

## 25.07.03.R0.01 Acquisition of Goods and/or Services

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### Procedure Statement

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The Texas Education Code 51.9335 provides a general description of the requirements for the acquisition of goods and services by institutions of higher education and this procedure provides guidelines to minimize risks associated with the procurement of goods and services and allow the university to carry out its fiduciary responsibilities.

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### Reason for Procedure

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This procedure establishes the intention and scope for Texas A&M University-Commerce's acquisition of goods and/or services according to sound business practices and best value.

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### Procedures and Responsibilities

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#### 1 GENERAL

- 1.1 All acquisitions must comply with the university's purchasing procedures. Each acquisition must be fully documented, with all documents retained in accordance with the university's records retention schedule. There are two types of purchasing authority: (1) acquisitions processed directly through and by Procurement Services; and (2) acquisitions delegated to all departments with a stated dollar limit of \$10,000. Acquisitions requiring a written contract, other than the university standard acquisition order, must be in compliance with the provisions of System Policy *25.07 Contract Administration*, and System Regulation *25.07.01 Contract Administration Procedures and Delegation*.
- 1.2 Unless specifically exempted (see section 5), the following procurement methods must be utilized: competitive bidding; competitive sealed proposals; catalogue acquisition procedures; group purchasing; and alternate methods relevant to specific application of goods or services purchased.

- 1.3 All acquisitions shall be based on a “best value” and shall encompass the following: acquisition price; reputation of the vendor and of the vendor’s goods or services; quality of the vendor’s goods or services; extent to which the goods or services meet the university’s needs; the vendor’s past performance with the university; impact on the ability of the university to comply with laws and rules relating to Historically Underutilized Businesses (HUBs) and to the procurement of goods and services from persons with disabilities; total cost of ownership to the university of acquiring vendor’s goods and services; use of material in construction or repair to real property that is not proprietary to a single vendor unless the university provides a written justification in the request for bids of the unique material specified; and any other relevant factor that a private business entity would consider in selecting a vendor.
- 1.4 Proprietary acquisition requisitions, those that can only be purchased from a single source, must be properly justified, in writing, before Procurement Services may process the requisition. All proprietary acquisition requisitions are reviewed for appropriate justification by the assigned buyer and then reviewed by the Chief Procurement Officer (CPO). At any point in the proprietary acquisition review process, the reviewer may forward the request to the next level supervisor for their review and approval regardless of the dollar value.
- 1.5 The CPO retains authority over all Acquisitions of Goods and Services for the University. The CPO reserves the right to make the final decision in the award of any contract, deemed the “Best Value” for the University. In addition, the CPO or his/her designee reserves the right to take exception to any purchasing rule on a case-by-case basis, which is determined to be in the best interest of the University.

## 2 ACQUISITION OF GOODS OR COMMODITIES

- 2.1 Procurement Services has delegated authority to departments to make acquisitions of goods and commodities without competitive bid for \$10,000 or less (including freight and/or postage); however departments are encouraged to obtain multiple bids whenever possible.
  - 2.1.1 All employees making acquisitions under delegated purchasing authority shall adhere to the System Policy *07.01 Ethics* and System Regulation *21.01.03 Disbursement of Funds*.
  - 2.1.2 Acquisitions within these dollar limits require proper documentation in the requisition or as provided in the university’s guidelines for procurement card acquisitions.
  - 2.1.3 Acquisitions may not be separated into smaller dollar acquisitions in order to remain within the authorized dollar limit of authority.

2.1.4 In the event an acquisition or series of acquisitions (that appropriately should have been combined into a single acquisition) are made exceeding the \$10,000 delegated authority, the department shall submit a non-compliant acquisition requisition letter. The letter shall be from the department head and should explain the circumstances surrounding the non-compliant acquisition and actions to be taken to avoid a reoccurrence. . The CPO has the authority to approve non-compliant payments to vendors that do not exceed \$1,000,000. All non-compliant payment requests greater than \$1,000,000 must be reviewed and approved by the Vice President for Business and Administration or designee.

Procedures and ramifications of non-compliant requisitions can be found in the Procurement Manual. Additional disciplining action may be taken.

2.1.5 Departments shall provide equal opportunity and access to all vendors for the acquisition of goods and commodities. Procurement Services will assist in identifying Historically Underutilized Businesses for such acquisitions. Assistance in identifying HUBs may be found at <http://www.tamuc.edu/facultyStaffServices/purchasing/default.aspx> for an on-line listing of HUBs.

2.1.6 Departments shall acquire goods, whenever possible, from persons with disabilities: Texas Industries for the Blind and Handicapped (TIBH). Procurement Services will assist in identifying TIBH contracts. TIBH contracts may be viewed at the following website: <http://www.tibh.org/shop.php>

2.1.7 The State of Texas has awarded contracts that are available for use by all state agencies and institutions of higher education. Departments are highly encouraged to review and utilize the state contracts whenever possible. Procurement Services administers many university and system-wide blanket-pricing contracts. For detailed information on the available university contracts, contact a buyer in Procurement Services.

2.2 All acquisitions in excess of the authorized departmental acquisition limit, excluding section 5.5 Exempt Acquisitions, shall be submitted as a requisition to Procurement Services. Upon receipt of the acquisition requisition, Procurement will determine the appropriate method of procurement and process accordingly.

### 3 ACQUISITION OF SERVICES

3.1 Acquisition of services is defined as the furnishing of skilled or unskilled labor or professional work, but does not include: (1) professional services as defined by Subchapter A, Chapter 2254, Texas Government Code; (2) service of a state agency employee; (3) consulting service as defined by Subchapter B, Chapter 2254, Texas Government Code; or (4) service of a public utility.

3.1.1 Requisitions must be submitted for the acquisition of services and the award issued before the service begins.

If the service can only be provided by a sole source provider, the requisition must indicate that the desired acquisition is a sole source acquisition and complete the online justification provided in Mane Market.

3.2 If a service will be required and rendered throughout the fiscal year, with an estimated cumulative value that exceeds \$10,000, a requisition must be forwarded to Procurement Services.

3.3 Procurement Services may delegate authority, to certain departments, for the acquisition of services. This may be for one-time acquisitions or continual service acquisitions within the departmental purchasing threshold of \$10,000.

#### 4 EMERGENCY ACQUISITIONS

An emergency acquisition is defined as an acquisition of goods or services that if not secured immediately, the university will suffer financial or operational damage. In the case of an emergency, departments must notify Procurement Services immediately. If the emergency happens after normal business hours, the department shall notify Procurement on the next business work day.

4.1 A written emergency justification is required.

4.2 Three informal bids must be obtained except when securing bids would significantly impede the process of completing the acquisition.

#### 5 ACQUISITION OF SPECIFIC GOODS OR SERVICES

##### 5.1 Computer Software

All software with a cost in excess of \$100,000 is classified as capital equipment and must be inventoried. All acquisition requisitions for software shall be sent to Procurement Services for processing. Software acquisitions are not allowed on the procurement card without prior approval from Procurement Services.

(See System Policy 29.01 and System Regulation 29.01.01 for additional requirements)

##### 5.2 Rental of Machines and Equipment

Rental of machines and equipment that do not include an operator are considered goods. Rentals that include an operator provided by the supplier are considered services. All rentals must be processed through Procurement Services prior to the date of required use.

### 5.3 Exempt Acquisitions

The following services are exempt from competitive bidding requirements, regardless of dollar amount:

5.3.1 Advertising

5.3.2 Conference Expenses

5.3.3 Hotels and Conference Rooms

5.3.4 Moving Expenses: (institutional funds only)

5.3.5 Lecturers/Guest/Speakers/Entertainers: fees for speakers/lecturers/ entertainers hired on a one-time basis (does not include fees for speakers on a continuous basis)

5.3.6 Student Travel: expenses related to student travel

5.3.7 Library materials: specific for A&M-Commerce Libraries

5.3.8 Legislative information services: bill analysis services

5.3.9 Membership fees and dues

5.3.10 Newspaper and magazine subscriptions direct from the publisher

5.3.11 Freight

5.3.12 Postage

5.3.13 Services provided by other State of Texas agencies, System members, or by other local governments (inter-agency and inter-local agreements must be reviewed by Procurement Services)

5.3.14 Registration fees and associated books and materials

5.3.15 Rental of exhibit space (booths for display purposes)

5.3.16 Goods and services provided by the Texas Department of Criminal Justice

5.3.17 Goods and services provided by the Texas Industries for the Blind and Handicapped

5.3.18 Internal repairs

- 5.3.19 Insurance premiums
- 5.3.20 Acquisitions from federal agencies
- 5.3.21 Utilities
- 5.3.22 Acquisition of livestock
- 5.3.23 Acquisition of feed for livestock
- 5.3.24 Catering services
- 5.3.25 Group Purchasing Programs (Co-Op)
- 5.3.26 Medical Doctor Services
- 5.3.27 Acquisitions from the GSA Contracts
- 5.3.28 Software
- 5.3.29 Artists (Painters, Sculptors, Composers, Performers)
- 5.3.30 Works of Art
- 5.3.31 Employee & Prospective Employee Travel

#### 5.4 Lease of Space

All lease-of-space requests for the University, regardless of the amount, must be submitted to Procurement Services for processing. Requests must include an acquisition requisition and specific lease information.

#### 5.5 Lease/Acquisition or Installment Payment Acquisition

Requests for all lease-acquisitions or installment payment acquisitions, regardless of the amount, shall be submitted to Procurement for processing.

#### 5.6 Professional Services

5.6.1 Professional Services are those services directly related to the professional practices as defined by the Professional Services Procurement Act (Texas Governmental Code, Chapter 2254, Subchapter A). These service include:

5.6.1.1 Accounting – a certified public accountant (CPA)

5.6.1.2 Architecture – an architect

5.6.1.3 Landscape Architecture

5.6.1.4 Land Surveying – a land surveyor

5.6.1.5 Medical – a physician, including a surgeon

5.6.1.6 Optometry – an optometrist

5.6.1.7 Professional Engineering – a professional engineer

5.6.1.8 Real Estate Appraising – a state certified/licensed real estate appraiser

5.6.1.9 Professional Nursing – registered nurse

5.6.2 However, services provided by professionals outside the scope of their profession, e.g., management consulting service provided by accounting firms, are not considered professional services.

5.6.3 Professional services are exempt from the competitive bid process. Instead, professionals compete based upon their qualifications and the ability to perform the scope of work as described in the Request for Qualifications (RFQ).

5.6.4 Before entering into an agreement for Professional Services, contact Procurement Services for guidance and approval. However, this general rule applies: Contracts for professional services where the estimated cost of the contract is less than \$25,000 do not have to be bid by RFQ.

5.6.5 The transition should be completed by Procurement Services to ensure legislative requirements are satisfied.

## 5.7 Consulting Services

5.7.1 A sometimes confusing aspect of dealing with a consultant contract is recognizing one. A contract with someone who calls himself or herself a consultant is not necessarily a “consultant contract” within the meaning of the Government Code.

5.7.2 Texas Government Code, Chapter 2254, Subchapter B, defines “consulting service” as the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

- 5.7.3 Studying or advising is the core of a true consultant contract and should be construed broadly. To “study” a state agency typically would mean to consider some aspect of the agency in detail, such as its financial status or its method of performing an administrative function, and to present that information to the agency. To “advise” a state agency typically would mean to provide a recommendation or identify options with respect to some course of action. The service of studying or advising also would include certain direct activities, such as “to assist” or “to coordinate” unless those activities are performed with respect to an exempted service.
- 5.7.4 One way to recognize whether a would-be consultant is “studying or advising” as opposed to doing something else, is to look at the deliverable involved. Generally speaking, a true “consultant” delivers information or provides assistance that enables the state agency to take some course of action. On the other hand, if the information simply enables the would-be consultant to take some course of action on the agency’s behalf which is itself not a consulting service (such as developing software), then one is likely not dealing with a true “consultant contract” within the meaning of the code.
- 5.7.5 However, the State recognizes that sometimes true consultant contracts will necessarily involve a mixture of consulting (studying or advising) and other services. Such contracts are referred to as “mixed” contracts. According to Texas Government Code, Section 2254.038, “A mixed contract is still a true consultant contract when the primary objective is to study or advise”.
- 5.7.6 Before entering into a consulting contract, consult Procurement Services for guidance. As a general rule, however, the following limits apply:
- 5.7.6.1 For consulting services less than \$50,000, no bids are required. The Department will be required to submit a “Best Value” letter stating why the particular consultant was chosen.
- 5.7.6.2 For consulting services greater than \$50,000, formal bidding through either a Request for Qualification (RFQ) or Request for Proposal (RFP).
- 5.7.7 The transaction must be completed by Procurement Services

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## **Related Statutes, Policies, or Requirements**

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[Texas Education Code, 51.9335\(a\)-\(e\)](#)

System Policy [07.01 Ethics](#)

System Policy [25.07 Contract Administration](#)

System Policy [29.01 Information Resources](#)

System Regulation [21.01.03 Disbursement of Funds](#)

System Regulation [25.07.01 Contract Administration Procedures and Delegations](#)

System Regulation [25.07.03 Acquisition of Goods and/or Services](#)

System Regulation [29.01.01 Information Resources Governance](#)

University Rule [25.06.01.R1 Historically Underutilized Business \(HUB\) Rule](#)

University Procedure [25.07.01.R0.01 Contract Administration](#)

This procedure supersedes University Procedure [25.99.02.R0.01 Purchasing Procedure](#)

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## **Definitions**

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Best Value – the means/methods that goods and/or services are procured as defined by Education Code 51.9335

Historically Underutilized Business - a historically underutilized business is an entity with its principal place of business in Texas, and is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American and/or American woman who resides in Texas and has a proportionate interest and demonstrates active participation in the control, operation and management of the entity's affairs.

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## **Contact Office**

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Procurement Services  
903-468-3000