



<b>Policy Name:</b>	Contracts Policy and Procedures Relating to Business and Non-Business Transactions		
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<b>Responsible Office(s):</b>	Purchasing Department Finance Department	<b>Contact(s):</b>	Director of Purchasing Accounts Payable

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## SECTION 1. BUSINESS TRANSACTIONS

### **I. Policy Statement**

It is the policy of Mercy College to obtain all supplies, equipment, and services, and to engage in other business transactions, that offer the best possible value to the College - value being defined as the optimum combination of price, quality, availability, and service. The following business transactions are covered under this Policy:

- A. Purchase of Goods: includes, but is not limited to, the purchase of supplies and equipment.
- B. Construction Contracts: utilizing a contractor to perform work on Mercy owned property, or leased property, with appropriate performance, regulatory and insurance requirements.
- C. Provision of Services: where Mercy provides a service and/or rents its facilities to an outside entity.
- D. Professional Services: where Mercy secures design and related professional services with architects and engineers.
- E. Purchase of Services: where Mercy secures service from an independent contractor or a company.

The purchase of goods and services, the provision of services and professional services (hereinafter collectively known as “business transactions”) in an amount that exceeds \$1,000 is subject to the requirements set forth in this Policy. If the amount of the purchase is \$1,000 or below, the purchase can be made either: 1) with a Purchase Order via the Purchasing Department, 2) use of the College credit card by an approved individual, subject to the College’s credit card policy, or 3) reimbursement via the College’s Travel and Expense Policy. All such purchases made by credit card or reimbursement must receive approval in advance in writing by the department vice president or assistant vice president, or school dean or associate dean.

### **II. Contract Process and Procedures**

#### **A. Written Contract Required**

A formal contract is required for the following:

- 1. Purchase of Goods over \$50,000
- 2. All Construction Contracts
- 3. All Provision of Services arrangements
- 4. Professional Services arrangements over \$50,000
- 5. All Purchase of Services with independent contractors or term agreements

In general, business transactions involving purchase orders (“PO’s”) or valued up to \$50,000 do not need a contract. PO’s contain Mercy general terms and conditions, which become superseded

by any contract between the parties unless specifically incorporated. If, however, the arrangement involves more than minimal risk or potential liability that needs to be allocated between the parties (regardless of amount) and insurance may be required, then a contract should be used. Examples of such scenarios include any activities that occur on Mercy's campus, such as facilities use and construction contracts. Any questions regarding whether a contract is needed should be directed to the Purchasing Director, who will consult with the General Counsel.

#### B. Contract Specifications

When it is determined that a contract is required, the school or department initiating the contract is required to provide the Purchasing Department the following information:

1. Contract Overview. A detailed description of why the service is being requested and the scope of services;
2. Date (including start and end date when applicable) of the service or arrangement;
3. Cost; and
4. Tax ID and W-9 form

The Purchasing Department will thereafter prepare the contract, in consultation with the General Counsel's Office. Every contract shall include the following terms/specifications:

1. **Mercy College** identified as the party (individual employees or departments are not permitted to be named as a party to any agreement)
2. Official College address, which is 555 Broadway, Dobbs Ferry, NY 10522
3. Scope of Work
4. Start and end dates
5. Termination provision for both parties
6. Determine if it is required that the vendor/contractor be bonded (insured)
7. Price(s) for service(s) performed
8. Payment terms
9. Shipping terms & Installation terms if applicable
10. Limits on Mercy's liability
11. Dispute resolution clause
12. No subcontracting clause
13. Vendor is independent and not an employee of Mercy
14. Statement that invoices be sent directly to Accounts Payable

Clauses *not permitted* in contracts include the following:

1. Automatic Renewal
2. Exclusivity
3. Limitation of liability
4. Single indemnification clauses to benefit the contracting party only

Exceptions to the abovementioned specifications shall only be granted with the approval of the Purchasing Director, in consultation with the General Counsel. In addition, in many cases, insurance is required in order to engage in the business transactions. See Appendix C below (insurance requirements).

### C. Independent Contractor Contracts.

The hiring of independent contractors also require a contract, but which will have some different specifications than the Contract Specifications set forth above. [See contract template attached in Appendix B.] In addition, prior to hiring an independent contractor, the department vice president or school dean must make an assessment as to whether the individual should be hired as an independent contractor or an employee, in accordance with the *Guidelines for Hiring Independent Contractors at Mercy College*, and in consultation with the General Counsel and the Executive Director of Human Resources.

Generally, if work to be performed by an independent contractor is on an hourly basis, then a rough estimate of the number of hours worked must be submitted to the Purchasing Director and a Purchase Order (PO) created based upon the estimated amount. If it appears that the estimated amount may be exceeded, it could trigger different approval requirements as set forth below. In such a case, the contract must be amended and submitted through the appropriate approval channels.

#### 1. Term Agreements

Contractors can also be hired for term agreements—that is, a contract can be signed with selected contractors for a specified period of time, to engage and complete numerous specific projects each with a value of \$50,000 or lower. The agreement will be issued for a period of one year with the option to renew for two additional years with the mutual agreement of the contracting parties. The maximum aggregate amount for one year will be \$250,000 for up to three years for a total maximum contract value of \$750,000 per Contract. Contractors hired for term agreement shall be acquired through soliciting bids publicly.

### D. Contract Review, Approval and Signatory Process

#### 1. Review Process

- a. After the contract is either prepared by the Purchasing Department or a contract is presented by the party offering the commodity or service to the Purchasing Department, the office or department initiating a contract is responsible for reviewing the contract to ensure that the contract accurately reflects the intent and mutually agreed upon terms and obligations of the parties.

- b. All such agreements must then be reviewed by the General Counsel, or utilize the template drafted by the General Counsel's Office for the particular arrangement. Review of a contract by the Office of the General Counsel shall be limited to those provisions which are legal in nature, pose a substantial risk to the College or are new, non-standardized clauses which the initiating departments' representative is not familiar and/or comfortable with. Provisions that pose a substantial risk to the College shall be discussed with the College's external risk manager.

## 2. Approval Process

After review by the appropriate parties, contracts must be approved in the following manner:

- a. All contracts in value greater than \$1,000 and up to \$100,000, and all activities outside of routine business operations, must be approved by the College's Chief of Staff, Chief Financial and Planning Officer, and Vice President for Operations and Facilities.
- b. All contracts in value greater than \$100,000 and up to \$1,000,000 must be approved by the President, except that construction contracts up to \$250,000 in value may be approved by the College's Chief of Staff, Chief Financial and Planning Officer, and Vice President for Operations and Facilities.
- c. Contracts that either (1) exceed \$1,000,000 in a single year, (2) have a term of three years or more with an aggregate value exceeding \$1,000,000, or (3) are outside the ordinary course of business shall be reviewed by the Finance and Control Committee of the Board and, thereafter, approved by the President.

## 3. Signatory Authority

Only individuals with signatory authority, or authority delegated by the President, may enter into a binding contract on behalf of the College. Anyone signing a contract on behalf of the College without signatory authority may incur personal liability, and/or may be subject to discipline by the College, including termination. Signatures shall be obtained in the following manner:

- a. Contracts in value up to \$100,000 must be signed by the College's Chief of Staff, Chief Financial and Planning Officer or the Vice President for Operations and Facilities (or the College President).
- b. Contracts in value greater than \$100,000 must be signed by the College President, except that construction contracts up to \$250,000 in value may be signed by the Vice President for Operations and Facilities.

## 4. Storage of Signed Contracts

After a contract is fully executed (that is, signed by all parties to a contract), the employee initiating the contract is responsible for emailing a copy to the Purchasing Director, who shall retain a copy and shall forward a fully executed contract to the Office of Vice President for Operations and Facilities for archival in the contracts database.

#### E. Insurance Requirements

In most business transactions involving the purchase of services, provision of services and professional services, proof of insurance is required, either from the outside party or by the outside party, depending on the nature of the services.

##### 1. Certificate of Insurance Required by Outside Parties

Mercy College is often requested by outside parties to provide proof of insurance evidencing the College's insurance coverage. Requests for Certificates of Insurance (COI) must be made in writing, with the specific insurance requirements, to the College's General Counsel's Office. Generally, a COI will be provided within 48 hours of the request via email.

##### 2. Certificate of Insurance Required by Mercy College

Contractors, suppliers, or other outside parties who will be performing work for or services to the College, or using College facilities are required to provide evidence of the insurance required by the College by submitting a COI to the Purchasing Director, who will consult with the Office of the General Counsel as needed. The required language for COI's are set forth in Appendix C.

### III. **Procurement Guidelines**

In order to ensure that the College receives goods and services both of high quality and that are cost efficient, the following guidelines are applicable to the purchase of goods and services by Mercy College:

#### A. Monetary Guidelines

1. Purchases that are less than \$5,000 require one (1) price quote and will be issued a PO via Purchasing, except that departments with authorization should use corporate credit card for procurements under \$5,000 for approved items outlined in credit card guidelines.
2. Purchases that are \$5,000 or more but less than \$20,000 require (2) two price quotes obtained by requestor, or documented internal or external pricing research. PO to be issued by Purchasing with discretion on frequency requested and issued. The Purchasing Department, at the Director's discretion, may elect to use the Purchasing Departments corporate credit card for purchases up to \$20,000 to aid in the procurement efficiencies for Mercy College.
  - Purchases up to \$20,000 are allowed to a certified Women and Minority Business Enterprise (W/MBE) vendor with a single quote.

3. Purchases that are \$20,000 or more but less than \$50,000 require three (3) written price quotes on vendor letterhead or email with company signature or logo, obtained within thirty (30) days of procurement date with pricing good for thirty (30) days. PO issued by Purchasing. These procurements may only be executed every six 6 months to same vendor without a formal RFP.
  - Preference will be considered for W/MBE vendors for procurement up to \$50,000 when pricing is deemed fair and reasonable.
4. Purchases of \$50,000 or more require a formal Request for Proposal (RFP) for goods or services or formal Request for Qualification (RFQ) for professional services. The process is conducted by the Purchasing Director in a sealed bid, non-public opening (set forth more fully in Section 1.III.E. and F. below).
  - Solicitation will encourage W/MBE participation, and preference will be considered for W/MBE vendors for procurement over \$50,000.

B. Additional Guidelines:

1. The College has determined a price to be fair and reasonable if it is within 15% of the lowest current price offered from other responsive vendors. If a vendor is selected with a price greater than the 15%, a rationale form must be provided to Purchasing explaining why the particular vendor was selected.
2. Split purchases, or other methods of purchasing that attempt to circumvent these guidelines, are not permitted.
3. When making purchases, College employees should first consider the following contractors/vendors:
  - a. Contractors that are NYS W/MBE listed;
  - b. Preferred sources (found in Appendix D), which are vendors that Mercy has pre-approved based on various factors, such as value, service and W/MBE status; or
  - c. Contractors/vendors that are on the NYS Preferred Vendor list, and New York State Office of General Services (OGS) state contracts (see Appendix D).



### C. Exceptions to Procurements Guidelines

1. Emergency Contracts. In the rare case of an emergency arising out of an unforeseen occurrence or condition or situation where a threat to health, safety, life or limb exists, or where a necessary service is threatened with material damage or suspension, or where College property is threatened, the College may authorize the award of a contract outside the guidelines and procedures set forth in this Policy. In such circumstances, there shall be a declaration of emergency stated on the Exceptions Form (Appendix E) with an explanation of the emergency situation and why the contract is justified.
  
2. Single Source. The College may authorize the award of a contract outside of the guidelines and procedures set forth in this Policy, even though two or more firms can supply the required commodity or service, if the College determines that either: (a) one particular firm has unique knowledge or expertise with respect to the required commodity or service rendering internal procedures impractical; or (b) other material or substantial reasons exist for awarding the contract. The College shall maintain a written record in the Exceptions Form setting forth the basis for justifying the single source procurement, including the methods and rationale for selecting the contractor, alternatives considered and why the alternatives do not meet the College's needs, and a determination that the vendor's price is fair and reasonable. In all instances the Purchasing Department shall make the final determination of whether a single source procurement is appropriate.
  
3. Sole Source. When there is only one source for a required commodity or service, the College may authorize the award of a contract for that commodity or service outside of the guidelines and procedures set forth in this Policy. The College shall create and maintain a written record in the Exceptions Form setting forth the basis for justifying the sole source procurement, including the methods and rationale for selecting the contractor, a determination of exclusive capability of the vendor or product, alternatives considered, and a determination that the vendor's price is fair and reasonable. In all instances, the Purchasing Department shall make the final determination of whether a sole source procurement is appropriate.

### D. Procurement Procedures

In order to implement the purchase of a good or service up to \$50,000, and where a credit card is not used, the following process applies:

1. Purchase Requisition Electronic Submission. A purchase requisition must be submitted online through Banner and will go through established approval protocol. The relevant supporting documentation must also be submitted to the Purchasing Department. Please ensure there are sufficient budgeted monies for the purchase prior to submitting a purchase requisition.
2. Purchase Order (PO). After the electronic Purchase Requisition is approved, a Purchase Order (PO) will be created by the Purchasing Department and mailed to the vendor.
3. Purchase Requisition and Purchase Order (PO) submission. A purchase requisition and requested for PO must be submitted via email, along with supporting documents, to the Purchasing Department for approval *before* the order is placed with the vendor. "Confirming" orders are not acceptable except in emergency situations. The Purchasing Director reserves the right to reject confirming orders and to hold the individual who submitted the order personally responsible for the costs of the goods or services.
4. Blanket Purchase Orders less than \$20,000 can be obtained for small items or multiple items with one vendor (i.e. painting supplies, toner, etc.) or independent contractor. The maximum term for the blanket purchase order is six months.
5. Authorizing Payment Upon Receipt of Goods or Services. All goods and services should be reviewed and/or inspected immediately upon receipt by an individual in the department authorized to sign for such receipt. If a shipment is complete for all items on a Purchase Order, sign and date the receiving copy of the Purchase Order in the Receiving Signature box and return the yellow copy and the invoice to the Accounts Payable Department.
6. Damages and Shortages. If goods are found to be unacceptable for any reason or if a department wishes to return merchandise, you must contact the Purchasing Department immediately and arrange for the goods to be picked up and returned to and/or replaced by the vendor.
7. Partial Shipments. If a partial delivery of the original order has been received:
  - a. Make a photocopy of the receiving report of the Purchase Order
  - b. Circle and date each item received
  - c. Sign and date in the applicable partial shipment box
  - d. Submit this photocopy to the Accounts Payable Department along with the invoice. Repeat this procedure for subsequent partial shipments.

- e. When final shipment is received, circle and date on the original yellow form the final items received; sign and date in the Receiving Signature box and submit this original to the Accounts Payable Department.
8. Change Orders. A Change Order form is used to make changes to an order after the Purchase Order has been generated and submitted to the vendor. Change Orders should be completed for:
- a. Cancellations
  - b. Increases in total price over 10%
  - c. Increasing or unencumbering funds on an Annual PO
  - d. Changes in quantity or individual price when the vendor requires a revised Purchase Order
  - e. Changing account numbers
  - f. Updating vendor information

Supporting documentation should be provided with a Change Order whenever possible. Change Order forms are currently unavailable online and may be obtained from the Purchasing Department.

E. Guidelines for Requests for Proposal (RFP)

Any good or service over \$50,000 will require a formal RFP process, performed under the following parameters:

1. Upon confirmation that there are available funds, contact the Purchasing Department of your need for a Request for Proposal (RFP) for specific goods or services.
2. Provide the Purchasing Department with the scope, any technical requirements and installation/contract term date(s) for the RFP.
3. Provide Purchasing with a list of vendors you would like included in the RFP process.
4. Purchasing Department will prepare a standard RFP template (reviewed and approved by the General Counsel) for the project.
5. The RFP must contain the following details at a minimum:
  - a. Submission Date — the deadline for the submission of the RFP

- b. On-Site Visit Date — date if it is required for vendors to visit the site
  - c. Scope — a description of the project overview including specific objectives that must be accomplished
  - d. Term — date for delivery/installation of the goods or dates for the term of a service contract
  - e. Proposal Bid Form — form in which the costs are noted
6. Submission of Bids:
- a. Sealed Bids: the bids are not open publically, and the results are not public information.
  - b. Electronic submission of bids is permitted by PDF format to the Purchasing Director.
7. When bids are received on the appropriate bid due date, sealed bids are opened in the Purchasing Department by the Director of Purchasing and Assistant Director of Purchasing. A member of the requesting department can also be present.
8. Bids are entered onto a Bid Tab Form spreadsheet which is forwarded to the requestor noting who submitted the lowest bid. The Bid Tab Form spreadsheet must be signed by both the Director and Assistant Director of Purchasing, who witnessed the bid opening and recording. The Form shall be maintained in the project file.
9. Once the requesting department advises which vendor they would like to award the project to, the Director of Purchasing contacts their references to be sure the vendor can meet all our requirements.
10. If the references support the decision, the Director of Purchasing prepares the standard contract template (reviewed and approved by the General Counsel), or forwards the vendor's contract to the General Counsel for review and approval.
11. When the signed contract and appropriate Certificate of Insurance is received from the vendor, the Director of Purchasing prepares the necessary paperwork for the approval process and e-mails the entire package to the Chief of Staff, Chief Financial and Planning Officer, and Vice President for Operations and Facilities. The General Counsel is copied on the e-mail.

F. Guidelines for Soliciting Professional Services Via a Request for Qualifications (RFQ) Process

1. RFQ: Scope of Services

Use of consultant services over \$50,000 requires the following to be provided to the Purchasing Director:

- a. Ensure pre-approved scope of work by department vice president or school dean/director of libraries, review of the Vice President for Operations and Facilities; and
- b. Submit project justification and project budget estimate, and funding source.

2. Solicitation/Advertising

The Purchasing Department will maintain a list of interested consultant firms as well as advertising routes. The Purchasing Department will place advertisements, document interests and distribute RFQ's.

3. Selection Based Upon Qualifications

A review team managed by the department vice president or school dean/director of libraries shall be created consisting of three members. The team shall review the list of interested firms and shall create a short list of qualified firms. The team shall create short list of firms deemed to be top contenders/most qualified after reviews, reference checks and presentations. From the short list ranking review with team members, the team shall assemble a final short list rank order and review recommendation for on-site presentations with the COO.

4. Fee Proposals/Negotiate

Fee proposals will be negotiated with the top two or three firms deemed "most qualified." The Vice President for Operations and Facilities must thereafter determine the cost that is the best value, and fair and reasonable. Fee proposals shall include direct labor, overhead and profit, reimbursable expenses, and project hour allocations by tasks.

5. Selection of Top Firm, Intent to Award Provided

An intent to award letter, contract and/or Purchase Order shall be developed by Purchasing Director and issued, copying requestor. When the signed contract and appropriate Certificate of Insurance are received from the vendor, the Director of Purchasing prepares the necessary paperwork for the approval process and e-mails the entire package to the Chief of Staff, Chief Financial and Planning Officer, and

Vice President for Operations and Facilities. The General Counsel is copied on the e-mail.

## **SECTION 2. NON-BUSINESS TRANSACTIONS**

The College engages in numerous transactions that are non-business in nature; that is, not related to the purchase of equipment, supplies or professional services, rental or use of facilities, or relating to independent contracts. Such transactions include, though are not limited to, the following:

1. Grants, including grant agreements, are administered by the Office of Sponsored Programs in accordance with the *Grant Management Handbook*. All grants agreements shall be reviewed by the General Counsel, and thereafter, shall be forwarded by the Office of Sponsored Programs to the Provost for review, approval and signature. Note there may be prevailing wage requirements and W/MBE requirements to which the College must adhere.
2. Scholarships, including Scholarship Agreements, shall be drafted by the Office of Institutional Advancement, reviewed by the General Counsel, and thereafter forwarded to the College's Chief Financial and Planning Officer and the Chief of Staff, or designees thereof, for review, approval and signature.
3. Gifts to the College shall be handled in accordance with the College's *Gift Acceptance Policy*.
4. Academic Agreements include, but are not limited to:
  - a. Articulation Agreements
  - b. Student Exchange Agreements
  - c. Affiliation Agreements (such as for clinical sites)

All Academic Agreements shall be drafted and reviewed by the Provost's Office and the General Counsel. All Academic Agreements shall be signed by the Provost or her/his designee, with the exception of clinical affiliation agreements, which can be signed by the appropriate school dean or associate dean.

5. Non-Academic Agreements, include, but are not limited to
  - a. Public funding awards where Mercy is the recipient of money; and
  - b. Memoranda of Understanding (MOU's) or agreements for the receipt, provision or exchange of services or resources without monetary payment.

Such Agreements shall be drafted by the relevant school or department, and reviewed by the appropriate vice president, school dean or associate dean and the General Counsel. All such agreements can be signed by the Provost, vice president of the department or the school dean or associate dean.

### SECTION 3. MISCELLANEOUS PROVISIONS

#### A. Exceptions for State and Federal Agencies

The Federal Government and most states will not provide insurance or indemnity in their agreements with their contracting partners. In such instances, the College normally will accept the agency's contract without such provisions. When entering into a contract with such a governmental entity, it is recommended that the contracting party attach the College's standard addendum and any other desired language which may act as a guideline for the parties to follow in the event of an adverse event or outcome, however such attachment is not likely to be considered binding.

#### B. Requirement of Arm's Length Transaction

If a contract directly benefits the employee forming the contract or the employee who is responsible for managing the contract, or such a person's relative or personal friend, or poses other potential conflicts of interest whether real or perceived, (e.g., the contract initiator or a key department member serves as a paid consultant to the contractor), the contract must be reviewed by both an authorized person with signatory authority who is unconnected with the agreement and the area vice president, with all potential conflicts of interest disclosed to the vice president. The risks for such agreements include self-dealing, operational difficulties, financial loss to the College and damage to the reputation of the College. In addition, if the potential conflict of interest involves a member of the Board of Trustees, or is an officer or senior manager, then the *Conflict of Interest Policy for Trustees, Officers and Senior Management* shall apply.

Any agreement that involves revenue sharing (including commissions, fees, or other payment) with the College, department or an individual from sales by the outside party to other third parties (including students, alumnae or employees) must be reviewed by the Chief Financial and Planning Officer or his/her designee. If the agreement is being entered into by the Finance Department, it must be reviewed by another vice president as well. Such arrangements are rare and generally discouraged, since they normally signify a commercial joint venture in which the College may assume risk of loss, and may implicate non-profit tax questions or concerns.

#### C. Policy on Reporting Suspected Abuse and Fraud

If a person believes that a supervisor, colleague, subordinate or any other person is acting outside the College policy on contracting, s/he should report the concerns to their area Vice President or Associate Vice President for Finance or the College's General Counsel. Complaints can be made anonymously if desired through the College's Whistleblower Hotline at 1-888-OK-MERCY (1-888-656-3729) or online at <https://www.mercy.edu/whistleblower-form>.