**Section 4.2055 Types of Contracts**

a) Scope

This Section contains descriptions of types of contracts and limitations as to when they may be utilized by the university in its procurements. Types of contracts not mentioned in this Section may be utilized with approval of the SPO.

b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting

The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.

1) A percentage mark-up from an agreed price list is not a cost-plus-a-percentage-of-cost contract.

2) A percentage mark-up from the cost of a supply or service selected by the university or another vendor under contract to the university is not a cost‑plus-a-percentage-of-cost contract.

3) A percentage mark-up from cost for parts needed in relation to a contract for services does not convert the services contract to a prohibited cost-plus-a-percentage-of-cost contract provided the parts supplied under the cost-plus-percentage-of-cost method do not exceed 20% of the value of the contract.

c) Types of Fixed-Price Contracts

1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the vendor's cost of performing the work specified in the contract.

2) Fixed-Price Contract with Price Adjustment

A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in the vendor's price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

i) changes in the vendor's labor agreement rates as applied to an industry or area (such as are frequently found in contracts for the purchase of coal);

ii) changes due to rapid and substantial price fluctuations that can be related to an accepted index (such as contracts for gasoline, heating oils and dental gold alloy); and

iii) in requirement contracts, in which a vendor is selected to provide all of the university's needs for the items specified in the contract, when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

B) If the contract permits unilateral action by the vendor to bring about the condition under which a price increase may occur, the university shall have the right to reject the price increase and terminate without cost the future performance of the contract.

d) Cost-Reimbursement Contracts

1) Determination Prior to Use

A) The university must submit to the SPO a justification for using any type of cost-reimbursement contract. This justification must be sufficient to show that such a contract is likely to be less costly to the university than any other type or that it is impracticable to obtain the items through any other type of contract. The SPO will consider the justification and any other relevant factors before making a written determination to authorize use of the cost‑reimbursement contract.

B) Any reimbursement of travel expenses authorized in the solicitation and the terms of the contract must be in accordance with applicable travel control board regulations.

2) Cost Reimbursement Contract. A cost reimbursement contract provides that the vendor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee. These contracts establish an estimate of total cost and must establish a ceiling that a vendor may not exceed. The SPO must provide a written determination that this type of contract is likely to be less costly than any other type of contract or that it is impracticable to obtain the item required except under this type of contract.

3) Cost-Plus-Fixed-Fee Contract. This cost-reimbursement type contract provides for payment to the vendor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee may be adjusted to provide for an increase or decrease in the scope of work. The adjustment must be made via a change order with approval of the SPO.

4) Cost Incentive Contracts

A) General. A cost-incentive type of contract provides for the reimbursement to the vendor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the vendor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the vendor controls cost in the performance of the contract).

B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The vendor is obligated to complete performance of the contract and, if actual costs exceed the ceiling price, the vendor suffers a loss.

C) Cost-Reimbursement Contract with Cost-Incentive Fee.

In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the university is obligated to reimburse the vendor. The vendor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the vendor.

e) Performance Incentive Contracts

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the vendor to a bonus, while late completion may entitle the university to a price decrease.

f) Time and Materials Contracts; Labor Hour Contracts

Time and materials contracts provide for an agreed basis for labor performed and payment for materials supplied. Labor hour contracts provide only for the payment of labor performed. The contracts shall contain a stated ceiling or an estimate that shall not be exceeded without prior approval. An estimated time and materials contract shall be treated as an indefinite quantity contract.

g) Definite Quantity and Indefinite Quantity Contracts

1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services at specified times or when ordered, with deliveries or performance scheduled at designated locations upon order.

2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally, an indefinite quantity contract is based on historical usage or the best information available as to quantity as stated in the solicitation and is not a guarantee of a quantity to be ordered. The contract may provide a minimum quantity the university is obligated to order and may also provide for a maximum quantity provision that limits the university's ability to order. If an estimated quantity is identified, the university may order up to 20% more than the estimate without written SPO approval. The SPO may authorize ordering beyond the stated 20%. Any such authorization shall be documented in writing and published in the Bulletin. An increase of an indefinite quantity contract is not a change order.

3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the university to order all its actual requirements during a specified period of time with deliveries or performance scheduled at designated locations upon order. If identified in the solicitation as a requirements contract, all needed quantity, regardless of any stated estimate, must be ordered from that contract. A requirements contract shall state a realistic estimated total quantity in the solicitation and resulting contract, but this is not a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal.

h) Leases

A lease is a contract for the use of supplies or real property under which title will not pass to the university at any time, except pursuant to an option to purchase. Leases of real property are governed in accordance with Article 40 of the Code and this Subpart M.

i) Recovery Contracts

Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the university. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.

j) State Produced Supplies and Services

Notwithstanding any provision in any contract, supplies or services available in‑house or from State programs, such as Illinois Correctional Industries, may be ordered without violating any contract.

k) Extraordinary Quantities

Notwithstanding any provision in any contract, the university reserves the right to take bids separately if a particular quantity requirement arises that exceeds the university's normal needs or ordering requirements.

l) Energy Conservation and Energy Savings Contracts

Notwithstanding Section 20-60(a) of the Code, university procurements of energy conservation measures, including guaranteed energy savings contract, are defined in the Code and Public University Energy Conservation Act [110 ILCS 62] (PUECA) and shall be made in accordance with the Code, this Part, and as otherwise authorized by PUECA. Notwithstanding any other law, energy savings contracts or leases may include an alternative financing or lease to purchase option as part of the contract's terms.

m) Printing Cost Offsets

In accordance with university policies, the university may provide advertising rights in printed products to a vendor or receive free copies of printed products from a vendor in order to reduce the overall cost of a printing contract. Procurement by competitive sealed bid or competitive sealed proposal is required when the printing cost exceeds the small purchase limit of Section 4.2020 of this Part.

n) Contracting for Installment Purchase Payments, Including Interest

Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

o) Food Donation

A university may not enter into a contract to purchase food with a bidder or offeror if the bidder's or offeror's contract terms prohibit the university from donating food to food banks, including, but not limited to, homeless shelters, food pantries, and soup kitchens. Universities shall adopt policies that permit the donation of leftover food procured with State funds, in accordance with Section 55-20 of the Code.

(Source: Amended at 43 Ill. Reg. 1781, effective February 15, 2019)