



# Contract Administration

## **Contract Administration Policies & Procedures**

**Presented by: Jennifer Lennon**

# OVERVIEW

- Mission and Location
- Contract Administration Responsibilities
- Contract Definition
- Before We Discuss Contracts – Operating Policies
- Important Steps to Remember
- Stages of a Contract / Rampart Forms
- Approval Authority
- Examples of Provisions / Contract Dispute Resolution
- Independent Contractor Procedure
- Department Responsibilities
- Helpful Tools

## MISSION & LOCATION

Mission: The mission of Contract Administration is to verify that contracts to purchase goods and services are in compliance with Texas state laws and in accordance with State of Texas Contract Management guidelines while evaluating institutional risks and ensuring contractual responsibilities are satisfactorily performed by ASU and vendors/contractors.

Location and contact: Two locations: Jennifer Lennon, Admin Bldg, Room 108, phone x2591 or Amanda Brown, 105A Central Receiving & Supply, phone x2748, main email for Contract Administration is [c\\_admin@angelo.edu](mailto:c_admin@angelo.edu).

## RESPONSIBILITIES OF CONTRACT ADMIN.

- Review contracts for fiscal and institutional risks;
- Verify compliance with Texas state laws;
- If contract is for a technology related process, routes contract to Information Technology for review;
- Contact vendors/contractors to negotiate terms;
- Notify departments on the status of their contract;
- Route finalized contracts for signatures;
- Retain contract files for ASU;
- Assist departments with contractor/vendor issues;
- Notify departments when contracts are expiring;
- Report contracts to the LBB;
- Report all consulting contracts to Board of Regents (BOR)

# CONTRACT DEFINITION

A contract is an agreement between two or more parties or persons that creates an obligation to do or not do a particular thing and involves consideration (a benefit).

Contracts include, but are not limited to, agreements, cooperative agreements, MOUs, interagency contracts, clinic agreements, loans, easements, insurance policies, licenses, leases, and permits with other parties.

Written contracts shall be executed whenever ASU enters into a binding agreement with another party that involves any amount and for any purpose.

# BEFORE WE DISCUSS CONTRACTS

If procurement is required, please ensure compliance with these operating policies **prior** to requesting goods or services:

- OP 14.11 Professional Services
- OP 54.02 Historically Underutilized Businesses
- OP 54.04 Purchase of Goods and Services
- OP 54.05 Use of Private Consultants

Please refer to the below operating policies:

- OP 30.01 Contracting Policy and Procedure
- OP 30.02 Contracting Authorities and Policies
- OP 30.03 Contract Administration
- OP 30.04 Auxiliary Enterprise Contractors

# STAGES OF A CONTRACT

The following elements of contract management must be considered (see flowchart):



# CONTRACT FORMS ON RAMPORT

In the Work Life Tab:

- Clinical and Affiliation Contract Routing Sheet
- Contract Routing Sheet
- Contract Dispute Resolution
- Field Placement Interagency Affiliation Agreement
- Independent Contractor Questionnaire
- General Contract Template
- Professional/Consulting Services Agreement
- Request for Proposal
- Student Clinical Experience Program Agreement
- Student Internship Experience Program
- University Agreement
- Vendor Contract Performance Form
- Request to Use a Private Consultant

## IMPORTANT STEPS TO REMEMBER

- If possible, allow for 6 weeks for review process;
- Ensure funds are available before routing contract;
- All contracts must be routed using a Routing Sheet;
- Do not sign a contract until it is approved by Contract Administration. Contracts must be signed before getting a good or service;
- Do an on-line requisition. Please indicate the assigned contract number in the “Comment” section of the online requisition;

Please note: If a contract is greater than \$500,00 per annum or greater than 4 years unless 120 day or less cancellation notice, the contract must go to BOR.

# APPROVAL AUTHORITY

No person has the authority to commit ASU for any purpose (e.g., enter into agreements) except as authorized in Section 07.12, Regents' Rules, and OP 30.02 Contracting Authorities and Policies.

## *Thomas, Richardson, Runden & Company, Inc. v. State of Texas*

Thomas, an employee of the Texas Railroad Commission, was found personally liable for a contract he signed that he was not authorized to sign. The Railroad Commission repudiated (refused) the contract and the vendor sued the State of Texas and the Railroad Commission. The court found that the employee was liable due to the employee's "implied warranty" of authority to execute the contract. The court ordered the employee to pay for the value of the services performed by the vendor and court costs.

# EXAMPLES OF STANDARD PROVISIONS

- Introduction
- Scope of Work
- Term of Contract
- Consideration/Price
- Payment schedule
- Specifications
- Party Responsibilities
- Indemnification by Vendor
- Independent Contractor
- Right to Audit
- Force Majeure
- Vendor Hold Status
- Venue/Governing Law
- Default / Termination
- Insurance
- Assignment
- Confidentiality/Open Records
- Antitrust
- Technology Access Clause
- Equal Opportunity
- HUB compliance
- Intellectual Property
- Contract Dispute Resolution

# CONTRACT DISPUTE RESOLUTION FORM

Per the Attorney General's Office, the Contract Dispute Resolution (CDR) MUST be included in all state contracts for the purchase of goods or services:

- The CDR notifies the contractor of the remedies available to them under Chapter 2260 of the Texas Government Code should a breach occur that cannot be resolved in the ordinary course of business.
- Whether the contractor chooses to sign or not, Chapter 2260 of the Texas Government Code still applies to the contract at hand.

# EXAMPLES OF PROHIBITED PROVISIONS

- Arbitration
- Attorney Fees
- Collection Fees
- Indemnification by ASU
- General Liability Insurance
- Workers Compensation Insurance
- Warranties
- Release of Records & Proprietary Information
- Other State Law
- Waiver/Change of Contract Dispute Resolution
- Contract Terms Beyond BOR Regulations
- Personnel Policies that are not ASU

# INDEPENDENT CONTRACTOR

See Handout:

- Independent Contractor Questionnaire
- Request to Use a Private Consultant
- Contract Routing Sheet
- Notification to Board of Regents
- Attach Resume

All consulting contracts must be reported to the BOR before contract is signed. All consulting contracts greater than \$25,000 per annum must get BOR approval.

## CONTRACT MONITOR (OP 30.03)

- Monitor vendor/contractor's and ASU's progress and performance in completing contract responsibilities;
- Authorize payments consistent with contract documents;
- Exercise remedies, in conjunction with the Contract Administration Office, when a contractor's performance is deficient;
- Document significant events and maintain appropriate records;
- Prior to closeout, CM should complete Vendor /Contractor Performance Form.

## VENDOR/CONTRACTOR PERFORMANCE FORM

For all contracts in excess of \$10,000, **except** for:

- Publishing agreements for the Print Shop
- Conference room agreements
- Sponsorship agreements for Athletics
- Employment contracts
- Membership fees and dues
- Purchases from federal agencies
- Purchases from the Texas Department of Criminal Justice
- Purchases from Texas Industries for the Blind and Handicapped
- Subscriptions
- Lecturers and guest speakers

## HELPFUL TOOLS

Contract Administration Website:

[http://www.angelo.edu/services/contract\\_administration/](http://www.angelo.edu/services/contract_administration/)

State of Texas Contract Management Guide:

<http://www.window.state.tx.us/procurement/pub/contractguide/>



# Purchasing

## **Purchasing Policies & Procedures**

**Presented by: Margaret Mata**

# OVERVIEW

- Mission and location
- General
- Overview of the Purchase Order Process
- Procurement Spending Thresholds/Best Value
- Exceptions to Bidding Requirements
- ProCards
- HUBs
- Policies and Procedures
- Helpful Links

## MISSION & LOCATION

Mission: The mission of the Purchasing Office is to procure goods and services to support the educational and research requirements of the University according to the rules and regulations prescribed by state law.

Location and contact: The Purchasing Office is located in the Administration Building, 2601 W. Avenue N, Room 110, San Angelo, Texas 76909. Hours of operation are 8:00am to 5:00pm, Monday through Friday, excluding University holidays. You may also reach us by phone at (325) 942-2012 or fax at (325) 942-2010 or email at [asu\\_purchasing@angelo.edu](mailto:asu_purchasing@angelo.edu)

## GENERAL

Whether you are responsible for creating requisitions, approving requisitions, or you are researching a prospective purchase for your department, making purchases for the university mandates that you serve as a good steward of state resources. University purchases are required to follow established University policy and applicable state statutes or federal law.

The total anticipated transaction amount effects Bidding Requirements.

## GENERAL

The Fund Source determines the statutes and reporting requirements that must be followed.

Specific requirements on certain goods or services may require additional approval and documentation.

The two primary methods for purchasing goods and services are by a Purchase Order or Procurement card (ProCard).

## Overview of the Purchase Order Process

Online Requisitions: Requisitions are submitted electronically by the Requestor for approval by the Budget Authority and Purchasing. A requisition is the process for requesting permission to purchase goods. All known details should be provided on requisitions to include the purpose for the purchase. Once all approvals are obtained and any issues are resolved, authorized Purchasing staff will turn requisitions into PO's.

## Overview of the Purchase Order Process

Purchase Orders (PO's): Purchase Orders are considered binding business contracts which commit funds on behalf of the University. The Purchase Order (PO) is the process for formally placing the order with the vendor. Without the official PO, the University is not obligated to make payment to the vendor.

The PO provides the correct shipping and invoicing addresses for the University. The PO is payable to vendors when goods/services are rendered and all terms of compliance are followed.

## Overview of the Purchase Order Process

Vendor contracts require additional review by Contract Administration. Contract Administration ensures the appropriate signature authority is included on each contract and that all terms and conditions are acceptable for the University.

It is a state requirement that funds must be encumbered prior to getting a good or service.

## Procurement Spending Thresholds

Vendor of Choice: Purchases of \$5,000 and below allows for selection of vendor of your choice. However, departments are encouraged to utilize HUB's and award based on best value.

Informal Bids: Three informal bids are required when purchases are between \$5,000.01 to \$25,000, two of which must be HUB vendors. Awarded based on best value.

## Procurement Spending Thresholds

Formal Bids: Formal bids are required when purchases are \$25,000.01 and above. Departments should contact Purchasing as soon as possible after the determination of need is made and the estimated cost is greater than \$25,000. The formal bid process requires 45 to 120 days lead time of requested receipt of product or delivery of service, depending on the complexity of the bid. The lead time includes time for developing, posting, and obtaining responses from the solicitation, and awarding the bid. Awarded based on best value.

## Best Value

Section 51.9335, Education Code: In determining what is the best value to an institution of higher education, the institution shall consider:

- the purchase price;
- the reputation of the vendor and of the vendor's goods or services;
- the quality of the vendor's goods or services;
- the extent to which the goods or services meet the institution's needs;
- the vendor's past relationship with the institution;

## Exception to Bidding Requirements

- State Term Contracts awarded by the Texas Procurement and Support Services (TPASS)
- Cooperative Group Purchases
- Proprietary Purchases (Sole Source)
- Emergency Purchases
- Exempt Purchases

## State Term Contracts

State contracts are agreements issued by the TPASS for frequently used items.

Visit TPASS at:

<http://www.window.state.tx.us/procurement/contracts/>

Some of the contract links available on this website include:

- TxSmartBuy Contracts
- TXMAS Contracts
- DIR Contracts

## **Cooperative Group Purchases**

Group purchase contracts are competitively bid and awarded to national vendors in accordance with purchasing procedures mandated by state procurement laws and regulations.

## Cooperative Group Purchases

Listing of Cooperative Group Purchasing Organizations:

- US Communities
  - <http://www.uscommunities.org/>
  
- E&I
  - <https://www.eandi.org/>
  
- TCPN
  - <http://www.tcpn.org/>
  
- BuyBoard
  - <http://www.buyboard.com/default.html>

## **Proprietary Purchases (Sole Source)**

A proprietary purchase (also known as a “Sole Source”) is one in which a product or service is available only from one vendor.

It may be that a vendor holds a patent or copyright for a particular product.

In order to complete a proprietary purchase, an end user will have to prepare the “ASU Justification for Proprietary Purchase” form in RamPort.

## **Proprietary Purchases (Sole Source)**

The form is not required on a purchase of less than \$5,000. Justification must be based upon unique technical or performance characteristics.

Personal preferences for certain brands or products does not adequately justify limiting competition.

Resellers cannot be sole source.

## Emergency Purchases

A purchase of goods or services so badly needed that the University will suffer financial or operational damage unless they are secured immediately.

Competition may not be precluded and normal purchasing procedures are not necessarily followed.

Lack of planning or loss of funds at end of fiscal year does NOT constitute an emergency.

## Emergency Purchases

These purchases require written justification to be attached to the requisition with the following information:

- The reason for the emergency
- The financial or operational damage/risk possible to the University
- Why standard procedures could not be used to obtain the products/services
- The reason and process used for selecting the vendor

## Exempt Purchases

Exempt purchases are purchases that are exempt from the competitive bidding process. They include:

- Classified advertisements
- Conference expenses
- Direct publications (e.g. direct subscriptions, prepared videos, and software packages purchased directly from the developer)
- Exhibit space
- Freight
- Hotels and conference rooms
- Internal repairs

## Exempt Purchases

- Inter-agency purchases (purchases from other state agencies)
- Lecturers/guest speakers
- Legislative information services
- Membership fees and dues
- Moving expenses (employee)
- Newspaper and magazine subscriptions directly from the publisher
- Registration fees and associated books and materials
- Student Travel
- Purchases from federal agencies

## Exempt Purchases

- Purchases from the Texas Department of Criminal Justice
- Purchases from Texas Industries for the Blind and Handicapped
- Utilities

## Procurement Credit Cards (ProCard)

- The ProCard program is designed to provide a fast and efficient method of procurement by departments for their day to day operations.
- ProCard purchases are limited to goods or services where orders do not exceed a specific limit authorized for each individual cardholder and the purchase meets guidelines established by ASU policy and as outlined in the ProCard Program Guide.

## Procurement Credit Cards (ProCard)

- Procards are available to only full time University employees that are approved to obtain one by the responsible Budget Authority.
- All individuals who participate in the ProCard program must receive initial cardholder training prior to receiving the credit card.

## HUB Responsibility

- ASU is dedicated to assisting Historically Underutilized Businesses (HUBs). Our responsibility is to promote and increase procurement opportunities with HUBs by demonstrating a good faith effort for HUB vendors to participate in bidding opportunities.
- A HUB is defined as 51% owned by a minority including Black, Hispanic, Asian, American Indian and Female.
- As a state institution of higher education, ASU must submit a Semi-Annual and Annual HUB performance/compliance report to the Comptroller.

## Identifying HUB Vendors

- Go to the Texas Comptroller Site:  
<http://www.window.state.tx.us/procurement/cmb1/hubonly.html>
- You can search by vendor name or categories
- A listing of some Texas HUBs can also be found at the following site:  
<http://www.angelo.edu/services/purchasing/Vendor%20Lists.html>

## **ASU Operating Policies and Procedures**

- OP 54.01 - Entertainment Policy
- OP 54.02 - HUB Policy
- OP 54.03 - Purchase of Food
- OP 54.04 - Purchase of Goods and Services

## Helpful Links

The Texas Comptroller of Public Accounts created eXpendit to provide information to state agencies and institutions of higher education on how to properly carry out purchase transactions while complying with certain provisions of the constitution, statutes and rules of Texas related to expenditures.

- <https://fm.xcpa.state.tx.us/fm/pubs/purchase>

### Purchasing Office Website

- <http://www.angelo.edu/services/purchasing/>
- Staff: Margaret Mata, Elicia Rankin, Stacey Sauer and Janice Smith

# Questions