TEXAS TECH UNIVERSITY

Operating Policy and Procedure

OP 72.09: Procurement of Goods and Services

DATE: February 27, 2023

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish the procedures to be followed when procuring goods or services (including equipment).

REVIEW: This OP will be reviewed in November of even-numbered years by the Chief Procurement Officer (CPO) with substantive revisions forwarded to the Senior Vice President for Administration & Finance and Chief Financial Officer.

POLICY/PROCEDURE

1. Definitions

a. Best Value: Factors to be considered in determining best overall value for the System or the Component Institution in accordance with Texas Education Code § 51.9335 (b).

b. Competitive Solicitation: The process of inviting and obtaining Responses from competing Vendors in response to advertised competitive Specifications, by which an award is made based on Best Value. The process contemplates giving potential Vendors a reasonable opportunity to compete and requires that all Vendors be placed on a level playing field. Each Respondent must respond to the same advertised Specifications, terms, and conditions. Competitive sealed bidding is the process of advertising an Invitation for Bid ("IFB"), the evaluation of the submitted bids, and awarding of the Contract. Competitive sealed proposals include the process of advertising a Request for Proposals ("RFP"), the evaluation of submitted Proposals, and awarding of the Contract.

c. Contract: A legally binding written agreement executed between the system or TTU and a third party in which the parties agree to perform in accordance with the obligations therein. Contracts include, but are not limited to, letter agreements, cooperative agreements, memorandum of understanding (MOU), interagency contracts, interlocal contracts, easements, licenses, leases, and purchase orders (Chapter 07, *Regents' Rules*). *TTU may require formal review and signature of other related legal documents (e.g., non-disclosure agreements).*

d. Contractor: An entity or individual with a contract to provide goods or services to the system or any component institution. The term contractor may be used interchangeably with the term "vendor" or "supplier."

e. Cooperative: Outside entity purchasing group that conducts competitive solicitations and awards contracts for goods and services that can be utilized by its members.

f. Emergency Procurement: Emergency procurements occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest, an emergency purchase may be warranted to prevent a *hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the institution.*

g. Exempt Procurement: Certain goods or services are exempt from the competitive procurement rules, either by statute or if the exemption is in the best interest of the public or TTU.

h. Goods: Supplies, materials, or equipment as defined in Texas Government Code § 2155.001. Goods do not include services or real property.

i. Historically Underutilized Business (HUB): A for-profit entity with its principal place of business in the State of Texas that is at least 51% owned by a Black American, Hispanic American, woman, Asian Pacific American, Native American, or disabled veteran.

j. Procurement (Procure): Purchasing, renting, leasing, or otherwise acquiring any goods and services, including all functions that pertain to the acquisition through contract closeout.

k. Proposal: A written or formal response to an RFP and intended to be used as a basis to negotiate a contract award.

l. Proprietary Purchase: A good or service produced or marketed by a contractor having the exclusive right to manufacture or sell it.

m. Purchase Order: A legal document issued to a contractor that formalizes the terms and conditions of any purchase of goods or services.

n. Quote: A document setting forth an offer to sell goods or services at a certain price under specified conditions. Quotes are required for the acquisition of goods or services that exceed $5,000 annually.

o. Response: A submission to TTU from a potential contractor in response to a solicitation.

p. Service(s): The furnishing of labor, time, and effort by a contractor or auxiliary enterprise, including for a construction project, which may involve, to a lesser degree, the delivery or supply of products.

q. Solicitation: A method or process used to obtain responses for the purpose of gathering information or entering a contractual arrangement.

r. Specification(s): Description of the requirements for goods or services, including the scope of work, to be fulfilled by a contractor.

2. Policy

a. This policy will apply to the procurement of all goods, equipment, or services unless otherwise exempted by this policy.

b. Only the Chief Procurement Officer (CPO), their designees, and other TTU personnel designated by the President may commit TTU to the procurement of either goods or services or both.

c. Departments are required to verify that any procurement of goods or services is allowable on the funding type they will be utilizing.

d. The procurement of goods or services must have a clear business purpose that supports the mission of TTU.

e. The CPO or their designee(s) has the authority to make any exceptions to this policy, which, in their determination, are essential for the continued operations of TTU and do not violate any federal or state laws.

f. Every procurement must comply with OP 72.12, Historically Underutilized Businesses, and comply with the Human Resources Code, Chapter 122, relating to purchases from people with disabilities.

g. Procurements on federal funds must comply with the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

3. Acquisition of Goods or Services

a. Pursuant to Texas Education Code § 51.9335, an institution of higher education may acquire goods or services by the method that provides the best value to the institution, including:

(1) Competitive bids;
(2) Competitive sealed proposals;
(3) Catalogue purchase;
(4) A group purchasing program (Cooperative); or
(5) An open market contract.

b. In determining the best value to an institution of higher education, the institution shall consider:

(1) Purchase price;
(2) Reputation of the vendor and the vendor's goods or services;
(3) Quality of the vendor's goods or services;
(4) Extent to which the goods or services meet the institution's needs;
(5) The vendor's past relationship with the institution;
(6) The impact on the ability of the institution to comply with laws and rules relating to historically underutilized businesses (HUBs) and the procurement of goods and services from persons with disabilities (TIBH);
(7) The total long-term cost to the institution of acquiring the vendor's goods or services;
(8) Any other relevant factor that a private business entity would consider in selecting a vendor; and
(9) The use of material in construction or repair to real property that is not proprietary to a single vendor, unless the institution provides written justification in the request for bids for the use of the unique material specified.

c. Procurement of goods or services must comply with state and federal laws, TTU operating policies and procedures, TTU System Regulations, and the *Regents' Rules*.

d. Purchase orders are not intended to be used strictly as a payment tool; therefore, the department must create the requisition before the commitment or obligation. Procurement Services and other departments will review the transaction for compliance and risk management. If the transaction complies with TTU operating policies and procedures and complies with TTU's strategic mission, Procurement Services will approve the requisition and submit a purchase order to the vendor. The only other allowable procurement method is the procurement card. Purchase orders submitted after the commitment is made or after the goods or services are received will constitute a non-compliant order.

e. Procurement Services is under no obligation to authorize payment for expenditures not made in compliance with this operating policy, and financial responsibility for any such obligation may become the personal liability of the employee who effected the improper procurement or transaction.

4. Procurement Methods

a. TechBuy Hosted and Punchout Vendors

TTU has established best value contracts for many vendors that are accessible to departments through the TechBuy system. Because these vendors are on a competitively procured contract or a cooperative contract, the dollar limit thresholds referenced in section 7 of this OP do not apply. Departments shall not purchase from these vendors outside of the TechBuy system as the TTU-specific pricing and best value services will not be applicable.

b. TechBuy Non-catalog Procurement

For any vendor not enabled with a punch-out or hosted catalog in TechBuy, the department shall establish a non-catalog requisition in TechBuy to procure the goods or services and encumber funds. The dollar limit thresholds referenced in section 7 must be followed unless the vendor has an approved cooperative contract or meets the requirements of section 6.

c. Standing Orders

Standing orders encumber funds and establish a business relationship with a vendor. Standing orders allow a department to make repetitive procurements throughout a fiscal year. For vendors on any state, federal, cooperative, or TTU purchasing contract, standing orders may be established for $10,000 (an exception on the limit is granted for library books and subscriptions). Standing orders may not be established with vendors who are punchouts or hosted vendors. Procurement Services reserves the right to further restrict or exempt the use of standing orders.

d. Blanket Orders

Blanket orders do not encumber funds and establish a business relationship with a vendor. Blanket orders may be established with vendors for repetitive procurements throughout a fiscal year. For vendors on any state, federal, cooperative, or TTU purchasing contract, blanket orders may be established for $5,000 (an exception on the limit is granted for library books and subscriptions). Blanket orders will be set at $2,500 for non-contracted vendors.

Blanket purchase orders are not permitted on any transactions using appropriated funds (funds starting with 11, 12, 13, or 14). In addition, any transaction that is a contractual obligation of a definite amount to a vendor is not permitted on a blanket order. Blanket orders may not be established with vendors who are a punchout or hosted vendor. Procurement Services reserves the right to further restrict or exempt the use of blanket orders.

e. Procurement Card (PCard)

The PCard is an acceptable procurement method for infrequent low-dollar procurements. All PCard transactions must comply with this operating policy and the PCard guidelines. https://www.depts.ttu.edu/procurement/FormRepository/pcard/Pcard-Program-Guidelines.pdf

5. Preferred Procurement Contracts

a. TIBH (Texas Industries for the Blind and Handicapped)

Goods or services available through the Texas Council for Purchasing from People with Disabilities (currently TIBH) must be procured through this entity unless non-utilization of TIBH can be adequately justified. Bids or proposals are not required when utilizing the TIBH contract for purchases.

b. State of Texas Contracts

The Texas Comptroller of Public Accounts ("CPA") and the Department of Information Resources ("DIR") establish purchasing contracts for goods or services. These contracts are accessible on the CPA's website http://www.window.state.tx.us/procurement/contracts/ and the DIR website https://dir.texas.gov/contracts. Bids or proposals are not required when utilizing CPA or DIR contracts.

c. General Services Administration ("GSA")

The GSA Advantage is the federal government's online catalog and ordering system. Vendors can extend pricing and contract terms to governmental agencies. Bids or proposals are not required when utilizing GSA contracts. The GSA contract number must be listed on the quote. http://www.gsaelibrary.gsa.gov/ElibMain/contractorList.do?contractorListFor=A

d. Procurement Cooperative Programs

Procurement cooperatives solicit contracts through a competitive process like the process done by Procurement Services. Bids or proposals are not required when utilizing cooperative contracts as the procurement cooperative has issued the competitive solicitation and awarded a contract on behalf of the cooperative members. TTU may be required to execute an additional contract with the vendor to formalize compliance with any TTU operating policies and procedures and Texas state laws. The following is a listing of the procurement cooperatives of which TTU is a member (others may be considered):

- 1GPA
- Buyboard
- Carahsoft
- Choice Partners
- E&I

- ESC Region 5
- ESC Region 16 (TexBuy)
- ESC Region 17 (Lone Star Purchasing Cooperative)
- ESC Region 19 (Allied States Cooperative)
- First Choice
- HGAC Cooperative Purchasing Program
- Internet2 (may require additional quotes)
- LEARN (may require additional quotes)
- National Cooperative Purchasing Alliance (NCPA)
- Omnia Partners
- The Purchasing Association of Cooperative Entities (PACE)
- The Interlocal Purchasing System (TIPS)
- University of Texas Alliance (UT Alliance)
- Workquest

e. TTU Negotiated Contracts

The Procurement Services Office has issued competitive requests for proposals and awarded contracts to several vendors based upon a competitive solicitation process. Bids or proposals are not required for procurement utilizing a TTU-negotiated contract, but the department should ensure that the vendor is extending TTU contract discounts to the department.

6. Other Procurement Methods

a. Justification for Exclusive Acquisition ("JEA") (formerly Proprietary Procurement)

A JEA is justified only when an equivalent good or service is not available. A written justification must be provided when the specification requirement limits consideration to one manufacturer, one good, or one service provider and the amount of the procurement exceeds $50,000 (either in a one-time procurement or repetitive procurements of the same goods or services during a fiscal year). Price and personal preferences are not acceptable as determining factors. The Procurement Services Office reserves the right to request additional quotes or bids on JEA purchases.

The written justification must include:

- Explanation of why the unique scope of work for the goods or services is required;
- Details of the unique features of the goods or services;
- The reason that competing goods or services are not satisfactory; and
- Any other relevant information to support the sole source documentation.

b. Emergency Procurements

Emergency procurements occur due to unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest, an emergency procurement may be warranted to prevent a *hazard to life, health, safety, welfare, or property or to avoid undue and substantial additional cost to the state or institution*. The Procurement Services Office reserves the right to require additional quotes or

bids on emergency procurements. All attempts should be made to utilize contracted vendors during these situations.

c. Exempt Procurements

Certain goods or services are considered exempt procurements. They are not subject to the bid thresholds, per TTU policy, state statute, or the exempt procurement is in the university's or public's best interest. Bids or proposals are not required when procuring exempt goods or services; however, the department should negotiate the best value with the vendor. Exempt procurements include:

Advertisements	Artwork (Original) & Artifacts	Lodging for guests, students, and employees
Athletics Competitions		
Catering, Meals, and Food Services (does not include food for resale)	Conference Expenses (excluding promotional items for attendees)	Direct Publications (subscriptions, newspapers, videos)
Exhibit Spaces	Travel (all travel operating policies and procedures must be followed)	Freight/Shipping
Legislative Information Services	Hotels & Conference Rooms	Lecturers, Entertainers, and Guest Speakers
Registration Fees and Related Expenses	Membership Fees & Dues	Personnel Moving Expenses for Employees
Training Services	Student Travel (including chartered air)	Purchases from Federal Agencies
Purchases from Local Governments or Quasi-Governmental Agencies	Internal Purchases from TTU System, TTU, TTUHSC, TTUHSC at El Paso, Angelo State, or Midwestern State.	Postal Services
Purchases from Other State Agencies, Including Public Institutions of Higher Education	Utilities	Search Firms (Faculty and Staff Recruitment)

d. Competitive Solicitations

If the best value for the goods or services is not obtained from one of the above-listed procurement methods, then the department shall comply with the procurement rules listed in the following section of this OP.

7. Competitive Solicitation Requirements

a. Competitive solicitations must be obtained on all procurements of goods or services above $50,000 unless the requirement can be properly justified as a proprietary procurement, emergency procurement, exempt procurement, or the purchase is made from a state, federal, institutional, or cooperative contract. The $50,000 limit applies to either a one-time procurement or repetitive purchases of the same goods or services during a fiscal year (e.g., procuring toner cartridges throughout the fiscal year).

b. Current solicitation limits, regardless of the source of funds are:

$0 – $50,000	At least one competitive solicitation response (bid or quote) is required; however, requisitioning departments are encouraged to obtain more than one competitive solicitation and to price compare all procurements with existing contract costs. ***Procurements from a historically underutilized business (HUB) are required to the fullest extent possible.***
$50,000.01 – $100,000	Three informal solicitation responses (bids or quotes) are required; at least two must be from a certified Texas HUB. The solicitation responses shall be sufficiently documented with written documentation to evidence the process. If the department receives one or more non-responsive solicitation responses from the HUB vendors, then it shall solicit, at least, three.
Above $100,000	Formal solicitation responses will be obtained by the Procurement Services Office on procurements above $100,000 that do not conform with one of the other procurement types listed in this OP.

c. The financial manager and their delegates are required to solicit and procure from HUBs to the fullest extent possible. For assistance in identifying potential HUBs, contact the Procurement Services Office at strategic.acquisitions@ttu.edu. Refer to OP 72.12, Historically Underutilized Businesses, for additional information.

d. State and federal laws and TTU operating policies and procedures prohibit splitting procurement transactions to circumvent the requirements outlined in this OP.

8. Prohibited Procurements

a. The procurement of goods or services for personal use or personal resale is prohibited. Procurements in which the officer or employee of TTU has received a personal benefit from the vendor are prohibited. All transactions must comply with ethics and standards of conduct requirements in Chapter 03 of the TTU System *Regents' Rules*.

b. Purchases from eBay

c. Vendors on Hold

Any transaction, including a requisition, purchase order, PCard, or any payment to a vendor who is on hold with the State of Texas or the federal government is prohibited. Any faculty, staff, or student who attempts to obligate TTU with a vendor on hold will be held personally liable for payment of any obligations to that vendor.

d. Sponsored Projects

Certain funding types have additional restrictions and requirements. Financial Managers are responsible for compliance with TTU operating policies and procedures and the requirements of the granting agency, uniform guidance, and the State of Texas Uniform Grant Management Standards. Procurement Services does not review for compliance with the granting agency requirements.

e. Fund Allowability

The following chart details the allowability of expenses based on the funding type.

Attachment: *Allowable Expenses by Fund Group*