

# BROOKDALE COMMUNITY COLLEGE

## CONTRACTS POLICY 4.8000

### I. **Title of Policy**

Contracts

### II. **Objective of Policy**

To ensure compliance with legal requirements in the award of public contracts; to provide for an orderly purchasing process; to limit the use of emergency purchasing and excessive change orders and to prevent unnecessary expenditure of College funds.

### III. **Authority**

N.J.S.A. 18A: 64A-25.1 and 19: 44A-20.4 et seq.

### IV. **Policy Statement**

#### A. General

(1) The purpose of this policy is to require and ensure compliance with New Jersey laws that govern the College's business affairs. Failure to adhere to its terms may result in violation of the law, cause undue expense to the College, or both.

(2) The College shall conduct the procurement process efficiently, promptly, fairly, and in strict accordance with all applicable laws and this policy.

(3) All College departments shall plan and conduct their activities so as to make purchases of goods and services in accordance with this policy.

(4) The procurement, storage, issuance and delivery of all materials, supplies, services, and equipment required in the operation of the College is an administrative responsibility controlled by the Board of Trustees.

(5) The Purchasing Department, within the Department of Materiel and Printing Services, is the only College department that is empowered to make purchases on the College's behalf. Purchases of goods or services made or negotiated by any department other than the Purchasing Department will not be honored by the College for payment except in the case of emergency purchases made in accordance with this policy. If the College is required to pay for any purchase made in the College's name and not in accordance with this policy, disciplinary action may be taken against the responsible employee(s) and may include in addition to normal discipline, a requirement that the employee(s) reimburse the College for all such payments.

(6) No employee or officer of the College is empowered to waive or override any part of this policy, except the President with the specific concurrence of the Chairman of the Board of Trustees in each instance. Waivers shall only be granted in those cases in which the President and Chairman concur that the College's ability to fulfill its mission would be compromised if a requested waiver were to be denied. It is a violation of this policy for any employee or officer of the College to request or demand that its provisions be waived except as stated above.

B. Goods and Services Included

The following is an illustrative, but not all-inclusive, list of the types of purchases to which this policy applies:

Education Equipment and Supplies  
Facilities Maintenance Department Equipment and Supplies  
Custodial Supplies and Uniforms  
Safety Equipment  
Contracted Services of all Types  
Printing  
Professional and Consulting Services  
Testing Materials  
General Class Instructional Materials and Supplies  
Office Furniture and Equipment  
Art Materials and Supplies  
Audio-Visual Equipment and Materials  
Athletic Equipment and Supplies  
Science Equipment and Supplies  
Telephone Switch and Key Equipment  
Security Equipment  
Services and Maintenance of Fleet Vehicles  
Police Security Equipment and Supplies  
Computer Equipment and Supplies  
Dental and Nursing Supplies  
Electronic Equipment and Supplies  
Mechanical Equipment and Supplies

C. Thresholds.

Sealed bids, RFPs, and special quotations will be solicited for any item, group of items or other services that exceed \$32,600 in accordance with the provisions of the College policy and in accordance with the provisions of the "County College Contracts Law" 18A:64A-25.1 et. seq.; however, College policy requires a formal process for purchases exceeding \$17,500.

(1) All contracts in excess of \$17,500 are subject to approval by the Board of Trustees.

(2) The Purchasing Department shall have administrative responsibility as contracting agent for purchasing equipment, materials, supplies, and services not exceeding \$17,500; provided, however, that no contract in excess of \$17,500 may be awarded by the Purchasing Department without prior approval of the Executive Committee or another committee of the Board, as designated by the Chairman, or a single member of the Board designated by said committee.

(3) All contracts in excess of \$17,500 are subject to the New Jersey “Pay-to-Play” statute, N.J.S.A. 19:44A-20.4 *et. seq.* (P.L. 2005 c. 271) and related statutes, to the extent applicable. All contracts over the \$17,500 threshold shall be procured in a fair and open manner as defined in said statutes, except in extraordinary circumstances.

(4) The Purchasing Department requires written quotations from at least three sources for the purchase of any item(s) having an estimated net price in excess of \$5,000 but under \$17,500. If the estimated net price is less than \$5,000, verbal quotations may be requested or the purchase may be made through pre-qualified vendor agreements with local suppliers from quotations or bids used to develop annual maintenance and supply contracts.

(5) All contracts under \$17,500 may be awarded by the Purchasing Department directly.

(6) All purchases during a fiscal year shall be aggregated for purposes of calculating thresholds. If the aggregated purchases in a fiscal year would subject the goods or services to a particular threshold, the procedure applicable to that threshold shall be applied in the following year and subsequently until the amount of the contract in a fiscal year drops to a lower threshold amount, in which case the lower threshold procedure shall be applied in the following year. The Purchasing and Finance Departments shall assist departments in determining aggregate amounts. Purchases of a particular kind or with a particular vendor shall not be divided into smaller units for the purpose of avoiding thresholds applicable to higher amounts.

(7) All procurements in excess of \$17,500 shall require formal public bidding unless exempted by N.J.S.A. 18A: 64A-25.5 or other applicable law. Procurements that are exempted by law from public bidding but exceed the bid threshold, will normally be conducted by requests for proposals (RFP) or similar appropriate competitive process. The rules applicable to such procurements shall be as stated in the request for proposals and shall be designed so as to maximize competition and transparency in the procurement process.

(8) Point-factor ranking systems based on measurable criteria shall be used to evaluate RFPs whenever appropriate. In each case where a point-factor system is used, the evaluation criteria and point scoring system shall be clearly stated in the RFP and once completed, shall be summarized by a written memo to the Board of Trustees in connection with any recommended award. The “competitive contracting” process set forth at N.J.S.A. 40A: 11-4.5 governing local contracting units, shall be used as a guideline as to how this type of RFP process is to be conducted.

D. Vendors and Specifications

(1) All contacts with approved or potential suppliers who desire to present products or services to the College for consideration, shall go through the Purchasing Department, which shall log the date and purpose of all such contacts. Departments contacted by vendors shall refer them to the Purchasing Department.

(2) College departments shall prepare technical requirements specifications for all goods and services and submit to the Purchasing Department for inclusion of required legal and contract terms and administration of the procurement process.

(3) A department may utilize a vendor's specification as the basis of design, provided that the department is able to clearly and specifically articulate why the particular features called out in the vendor's specifications are more desirable than those of its competitors. The department's use of particular goods in the past, or a belief not supported by objective evidence that particular brand name goods are superior to others, is not sufficient to justify specifications that unduly limit competition.

(4) The Purchasing Department shall prescribe the general format in which specifications are to be prepared. If a department wishes to obtain material from a vendor to be used in the development of specifications, the material is to be forwarded to the Purchasing Department so that a copy can be kept on file, and the Purchasing Department will then forward it to the user.

(5) The Purchasing Department shall maintain a library of specifications, including those used in past procurements, for departments' use in preparing specifications for new contracts and shall utilize online and other resources to locate standard specifications. Before going to a vendor to obtain specifications, the using department shall first ascertain whether the Purchasing Department is able to locate an appropriate standard specification from industry, government, or other independent sources.

(6) It is the College's policy to maximize competition among vendors to the extent consistent with good business practices and the needs of the College. Specifications that contain any of the following elements or omissions violate this policy:

- (a) Require a standard, restriction, condition or limitation that is not directly related to the purpose of the procurement.
- (b) Require that any bidder be a resident of, or that their place of business be located in Monmouth County unless the physical proximity of the bidder is requisite to the efficient or economical performance of the contract. For contracts where response time is important, response time and not physical proximity shall be specified.

- (c) Discriminate on the ground of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- (d) Require the use of any “brand name,” but shall in all cases where brand names are required provide for equivalent goods on a “brand or equal” basis. If materials or supplies that are patented or copyrighted are required to be specified and there is no equivalent, the using department shall provide the Purchasing Department with a written explanation as to how the special need for the patented or copyrighted materials or supplies is directly related to the performance or purpose for which the purchase is made.
- (e) Require the use of goods or services that can only be obtained from one vendor, when other vendors can reasonably provide the same or equivalent goods or services for a comparable price.
- (f) Unduly favor an incumbent vendor; provided, however, that a vendor’s experience and familiarity with the College’s operations may be taken into account in the evaluation of proposals.
- (g) As to any contract awarded by approval of the Board of Trustees, include a “contingency” or other fund or mechanism allowing increases in a base contract price in the absence of a change order approved by the Board of Trustees in accordance with this policy.
- (h) Fail to include any option for renewal, extension or release which the College may wish to require;
- (i) Fail to include any necessary terms or conditions, or to disclose any matter necessary for the substantial performance of the contract or agreement.

E. Timing of the Procurement Process

Rushed procurements invite mistakes and often cause unnecessary expense to the College through excessive change orders and potential legal challenges. Accordingly:

(1) As a general matter, departments are responsible for planning their needs so as to be able to initiate procurements on a schedule that allows sufficient lead time in advance of when goods or services are needed, for an orderly procurement process that provides an opportunity for preparation and distribution of packages to vendors, the procurement process, award of a contract as required, signature of contract documents, and submission of required documents by the selected vendor.

(2) Construction projects and contracts for procurement of capital equipment with an estimated value over \$500,000 shall not be advertised for bid unless a complete draft bid package, including the conditions of the contract and all specifications and drawings, has been submitted to the College by the design professionals not less than 60 calendar days before the date scheduled for bidding.

(3) For other projects, the Purchasing Department shall develop and distribute a schedule for submission of procurement requests and specifications by user departments.

(4) Departments shall adhere to the published schedule and shall not request waivers from the Purchasing Department. Emergency situations shall be handled in accordance with the specific provisions of this policy.

F. “Blanket” or catalog purchases; “time and materials” trade contracts.

Many specialized maintenance materials and other products used infrequently are stocked by distributors and not contained in standard internal inventories. In order to eliminate delays and reduce the need for writing large numbers of small purchase orders for these materials while also complying with the contracting laws, blanket purchase orders obtained through either public bid solicitations or quotations are processed each year for these supplies. Similarly, the College will enter into “time and materials” contracts with trade contractors such as plumbers, carpenters, and electricians for services to be provided as-needed.

The Purchasing Department shall advise users as to the vendors and terms of these blanket purchase orders and time and materials contracts, and users shall comply therewith with the terms and procedures of the purchase order.

G. State contract purchases

The College may, in appropriate cases, purchase goods and services under State contracts. In each case, the Purchasing Department shall obtain a certification from the vendor that the goods and services are in fact covered by the cited State contract and that the prices offered to the College are those contained in the cited applicable State contract, in each case identifying the specific, applicable provisions by page and paragraph and attaching copies. This certification shall be obtained from each vendor before any purchase order is issued.

H. Change orders

(1) All contract amendments that change the price or extend the time for performance of any contract shall be deemed change orders. Change orders to contracts whose initial amount exceeds \$17,500, shall be presented to the Board of Trustees for approval prior to execution. No College employee is authorized to approve change orders to such contracts without prior approval of the Board of Trustees.

(2) All change orders shall be accompanied by a memorandum signed by the responsible department head that explains the reason(s) why the change order is necessary and in the College’s interest.

(3) As to change orders to contracts whose initial amount exceeds \$32,600 that increase the awarded contract price by more than 20% either individually or

in the aggregate, and/or increasing the contract time by more than 20% over that required by the awarded contract:

- (a) Generally such change orders are not justifiable.
- (b) As to each change order individually exceeding 20% of the original contract price, the President shall file with the Board of Trustees, a memo that includes an explanation of the factual circumstances which necessitate issuance of the change order; a statement indicating why these circumstances could not have been foreseen; a statement indicating why issuance of the change order would be in the best interests of the College and, if the nature of the change order is technical, a statement from the College's engineer or other person with the appropriate expertise. This statement shall explain in detail the factual circumstances which justify issuance of the proposed change order.
- (c) If change orders increase the contract price by more than 20% in the aggregate, with the change order reaching the 20% level, the President shall submit to the Board of Trustees a memo that provides a history of the project and its change orders, and an explanation of the circumstances that have caused change orders to have reached that level. Each subsequent change order shall be accompanied by an update to the memo.
- (d) Change orders increasing the contract time (as measured in total days) by more than 20% either individually or in the aggregate, shall be accompanied by a memo from the President explaining the chronology of the project or contract, the reason for delays or extensions, whether or not they are excusable delay under the terms of the contract in question, and explaining why it is necessary to increase the time for performance. Each subsequent change order increasing the contract time shall be accompanied by an updated memo.
- (e) In each case where a memorandum from the President is required, the President may attach a cover memo to materials provided by others; provided, however, that the President's cover memo shall state that the President has personally reviewed the attached materials, has discussed them with their author(s), and is satisfied with the facts presented.

(4) Increases to BPOs and POs for contracts whose initial amount exceeds \$17,500, shall not be executed without approval of the Executive Committee or another committee of the Board, as designated by the Chairman, or a single member of the Board designated by said committee.

I. Extensions of contract time.

If it is necessary to extend the term of a contract awarded by the Board of Trustees in order to accommodate the process of re-bidding or other re-procurement, the Board may approve an extension not to exceed 60 days from the original contract date with one additional extension of 60 days. In each such case, the request for the extension shall be accompanied by a memo to the Board explaining the reasons why it is necessary.

J. Emergency purchases.

The term “emergency” is defined in N.J.S.A. 18A: 64A-25.6 as a circumstance “affecting the public health, safety and welfare of occupants of college property and requiring the immediate delivery of goods or the performance of services.” The term “affecting the public health, safety and welfare” means a circumstance that presents an imminent risk to life or property and does not include potential disruption to individual academic programs or business activities.

Examples of emergencies that fall within the above definition include fire, flood, extreme weather conditions, vandalism or other criminal activity; release of hazardous substances, and significant failures of building or College-wide systems. Other circumstances such as disruption to individual academic programs or business activities require waivers under Section IV (A) of this policy. The use of emergency purchasing procedures in situations not meeting the definition of an emergency is a violation of State law and of this policy. The emergency purchasing procedures stated in this policy shall apply to all emergency purchases over \$17,500 and are as follows:

- (1) Upon the occurrence of an emergency as defined above, the College employee(s) making such determination in the first instance shall immediately notify their superior, who shall take such steps as are immediately necessary to protect health, safety and welfare and shall follow up within one business day by a written requisition for the goods and services required and stating the nature and cause of the emergency. Whenever possible, the College’s standby trade contracts, and not emergency purchases, shall be used.
- (2) Within one business day, the requisition shall be forwarded to the department head who shall if they concur forward the requisition to the President, the applicable vice president, and the Purchasing Agent.
- (3) The notice given by the department head shall include the requisition and give sufficient additional information for the President to determine that an emergency does indeed exist within the meaning and intent of the County College Contracts Law and that there are sufficient funds identified to carry out the work required in mitigating the emergency.
- (4) If the President is satisfied that an emergency in fact exists, the President shall immediately authorize the procurement of the goods and services, notify the Chairman of the Board of Trustees and the College’s counsel of the nature and extent of the emergency and what actions have or will be taken, direct the

Purchasing Agent to take all appropriate action, and prepare a Resolution acknowledging said procurement for Board of Trustees action.

(5) The Resolution ratifying the President's action in authorizing the emergency procurement shall be placed on the next following Board of Trustees agenda for formal action.

K. Disposition Of Surplus And Obsolete Materials

It shall be the responsibility of the Purchasing Department to dispose of surplus or obsolete materials, supplies, or equipment that is no longer needed to accomplish the educational mission of the College. Such items shall be cataloged and sold annually, or at other specified times on the following basis:

1. Items of no value.
2. Items having resale value as scrap.
3. Items that can no longer be used for educational purposes, but which retain a portion of their value and are considered salable.

Items in category 1 shall be offered to charitable, educational, and civic organizations. Those items which are not desired by these organizations shall be disposed of in accordance with written instructions of the Director of Purchasing and Inventory.

Items in Category 2 and 3 shall be sold to interested parties at public sale to the highest bidder. The exceptions to this are if the items to be sold are perishable goods or if the estimated fair value of the property to be sold does not exceed the amount determined pursuant to N.J.S.A. 18A:64A-25.3(b) in any one sale. In these cases, a public sale is not mandated. The procedures for such sales are set forth in N.J.S.A. 18A:64A-25.27.

If no bids are received in the first public sale, or if the College elects to reject all bids in accordance with the statute following a second public sale, the College may then elect to sell the goods at a private sale. In no event shall the negotiated price at the private sale be less than the amount of the highest bid rejected at the preceding two public sales. In any event, the terms or conditions of sale shall not be changed or amended. In the case in which the College received no bids at the two previous sales and elected to sell at a private sale, the property may not be sold at less than the estimated fair value as defined in N.J.S.A. 18A:64A-25.27.

L. Reference to Other Laws and Rules

Where the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq. and this policy does not provide guidance as to any aspect of procurement or contracting, the College shall look to analogous provisions of the Local Public Contracts Law, N.J.S.A. 40A: 11-1 et seq., the Public School Contracts Law, N.J.S.A. 18A: 18A-1 et seq., and implementing regulations, guidance,

publications, and Local Finance Notices published by the New Jersey Department of Community Affairs.

M. No Reliance; Interpretation

This policy is solely for the guidance of the College and its staff, is not contractual in nature, and is not to be deemed to be incorporated directly or indirectly into any specification, bid package, or other document relied upon or intended to be relied upon by any actual or prospective vendor, bidder, or other person doing business or seeking to do business with the College. No person may rely upon this policy as establishing any duty or obligation for the benefit of anyone other than the College. In all cases, this policy is to be interpreted solely for the benefit of the College.

N. Code Of Ethics

The College's purchasing activities shall be consistent with the College's Code of Ethics as well as the following:

1. To give first consideration to the objectives and policies of the College.
2. To strive to obtain the maximum ultimate value for each dollar expended.
3. To cooperate with trade and industrial associations, governmental, and private agencies engaged in the promotion and development of sound business methods.
4. To demand honesty in sales representation whether offered through the medium of a verbal or written statement, an advertisement, or a sample of the product.
5. To decline personal gifts or gratuities.
6. To grant all competitive bidders equal consideration; to regard each transaction on its own merits; to foster and promote fair, ethical, and legal trade practices.
7. To use only by consent original ideas and designs devised by one vendor for competitive purchasing purposes.
8. To be willing to submit any major controversies to arbitration.
9. To accord a prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.

O. Prior Policies Superseded

This policy shall supersede any policy or regulation adopted by the Board of Trustees prior to its effective date, to the extent of any conflict or inconsistency between this and any earlier policy or regulation.

V. **Responsibility for Implementation**

Board of Trustees

Eff: 6/9/11

Updated: 3/18/13