OP 72.09: Procurement of Goods and Services

DATE: August 25, 2021

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

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. Bid: An offer to contract submitted in response to an invitation for bid. The term bid may also be referred to as a response.

b. Contract: A legally binding written agreement executed between the system or an institution 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, co-operative agreements, memorandums of understanding (MOU), interagency contracts, interlocal contracts, easements, licenses, leases, and purchase orders (Chapter 07, Regents’ Rules).

c. 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.”

d. 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.

e. 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 the institution.

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

g. Procurement (Procure): Purchasing, renting, leasing, or otherwise acquiring any goods and services, including all functions that pertain to the acquisition through contract closeout.
h. Proposal: A written or formal response to a request for proposals (RFP) and intended to be used as a basis to negotiate a contract award.

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

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

k. Quote: A document setting forth an offer to sell goods or services at a certain price under specified conditions.

l. Response: A submission to the system or an institution from a potential contractor in response to a solicitation.

m. 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.

n. Solicitation: A method or process used to obtain responses for the purpose of gathering information or entering into a contract.

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

p. Vendor: An individual, business, or governmental entity that has a contract to provide goods or services to the state of Texas, used interchangeably with the term “contractor.”

2. Policy

a. This policy will apply to the procurement of all goods 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 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. In the event of any conflict between this OP and any state or federal procurement regulations, those regulations shall prevail.

h. Starting fiscal year 2019, 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; 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, institutional operating policies and procedures, and the Regents’ Rules.

d. Purchase orders are not intended to be used strictly as a payment tool; therefore, the department must create the purchase order before the commitment or obligation. 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 payment 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, the dollar limit thresholds referenced in section 7 of this OP do not apply.

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 or Blanket Orders**

   Standing or blanket orders may be established with vendors for repetitive procurements throughout a fiscal year. For vendors on contract, exempt purchases, or proprietary purchases of goods or services, these may be established for any dollar threshold. Standing or blanket orders will be set at $30,000 for non-contracted vendors, provided that the vendor extends TTU a discount of at least 15 percent. If a discount letter cannot be provided, then the standing or blanket purchase order will be limited to $15,000 per fiscal year. Standing or blanket purchase orders are not permitted on appropriated funds (funds starting with 11, 12, 13, or 14). In addition, any transaction that represents a contractual obligation of a definite amount to a vendor is not permitted on standing or blanket orders.

d. **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. [http://www.depts.ttu.edu/procurement/FormRepository/pcard/procurement-pcard-program-guidelines-20161001.pdf](http://www.depts.ttu.edu/procurement/FormRepository/pcard/procurement-pcard-program-guidelines-20161001.pdf)

5. **Preferred Procurement Contracts**

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

   Goods or services that are 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.

b. **State of Texas Contracts**

   The Texas Comptroller of Public Accounts (CPA) establishes term contracts for goods or services. These contracts are accessible on the CPA’s website [http://www.window.state.tx.us/procurement/contracts/](http://www.window.state.tx.us/procurement/contracts/). Bids or proposals are not required when utilizing CPA contracts. The Department of Information Resources (DIR) also maintains state contracts for information technology and telecommunication goods or services [https://dir.texas.gov/](https://dir.texas.gov/).
c. General Services Administration

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](http://www.gsaelibrary.gsa.gov/ElibMain/contractorList.do?contractorListFor=A)

d. Procurement Cooperative Programs

Procurement cooperatives provide for procurement directly with the vendor on the cooperative’s contract terms and conditions. Bids or proposals are not required when utilizing cooperative contracts as the procurement cooperative has issued the solicitation on behalf of the cooperative members. The following is a listing of the procurement cooperatives of which TTU is a member (others may be considered upon approval by the CPO):

- 1GPA
- Allied States Cooperative
- Buyboard
- Carahsoft
- Choice Partners
- E&I
- First Choice
- HGAC Cooperative Purchasing Program
- Internet2 (may require additional quotes)
- LEARN (may require additional quotes)
- National IPA
- National Joint Power Alliance (NJPA)
- NCPA
- Omnia
- PACE
- Premier
- Region 5
- The Cooperative Purchasing Network (TCPN)
- TexBuy
- TIPS/TAPS
- UT Alliance
- Vizient
- Western States Contracting Alliance (WSCA)

e. TTU Negotiated Contracts

The Procurement Services Office has awarded competitive contracts to several vendors based upon a competitive solicitation process. Bids or proposals are not required for procurement utilizing a TTU-negotiated contract.
6. Other Procurement Methods

a. Proprietary Procurement/Sole Source

A proprietary procurement 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 $15,000 (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 require additional quotes or bids on proprietary purchases.

The written justification must include:

- Explanation of why the unique scope of work for the goods or services is required;
- Details on 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 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 CPA policy, state statute, or the exempt procurement is in the public’s best interest. Bids or proposals are not required when procuring goods or services that are exempt; however, the department should attempt to negotiate the best value with the vendor. Exempt procurements include:

<table>
<thead>
<tr>
<th>Advertisements</th>
<th>Artwork (Original) &amp; Artifacts</th>
<th>Lodging for guests, students, and employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catering, Meals, and Food Services (not food for resale)</td>
<td>Conference Expenses (excluding promotional items for attendees)</td>
<td>Direct Publications (subscriptions, newspapers, videos, software from manufacturer)</td>
</tr>
<tr>
<td>Exhibit Spaces</td>
<td>Travel (all travel operating policies and procedures must be followed)</td>
<td>Freight</td>
</tr>
<tr>
<td>Legislative Information Services</td>
<td>Hotels &amp; Conference Rooms</td>
<td>Lecturers, Entertainers, and Guest Speakers</td>
</tr>
<tr>
<td>Registration Fees and Related Expenses</td>
<td>Membership Fees &amp; Dues</td>
<td>Personnel Moving Expenses for Employees</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Training Services</td>
<td>Student Travel (including chartered air)</td>
<td>Purchases from Federal Agencies</td>
</tr>
<tr>
<td>Purchases from Local Governments or Quasi-Governmental Agencies</td>
<td>Internal Purchases from TTU, TTUHSC, TTUHSC at El Paso, or Angelo State.</td>
<td>Postal Services</td>
</tr>
<tr>
<td>Purchases from Other State Agencies, Including Public Institutions of Higher Education</td>
<td>Utilities</td>
<td></td>
</tr>
</tbody>
</table>

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 $15,000 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 $15,000 limit applies to either a one-time procurement or repetitive procurements of the same goods or services or the same vendor 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 – $15,000: 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.**

   - $15,000.01 – $50,000: 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 the department shall solicit, at a minimum, three HUB vendors.

   - Above $50,000: Formal solicitation responses will be obtained by the Procurement Services Office on procurements above $50,000 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 purchasing@ttu.edu. Refer to OP 72.12, Historically Underutilized Businesses, for additional information.

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

8. Prohibited Procurements

a. Personal Procurements

(1) The procurement of goods or services for personal use or personal resale is strictly prohibited.

(2) Procurements in which the officer or employee of TTU has received a personal benefit from the vendor are prohibited.

b. Vendors on Hold

Departments may not make any procurement or payment to a vendor who is on hold with the state of Texas or the federal government. Individuals who obligate TTU with a vendor on hold will be held personally liable for payment of any obligations.

c. Funding Types

Certain funding types have restrictions on what may and may not be procured (e.g., no food on appropriated funds). See the attachment for a basic summary.

Attachment: Allowable Expenses by Fund Group