

## Best Value Procurement

**Original Implementation:** January, 1988

**Last Revision:** April 18, 2020

### Purpose

This policy affirms that Stephen F. Austin State University (SFA) makes purchases, not otherwise delegated through Delegated Purchasing Authority (17.5), in accordance with Texas Education Code Section 51.9335 and university policy.

### PROCUREMENT PROCESSES

The university purchases goods or service by the method that provides the best value to the university, including:

- A. programs associated with the purchase of goods or services from persons with disabilities as required under applicable state law;
- B. direct negotiation if the aggregate total is \$15,000 or less (except that the limit for federal funds is \$3,000);
- C. group/cooperative purchasing programs;
- D. contracts awarded by the state comptroller's office, Department of Information Resources, Council on Competitive Government, State Office of Risk Management, or other state of Texas agencies or institutions of higher education;
- E. contracting with other state agencies or political subdivisions in accordance with Interagency and Interlocal Contracts (see additional information below in Additional Procurement Considerations);
- F. purchasing on a proprietary basis in accordance with Proprietary Purchases (see additional information below in Additional Procurement Considerations);
- G. purchase of professional and consulting services in accordance with Texas Government Code Section 2254 (see additional information below in Additional Procurement Considerations);
- H. purchasing from state or federal surplus warehouses in accordance with Purchase of Surplus Property (17.17);
- I. soliciting bids or proposals as follows:
  - a. informal solicitation if the aggregate total is \$50,000 or less; this limit may be increased to \$150,000 if using federal grant funds;
  - b. formal solicitation if the aggregate total is over \$50,000; this limit may be increased to \$150,000 if using federal grant funds;
- J. purchasing on an emergency basis as long as the procurement is necessary to prevent a hazard to life, health, safety, welfare or property, or to avoid undue additional cost to the university;
- K. purchasing on a best value basis without using one of the above processes as long as the supporting justification is approved by the director of procurement and is in compliance with best value considerations outlined in Texas Education Code Section 51.9335.

## **ADDITIONAL PROCUREMENT CONSIDERATIONS**

### **General**

The university may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the university to participate in preparing the specifications or request for proposals on which the bid or contract is based. This does not prohibit a bidder or contract participant from providing free technical assistance to the university.

In accordance with Gov't Code Ch. 2252, Subchapter A, the university will apply reciprocity when evaluating informal bids and competitive sealed bids. This requirement does not apply to federal funds.

Contracts that generate revenue may be processed through any of the above procurement processes, through direct negotiation, or through any other process that is determined to represent the best value to the university.

All procurements, regardless of the source of funds, shall comply with laws and rules relating to historically underutilized businesses. Reference Historically Underutilized Businesses (17.7).

Some procurements may require Board of Regents approval prior to purchasing. Reference Items Requiring Board of Regents Approval (1.4).

Some procurements have additional restrictions based on the source of funding. Reference the Funds Guidelines and HEF Guidelines published on the procurement and property services website.

### **Contracting Restrictions**

Contracting with a former employee or retiree for services is prohibited on state funds within 12 months of the employee's separation date from the university. The use of local funds is allowed within 12 months of the employee's separation date with prior approval of the director of procurement and property services, director of human resources, and general counsel.

If a past employee or retiree is hired as a consultant within 2 years of leaving SFA or any other state agency, the consultant must disclose in his/her offer the following information: a) nature of employment at the agency; b) the date employment was terminated; c) the annual rate of compensation at termination. This requirement does not apply to professional services.

Contracting for professional services with a company employing a former employee or retiree within 12 months of the employee's separation date from the university is allowed only if the former or retired employee does not work on a project that is similar to his/her duties while employed by SFA.

Contracting with the executive head of a state agency, or with a person who at any time during the four years before the date of the contract was the executive head of a state agency, or with a person who employs a current or former executive head of a state agency is prohibited unless the Board of Regents votes in open meeting to approve the contract, and the Legislative Budget Board is notified no later than the fifth day before the date of the vote, of the terms of the proposed contract.

Pursuant to state law, a former officer or employee who during their period of service or employment participated on behalf of the university in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

## **Contract Management**

The procurement office shall establish and maintain contract management procedures that provide for consistent contracting policies and practices and contract review procedures, including a risk analysis procedure. The contract review procedures, contract review checklist, and any updates, must be reviewed and approved by the general counsel before implementation.

The procurement office shall establish procedures to identify each contract that requires enhanced contract or performance monitoring. New construction projects over a designated dollar amount shall be included in evaluation for enhanced monitoring. Identified contracts shall be reported to the Board of Regents at regularly scheduled meetings, including the following information:

1. a description of the contract;
2. the vendor awarded the contract;
3. the procurement method by which the vendor was selected;
4. who is managing the contract;
5. any serious issue or risk associated with the contract.

The following types of purchases or contracts are excluded from this reporting requirement: a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is no cost.

All contracts should be fully executed prior to the effective date and prior to work being performed to the extent possible.

## **Interagency and Interlocal Purchases**

Interagency purchases are for goods and services from another agency of the state of Texas and are allowed by the Interagency Cooperation Act, except that a state agency may not enter into an agreement or contract that requires or permits the agency to exceed its duties and responsibilities or the limitations of its appropriated funds. An agency may purchase goods, equipment, and special or technical services including the services of an employee through an Interagency Cooperation Agreement.

Interlocal purchases are for goods or services from or by a local government such as a city or county government, school district, junior or community college district, or other political subdivision. Such purchases are handled as an Interlocal Agreement, and are allowed so long as neither the agency nor the political subdivision exceeds its duties and responsibilities or the limitations of its appropriated funds or its governing board or commission.

A state agency may not provide services or resources to another agency that are required by Article XVI, Section 21, of the Texas Constitution to be provided under a contract awarded to the lowest

responsible bidder. Printing services may not be purchased through an Interagency or Inter-local Agreement.

Interagency contracts shall follow financial approval thresholds allowed in university policy 1.4. All interagency contracts must conform to appropriate procurement procedures and be approved by an authorized administrator from each agency. An interagency agreement, if required under applicable law, must specify the following:

1. the kind and amount of goods or services to be provided;
2. the basis for computing reimbursable costs; and
3. the maximum cost during the period of the agreement.

Interlocal contracts must contain a formal written agreement signed by the university agency head, or designee, and the local government, regardless of the dollar amount. The written agreement must:

1. state the purpose, terms, rights, and duties of the contracting parties; and
2. specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

Forms for interagency and interlocal agreements are available on the general counsel's website.

### **Proprietary Purchases**

A proprietary purchasing situation occurs when competition is not available. In addition to the purchase requisition, a written exclusive acquisition justification must be submitted to the Department of Procurement and Property Services when the specification requirement limits consideration to one manufacturer, one product, or one service provider.

A sole product may be available from more than one source and is subject to best value procurement rules. Justification for proprietary purchases must be signed by the director of procurement and property services/HUB coordinator. To assist in proprietary purchase considerations, procedures and guidelines are provided on the procurement and property services website.

### **Purchase of Professional and Consulting Services**

Professional services are services within the scope of practice, as defined by state law, of: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, and interior design or those services provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, landscape architect, land surveyor, a physician (including a surgeon), an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, registered nurse, or a licensed interior designer.

Consulting services are services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. A consultant may be used only if there is a substantial need for the consulting services with its own personnel or obtain the consulting services through a contract with a state governmental entity.

Major consulting service contracts are contracts for which it is reasonably foreseeable that the value of the contract will exceed \$25,000. The \$25,000 threshold is not a one-time cost, but rather a cumulative amount for on-going consulting services.

A consultant is a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

Selection of professional or consulting service contracts may require Board of Regents approval. Reference Items Requiring Board of Regents Approval (1.4). Submission of a requisition is required, and other purchasing procedures may apply.

Professional or consulting service solicitations greater than \$50,000 will be posted on the electronic business daily unless Procurement and Property Services determines that no value is added by the posting.

A professional service provider is not to be selected on the basis of competitive bid but rather on the basis of demonstrated competence and qualifications to perform the services; and a fair and reasonable price, as long as professional fees do not exceed any maximum provided by law.

Professional services, including architectural, engineering, land surveying, and other professional services as referenced above, must be procured in the following manner:

1. Select the most highly qualified provider based on demonstrated competence and qualifications as provided in the Request for Qualifications;
2. Attempt to negotiate a contract with the selected provider at a fair and reasonable price;
3. If a satisfactory contract cannot be negotiated with the most highly qualified provider, formally end negotiations with that provider; select the next most highly qualified provider; and attempt to negotiate a contract at a fair and reasonable price.

The selection process for architectural, engineering, or land surveying services shall continue in this manner until a contract is accepted by all parties.

A consulting service provider is to be selected using the procurement method that provides the best value to the university based on demonstrated competence, knowledge, qualifications, and reasonableness of the proposed fees for the services.

## **EXEMPT PURCHASES**

Purchases that are exempt from best value procurement processes outlined herein but for which submission of a purchase requisition and other rules may apply include:

1. advertising;
2. hotels and meeting rooms for conferences;
3. conference expenses – expenses related to conference room services such as audio/visual/network and food services. (does not include goods purchased for attendees or

- transportation services);
- 4. moving expenses (employee) – see Moving Expenses (3.23);
- 5. student travel – see Student Travel (10.12);
- 6. library materials and services for Stephen F. Austin State University libraries when such exemption represents the best value to the university;
- 7. membership dues and associated fees;
- 8. direct publications only available from a single source as defined in the procurement procedure manual;
- 9. freight, including shipping, handling, fuel surcharge, hazardous material fee, postage, and other surcharges;
- 10. intra-agency payments (IDT);
- 11. rental of exhibit space;
- 12. items for resale;
- 13. internal repairs – repairs for which the extent and cost of such cannot be determined until the commodity is disassembled and evaluated; an internal repair must contain labor and may also include parts;
- 14. purchases from federal agencies;
- 15. utilities, other than deregulated electricity;
- 16. organized activity purchases – goods and services for the Early Childhood Lab, Cole Audiology Lab, Beef Farm, Poultry Farm, Equestrian Program, Broiler Houses, and Swine Farm when the purchase directly affects operations and such exemption represents the best value to the university;
- 17. group travel – expenses related to group travel when such group travel includes non-university persons and/or is funded by payment from individual travelers; i.e., Art Tour;
- 18. gifts, prizes and awards for students, employees and non-university individuals – See Gifts, Prizes and Awards (3.18);
- 19. accreditation fees;
- 20. tournament fees or game guarantees;
- 21. licensing fees or permits;
- 22. employee registration or tuition;
- 23. sponsorships;
- 24. non-travel-related meals;
- 25. fees, not otherwise identified herein;
- 26. notary bonds;
- 27. guest lecturers, speakers, artists, entertainers, performers, musicians, etc.;
- 28. educational/training services for university employees;
- 29. veterinary services;
- 30. other professional services as defined by the state comptroller’s expenditure codes.

**Cross References:** Items Requiring Board of Regents Approval (1.4); Ethics (2.6); Gifts, Prizes and Awards (3.18); Student Travel (10.12); Nepotism (11.16); Historically Underutilized Businesses (17.7); Delegated Purchasing Authority (17.5); Purchase of Surplus Property (17.17); Purchase Voucher (17.20); Purchases From Officers or Employees (17.21); Moving Expenses (3.23); Purchase Requisition (17.19); Tex. Educ. Code §§ 51.9335, .9337; Tex. Gov’t Code § 572.069; Tex.

Gov't Code § 669.003; Tex. Gov't Code § 2261.253; Tex. Gov't Code §§ 2252.001-.004, .901; Tex. Gov't Code Ch. 2254; Tex. Gov't Code Ch. 573; Tex. Gov't Code Ch. 771, 791; Tex. Const. Art. XVI, §21; Tex. Gov't Code §§ 2155.063, .067; 2 CFR §§ 200.317-.326

**Responsible for Implementation:** Vice President for Finance and Administration

**Contact for Revision:** Director of Procurement and Property Services/HUB Coordinator

**Forms:** Purchase Requisition, Purchase Voucher

**Board Committee Assignment:** Finance and Audit