



Angelo State University
Operating Policy and Procedure

OP 54.04: Purchase of Goods and Services

DATE: May 25, 2017

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

REVIEW: This OP will be reviewed in September every five years, or as needed, by the director of purchasing and travel and executive director of materials management with recommendations for revision forwarded through the vice president for finance and administration to the president by October 15 of the same year.

POLICY/PROCEDURE

1. General Policy

- a. This policy will apply when using all sources of funds for the procurement of goods and services.
- b. All procurements of goods or services must have a clear business purpose that supports the mission of Angelo State University (ASU) and must follow the Texas Tech University System Contract Management Handbook.
- c. Only the director of purchasing & travel or the executive director of materials management, and other ASU personnel designated by the president, may commit ASU to the procurement of goods and services.
- d. Departments are required to verify appropriate use of funding for all procurement of goods or services.
- e. State and federal laws and ASU operating policies and procedures strictly prohibit splitting procurement limits to circumvent the requirements outlined in this OP.
- f. All procurements must comply with [OP 54.02 Historically Underutilized Businesses](#).
- g. The director of purchasing & travel or the executive director of materials management have the authority to make any exception to this policy so long as it does not violate any federal or state laws.
- h. An employee shall not make any unauthorized commitments or promises of any kind purporting to bind ASU for any goods or services without an authorized purchase order, ProCard purchase, and/or contract.

- i. ASU will delay implementation of new procurement rules in 2 CFR §§200.317 - 200.326 until August 31, 2018, and in the interim will follow the guidance of the old standards.
- j. In the event of any conflict between this OP and any state or federal procurement regulations, state and/or federal procurement regulations shall prevail.

2. Definitions

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 \(b\)](#).

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

Conflict of Interest: A Conflict of Interest refers to a situation in which an employee's financial, professional, or other personal considerations may directly or indirectly affect, or have the appearance of affecting, the employee's judgment in exercising any duty or responsibility, including the conduct or reporting of research, owed to the Institution.

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](#)).

Contractor: An entity or individual that has 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."

Emergency Procurement: Emergencies 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*.

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

Goods: Supplies, materials, or equipment as defined in [Texas Government Code § 2155.001](#). Goods do not include services or real property.

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

Proposal: A response to a request for proposals (RFP) and intended to be used as a basis to negotiate a contract award.

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

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

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

Request for Qualifications: A Solicitation document requesting submittal of Qualifications in response to the scope of Services required.

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

Scope of Work (or “SOW”): A detailed, written description of the conceptual requirements contained within the Specifications.

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 Goods.

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

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

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.”

3. Procurement Conflict of Interest and Code Of Ethics

- a. All employees must follow [OP 02.09 Conflict of Interest and Commitment](#) and [OP 52.02 Ethics Standards and Conduct Policy](#) when procuring goods or services.
- b. ASU employees shall act impartially and not give preferential treatment to any private or public organization or individual while procuring goods or services.
- c. The procurement of goods or services for personal use and/or for personal resale are strictly prohibited.
- d. An employee shall not receive, attempt to receive, nor intend to receive at any time any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service from any vendor in connection with any bid, proposal, qualification request, purchase, payment, or contract.
- e. If any conflict of interest occurs or is perceived to have occurred during the procurement of goods and services, the employee shall remove him/herself from the process and disclose the relationship to his/her direct supervisor and to the director of purchasing & travel. The director of purchasing & travel shall review the procurement of goods or services with the purchasing conflict of interest committee to determine if procurement is allowable.

- f. Procurement of goods or services that result in a personal benefit for any officer, faculty, staff, or student are a violation and may result in additional disciplinary action.

4. Policy for Purchasing and Contracting Office Staff

In addition to the rules for officers, faculty, and staff outlined in Section 3, staff members in the Purchasing and Contracting Offices shall also adhere to the following policies:

- a. Staff members shall disclose annually any relations they may have that would cause a conflict of interest in performing their duties. If such conflict exists, the staff member shall remove himself/herself from any procurement in which there might be a conflict. Staff members shall at all times keep their supervisors notified of any conflicts and any changes in the status of a conflict.
- b. Staff members must disclose to their supervisor any confidential information in which there would be a private interest or personal gain.
- c. Staff members may not authorize any purchase order, contract, or payment with any vendor in which there would be a conflict of interest or private interest or personal gain.

5. Policy for Vendors

- a. Vendors shall be required to sign the Bidder Affirmation form upon request by the ASU Purchasing Office. The Bidder Affirmation requires vendors to affirm their compliance with state laws, federal laws, and/or ASU policies, as applicable
- b. 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 ASU with a vendor who is on hold may be held personally liable for payment of any obligations.

6. Acquisition of Goods and 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 bidding;
 - (2) Competitive sealed proposals;
 - (3) Catalog purchase (CISV);
 - (4) Group purchasing programs; or
 - (5) Open market contract.
- b. In determining best value to an institution of higher education, the institution shall consider:
 - (1) Purchase price;

- (2) Reputation of the vendor and of 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) Vendor's past relationship with the institution;
 - (6) Impact on the ability of the institution to comply with laws and rules relating to historically underutilized businesses (HUBs) and to the procurement of goods and services from persons with disabilities (TIBH);
 - (7) 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) 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 use of the unique material specified.
- c. Procurements of goods and services must comply with state and federal laws, institutional policies and procedures, and the [Regents' Rules, Chapter 7](#).
 - d. All procurement of goods and services that require a contract, contract amendment, or SOW will be reviewed in accordance with [OP 30.01 Contracting Policy & Procedures](#).
 - e. All information technology procurement of goods and services must be reviewed by the Office of Information Technology
 - f. Purchase orders are not intended to be used strictly as a payment tool; therefore, the purchase order must be created prior to the commitment or obligation. Purchase orders submitted after the commitment has been made and/or after the goods and services are received will constitute non-compliance.
 - g. All electronic and information resources (EIR) products developed, procured, or changed through a procured services contract, and all EIR services provided through hosted or managed services contracts, shall comply with the provisions of Chapter 206 and Chapter 213 of the [Texas Administrative Code](#), as applicable, unless such requirement imposes a significant difficulty or expense, as determined and exempted by the president of the university. If the total dollar value being paid for an EIR does not exceed \$40,000, the purchase of an EIR does not have to comply with Chapter 213 of the *Texas Administrative Code*.
 - h. The Purchasing Office 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 made the improper procurement or transaction.

7. Procurement Methods

- a. Procurement Card (Pro-Card) – The procurement card should be utilized for allowable low-dollar procurements. See the [Purchasing Office](#) website, for procurement card guidelines and application.
- b. Texas Industries for the Blind and Handicapped (TIBH) - Commodities and/or services that are available through the Texas Council for Purchasing from People with Disabilities (currently TIBH) must be purchased through this entity when state-appropriated funds are being used unless non-utilization of TIBH can be adequately justified. Contact the Purchasing Office for assistance with purchasing via TX Smartbuy.
- c. State of Texas Contracts – The Texas Comptroller of Public Accounts establishes contracts, including term contracts, TXMAS and DIR contracts for goods and services. These contracts are accessible on the [Purchasing Office](#) website.
- d. Purchasing Co-ops – Angelo State University is a member of numerous purchasing co-ops, which allow purchases to be made directly with the vendor as the bidding and/or negotiation process has already occurred. These contracts are accessible on the [Purchasing Office](#) website.
- e. 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.
- f. Request for Qualifications – Selection and award to vendors is based solely on demonstrated competence to perform the Services; and for a fair and reasonable price. Price is negotiated after ASU has made a selection based on Qualifications.
- g. Competitive Solicitations- If the “best value” for the commodity or service is not obtained from one of the above-listed programs, follow the bidding requirements below.

8. Proprietary Procurement

- a. A proprietary purchase is justified only when an equivalent product or service competition is not available. When the specification requirement limits consideration to one manufacturer, one product, or one service provider, and the amount of the purchase exceeds \$15,000 (either in a one-time procurement or repetitive procurements of the same goods or services during a fiscal year), a written justification must be provided, as required by state and federal law and university policy. Price and personal preferences are not acceptable as determining factors. The Purchasing Office reserve the right to require additional quotes or bids on proprietary purchases.
- b. The attached Proprietary Purchase form must be included as an additional form with the requisition, to assist in the justification process. The project account manager must state:
 - Explanation of why the unique scope of work for the goods or services are required;
 - Details on the unique features of the goods or services;
 - Reason that competing goods or services are not satisfactory; and

- Any other relevant information to support the sole source documentation.

9. Procurement Requirements

- a. Competitive solicitations must be obtained on all procurements of goods or services in excess of \$15,000 unless the requirement can be properly justified as a proprietary procurement, emergency procurement, exempt procurement, or the purchase is made from 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. Departments must contact the Purchasing Office for assistance with procurement of goods or services over \$15,000.
- b. Current solicitation limits per fiscal year, regardless of the source of funds are:

\$0 - \$15,000	Only one solicitation (bid or quote) is required; however, requisitioning departments are encouraged to obtain more than one bid. Purchases from a historically underutilized business (HUB) are encouraged to the fullest extent possible.
\$15,000.01 - \$40,000	Three informal competitive solicitation responses (bids or quote) are required, with two being from certified HUBs. The Invitation to Bid form or an approved modified version is the preferred method to solicit vendor responses (contact the Purchasing Office for assistance). If one or more non-responsive solicitation responses are received from the HUB vendors, then solicit, at a minimum, three HUB vendors.
Over \$40,000	Formal solicitation responses will be obtained by the Purchasing Office on procurements in excess of \$40,000 that do not conform with one of the other procurement types listed in this OP.
- c. Exception to above bid requirements:
 - (1) The ASU Print Shop has first right of refusal for all printing and binding jobs. Bids are not required if printing and binding are done by the ASU Print Shop. Competitive bidding is required in order to procure external printing and binding services.
 - (2) Exempt purchases as stated below.
 - (3) Proprietary purchase adequately justified (request in excess of \$40,000 may require a formal solicitation if required by the Purchasing Office).
- d. All procurements that exceed \$40,000, without regard to the source of funds, may be posted on an [electronic bulletin board](#) managed by the Comptroller of Public Accounts, if there is an advantage to do so.

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- e. The account manager is encouraged to solicit and purchase from HUBs to the fullest extent possible. For assistance in locating HUBs, contact the Purchasing Office.
- f. State and federal laws and university policies strictly prohibit the splitting of orders to circumvent the bidding process.

10. Exempt Purchases

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

- a. Artwork (original);
- b. Classified advertisements (e.g., newspaper and magazine advertisements);
- c. Conference expenses (expenses related to conference room services such as audio/visual/network and food services; however, goods purchased for attendees or transportation services are not exempt);
- d. Direct publications (e.g., direct subscriptions, prepared videos, and software packages purchased directly from the developer);
- e. Exhibit space (e.g., booths for display purpose);
- f. Freight;
- g. Hotels and conference rooms;
- h. Internal purchases from ASU, TTU, or TTUHSC;
- i. Internal repairs;
- j. Inter-agency purchases (purchases from other state agencies)
- k. Lecturers/guest speakers (fees for one time only, not for continuous engagements)
- l. Legislative information services; bill analysis services
- m. Membership fees and dues
- n. Moving expenses (employee)
- o. Newspaper and magazine subscriptions directly from the publisher
- p. Postal Services;
- q. Purchases from federal agencies;
- r. Purchases from local governments or quasi-governmental agencies;
- s. Purchases from other state agencies, including public institutions of higher education;

- t. Purchases from the Texas Department of Criminal Justice;
- u. Purchases from Texas Industries for the Blind and Handicapped;
- v. Registration fees and associated books and materials;
- w. Student travel (except for chartering aircraft);
- x. Training services;
- y. Travel (all travel operating policies must be followed);
- z. Utilities

11. Emergency Purchases

- a. An emergency purchase is defined 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 Procurement may be warranted to prevent a *hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the Institution.*
- b. An emergency purchase requires a letter of justification stating:
 - (1) The reason for the emergency purchase by explaining what the emergency is and/or what caused the emergency;
 - (2) The financial or operational damage that will occur if needs are not satisfied immediately (do not just state there will be a loss or damage); and
 - (3) Why the needs were not or could not be anticipated so that items could be procured through regular procurement procedures.

12. Advance Payments

- a. Generally, prepayment is not authorized for the purchase of supplies, materials, equipment, or services. When utilizing state-appropriated funds, there are only a few exceptions:
 - (1) Library purchases for the university libraries;
 - (2) Databases and other published materials necessary for the efficient operation of the institution's library;
 - (3) Payments to federal and other state agencies;
 - (4) Lease payments;
 - (5) Subscriptions (up to six weeks in advance);

- (6) Rental fees for a meeting room or exhibit booth;
 - (7) Annual maintenance agreements;
 - (8) Registration fees.
- b. When institutional funds are being used, advance payments will be made to vendors only when no practical alternative exists to satisfy a need, when definite price savings can be realized, or when it is in the best interest of Angelo State to do so. Advance payments will not be made to vendors who sell to some classes of customers without advance payments, but require such payments from Angelo State, unless there is no alternative and the payments are approved in advance by the controller.

13. Receipt of Goods and Services

- a. Requisitioning departments must inspect all shipments delivered by Central Receiving against the purchase orders and report any discrepancies to the Purchasing Office. Any discrepancy, including non-compliance with specifications, shortages, overages, and any damages must be reported immediately, but no later than 15 days after receipt of goods and/or services.
- b. Requisitioning departments are responsible for notifying the Purchasing Office when an order is complete if the department picked up the items directly from the vendor or if services were rendered against a purchase order so that payment can be made to the vendor in a timely manner.
- c. Substitution of items called for in a contract is not permitted without the Purchasing Office's prior approval. No approval will be granted unless substituted items are of equal quality and are offered at the same or lower price.
- d. Items and/or services must comply with the written specifications contained within the purchase order and/or contract. Failure to do so by the vendor will result in non-payment to the vendor.

Attachment: [Proprietary Purchase](#)