not exceeding \$100,000 may be conducted in accordance with the procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this policy.
2. Indian Preference. BMCC shall provide preference to Indian-owned economic enterprises and Indian organizations. BMCC will insist contractors provide Indian preference in subcontracting, training, and employment.
3. Obtaining Quotes. BMCC shall solicit price quotations by telephone, letter, or other informal procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, BMCC shall inform the sources solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The quotation will be written and shall include the names, addresses, and/or telephone numbers of the offerors, and the date and amount of the quotation.
4. Competition. BMCC shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer than three sources is acceptable if BMCC has attempted but has been unable to obtain at least three quotations. The sole quotation received may be accepted only in unusual circumstances (such as an emergency threatening public health and safety).
5. Award.
  - a. Award Based on Price. For small purchases awarded based on price and fixed specifications (i.e., not subject to negotiation), BMCC shall make award to the qualified Indian-owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and no more than 5% higher than the lowest responsive quotation received. If no responsive quotation from a qualified Indian-owned economic enterprise or organization received is within 5% of the lowest responsive quotation from any qualified source, then award shall be made to the source with the lowest quotation.
  - b. Award Based on Factors Other Than Price. For small purchases to be awarded based on factors other than price, formal solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and rating system to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including cost or price. Award shall be made to the best proposal or quotation in accordance with the stated rating system.

#### **F. SEALED BIDS FOR CONTRACTS OVER \$100,000**

1. General. BMCC shall use the procurement method of sealed bids in accordance with the applicable Federal regulations or donor guidelines.
2. Conditions for Use. Contracts shall be awarded based on competitive sealed bidding if the following conditions are 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 work; 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. Sealed bidding is the preferred method for construction procurement. For professional service contracts, sealed bidding should not be used. Professional service contracts will follow the small contract procedures - \$100,000 or less.
3. Solicitation and Receipt of Bids.
  - a. Issuance and Amendment. An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an

amendment within seven days of the bid opening, the bid opening shall be postponed until at least seven days after the issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

- b. Restricting Solicitations. The invitation may be restricted to qualified Indian-owned economic enterprises and Indian organizations if BMCC has a reasonable expectation of receiving the minimum number of bids from them. BMCC shall solicit bids from non-Indian as well as Indian-owned economic enterprises and Indian organizations if BMCC decides not to restrict the solicitation; or, an insufficient number of qualified Indian-owned economic enterprises or organizations submit responsive bids in response to a solicitation; or, a single bid is not accepted.
4. Bid-Opening. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and bids shall be available for public inspection.
5. Award. Award shall be made as provided in the invitation for bids by written notice to the successful bidder, as follows:
  - a. Restricted Solicitations. If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more (or a greater number determined by BMCC as stated in the invitation) qualified Indian-owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If equal low bids are received, award shall be made by drawing lots or similar random method, unless otherwise provided in Tribal or local law. If fewer than the minimum number of qualified Indian-owned economic enterprises or organizations submit responsive bids, all bids shall be rejected, and BMCC shall cancel the solicitation and re-solicit, inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations. BMCC may accept a single bid received from a responsible bidder, subject to funding agency approval, in unusual circumstances, such as if BMCC determines that, based on a cost or price analysis, the bid price is fair and reasonable, or BMCC determines that the delay of re-soliciting would subject the project to higher construction costs.
  - b. Unrestricted Solicitations. If the solicitation is not restricted to Indian-owned economic enterprises and organizations, award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid, whose bid is not 5% more than the lowest responsive bid and within the maximum total contract price established for the specific project or activity being solicited. If equal low bids are received from qualified Indian-owned economic enterprise or organizations, award shall be made by drawing lots or similar random method, unless otherwise provided in Tribal or local law. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsive, responsive bidder.
6. Mistakes in Bids.
  - a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.
  - b. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the President. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of BMCC or fair competition shall be permitted.

## **G. NONCOMPETITIVE PROPOSALS**

1. Conditions for Use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures or sealed bids, and one of the following applies:
  - a. An emergency exists that seriously threatens public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to BMCC, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency; or
  - b. Only one source of supplies is available, and the President so certifies in writing; or
  - c. After solicitation of a number of sources, competition is determined inadequate; or
  - d. A funding agency specifically authorizes the use of noncompetitive proposals.
2. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification signed by the President for using such procedures.

## **H. CANCELLATION OF SOLICITATIONS**

1. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if: (a) BMCC no longer requires the supplies, services or construction; or, (b) BMCC can no longer reasonably expect to fund the procurement; or, (c) proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or (d) similar reasons.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: (a) the supplies, services, or construction are no longer required; or (b) ambiguous or otherwise inadequate specifications were part of the solicitation; or, (c) the solicitation did not provide for consideration of all factors of significance to BMCC; or, (d) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, (e) there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or, (f) for good cause of a similar nature when it is in the best interest of BMCC.
3. The reasons for cancellations shall be documented in the procurement file and the reasons for cancellations and/or rejection shall be provided upon request to any offeror solicited.
4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
5. For solicitations that are not restricted to Indian-owned economic enterprises or Indian organizations, if all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, BMCC shall cancel the solicitation and either:
  - a. re-solicit using a request for proposals; or
  - b. by using noncompetitive proposals method; provided, that the President determines in writing that such action is appropriate, that all bidders are informed of BMCC's intent to negotiate, and that each responsible bidder is given a reasonable opportunity to negotiate.

## **I. COOPERATIVE PURCHASING**

BMCC may enter into local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions.

## **IV. CONTRACTOR QUALIFICATIONS AND DUTIES**

### **A. CONTRACTOR RESPONSIBILITY**

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, BMCC shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor), and financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract. If a prospective contractor is found to be nonresponsible, a written determination of nonresponsibility shall be prepared and included in the procurement file, and the prospective contractor shall be advised of the reasons for the determination.

### **B. DEBARMENT AND SUSPENSION**

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension."

### **C. BONDS - \$100,000 OR MORE**

For construction or facility improvement contracts or subcontracts exceeding \$100,000, BMCC shall require assurance of performance and payment. Acceptable forms of assurance include:

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 this 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."

## **V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION**

### **A. CONTRACT TYPES**

Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of BMCC may be used, provided that the cost-plus-a-percentage-of cost and percentage of construction costs methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.

### **B. OPTIONS**

Options for additional quantities or performance periods may be included in contracts, provided that: (1) the option is contained in the solicitation; (2) the option is a unilateral right of BMCC; (3) the contract states a limit on the additional quantities and the overall term of the contract; (4) the options may be exercised only at the price specified in or reasonably determinable from the contract; and (5) the options may be exercised only if determined to be more advantageous to BMCC than conducting a new procurement.

### **C. CONTRACT CLAUSES**

In addition to containing a clause for identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, such as the following:

1. Administrative, contracted, or legal remedies in instances where contractors violate or breach terms, and provide for such sanctions and penalties as may be appropriate;
2. Termination for cause and for convenience;
3. Termination for default;
4. Equal Employment Opportunity;
5. Copeland "Anti-Kickback" Act;
6. Davis-Bacon Act;
7. Contract Work Hours and Safety Standards Act;
8. Reporting requirements;
9. Patent rights;
10. Rights in data and copyrights;
11. Examination of records by Comptroller General;
12. Retention of records as required by the funding agency;
13. Clear Air Act and the Federal Water Pollution Control Act;
14. Energy efficient standards;
15. Bid protests and contract claims;
16. Value engineering;
17. Byrd Anti-Lobbying Amendment;
18. Payment of funds to influence certain federal transactions.

If all required clauses are not included on the contract form, then BMCC shall attach any additional clauses to the contract forms used in contract documents.



## **D. 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.

## **VI. SPECIFICATIONS**

### **A. GENERAL**

All specifications shall be drafted so as to promote overall economy or the purposes intended and to encourage competition in satisfying BMCC's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplication items. Detailed product specifications shall be avoided whenever possible, except if BMCC is attempting to standardize equipment for maintenance ease and/or inventory convenience. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase.

### **B. LIMITATIONS**

The following specification limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy BMCC's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any Tribal or local licensing laws.

## **VII. APPEALS AND REMEDIES**

### **A. GENERAL**

It is BMCC's policy to resolve all contractual issues informally, without litigation. If disputes are unable to be resolved, they shall be subject to suit in Tribal Court.

### **B. BID PROTESTS**

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received within ten (10) calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the President or designee, who shall issue a written decision on the matter. The President may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

### **C. CONTRACT CLAIMS**

All claims by a contractor relating to the performance of a contract shall be submitted in writing to the President or designee for a written decision. The contractor may request a conference on the claim. The President's decision shall inform the contractor of its appeal rights.

### **D. PROTESTS INVOLVING INDIAN PREFERENCE**

Complaints arising out of any of the methods of providing for Indian preference shall be handled in accordance with these procedures. Each complaint shall be in writing, signed, and filed with BMCC. A complaint must be filed with BMCC no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based. Upon receipt of a complaint, BMCC shall promptly stamp the date and time of the receipt upon complaint, and immediately acknowledge its receipt. Within 20 calendar days of receipt of a complaint, BMCC shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The President shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to BMCC. If the protest is still unresolved, the complainant

may, within 20 days, appeal in writing to the Board of Regents. The Board shall review the written record of the case and may, where warranted, meet at the next regular or call a special board meeting to consider the complaint and render a decision. A final decision by the Board of Regents will be determined by a majority vote with a quorum present. The decision of the Board of Regents of BMCC shall constitute final administrative action on the complaint.

## **VII. ETHICS IN PUBLIC CONTRACTING**

### **A. GENERAL**

BMCC shall adhere to the following code of conduct, consistent with applicable Tribal or local law.

### **B. CONFLICT OF INTEREST**

No employee, officer or agent of BMCC shall participate directly or indirectly in the selection of, or in the award of, or administration of any contract supported by Federal funds if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. an employee, officer, or agent involved in making the award;
2. his/her relative (including father, mother, son, daughter, brother, sister)
3. his/her partner; or,
4. an organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

### **C. PROHIBITION AGAINST CONTINGENT FEES**

Contractors shall not retain a person to solicit or secure a BMCC contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees of a contractor.

We do hereby certify that the foregoing Amended Procurement Policy was duly presented and adopted by a vote of \_\_\_\_\_ For, \_\_\_\_\_ Against, \_\_\_\_\_ Abstaining; by a vote of the Bay Mills Community College Board of Regents, taken March 14, 2003.

BAY MILLS COMMUNITY COLLEGE  
BOARD OF REGENTS