Section 04.08.01

PURCHASING GUIDELINES

The Texas A&M University System (System) was granted additional purchasing authority by the 77th Legislature. The System Procurement Code (Code) was developed to guide the purchasing activities of the System. The Code is located at http://sago.tamu.edu/policy/Code.htm and should be consulted whenever purchasing questions arise.

Best Value

Institutions of higher education, including related service agencies, may acquire goods or services by the purchasing method that provides the best value to the institution, including competitive bidding, competitive sealed proposal, catalogue purchase, group purchase program or open market contract. Whenever possible, purchases should be based on the best value criteria listed below through competitive bids or competitive sealed proposals. In determining best value, the institution must consider:

* The purchase price;
* The reputation of the vendor and 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;
* The impact on the ability of the institution to comply with laws and rules relating to historically underutilized businesses and to the procurement of goods and services from persons with disabilities;
* The total long-term cost to the institution of acquiring the vendor’s goods or services;
* 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 use of the unique material specified; and
* Any other relevant factor that a private business entity would consider in selecting a vendor.

Departments are encouraged to anticipate needs. The purchasing department should be contacted as early as possible in the purchasing process to enhance the timely delivery of services and equipment. The purchasing department researches possible suppliers, assists departments in evaluating supplies and equipment, and in developing specifications that meet the department’s requirements.

Delegated Purchases
Each Member should establish delegated purchasing authority limits up to which departments can purchase goods or services. Delegated authority is intended to allow departments to purchase supplies and equipment that would meet their immediate needs.

The following purchasing functions may be delegated to departments. All dollar limits are maximum amounts and each Member may adopt dollar limits below the maximum amount:

* commodity purchases of goods that do not exceed $5,000;
* emergency purchases; and
* purchases of services the estimated cost of which does not exceed $5,000 per year per contract.

Departments should carefully evaluate and plan their purchases of goods and services on a monthly/yearly basis. Once the estimated value of a desired purchase (or a series of planned or anticipated purchases from the same vendor) exceeds the delegated limit, a requisition must be submitted to the appropriate A&M System Member purchasing department. In addition, services expected to exceed $5,000 on an annual basis must also be requisitioned through the purchasing department.

Separate, sequential, and or component purchases ordered or purchased with the intent of avoiding competitive bidding and competitive proposal requirements from the same supplier, by the same department are treated as if they are a single purchase and a single contract. No employee or department may intentionally or knowingly make or authorize separate, sequential or component purchases to avoid competitive bid requirements. Purchases may not be broken down into small purchases in an attempt to circumvent purchasing rules. In fact, cumulative departmental purchases of $5,000 or more within 30 days with the same vendor should be competitively bid. Delegation of departmental purchasing authority will be revoked for intentional misuse.

Goods should be obtained from an internal service department or on an existing state contract when available. Intra-agency purchases of goods or services from other A&M System Members do not require purchase orders, regardless of dollar amount or source of funds. Departments are encouraged to solicit bids for the purchase of equipment and supplies within their purchasing authority from Historically Underutilized Businesses (HUB’s).

**Historically Underutilized Businesses (HUB Vendors)**

In 1994, the Texas Legislature affirmed the economic importance of minority-owned and small business in the state by creating the Historically Underutilized Business (HUB) program. A state agency must make a good faith effort to increase contract awards to HUB vendors for the purchase of goods or services that the agency expects to make during a fiscal year. A state agency that considers entering into a contract with an expected value of $100,000 or more must determine whether there will be subcontracting opportunities under the contract. The agency must do this before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract.

Three resources are available to assist in identifying HUB vendors. The master list of HUB vendors is located on the Texas Building and Procurement Commission’s Historically Underutilized Business (HUB) Search website at http://www.tbpc.state.tx.us/cmbl/hubonly.html. The Texas A&M University (TAMU) Purchasing department has added a HUB directory to their website which lists vendors who have responded to one or more formal bid invitations issued by TAMU. Their website is located at http://finance.tamu.edu/hub/directory/public/default.asp.
For those A&M System Members who use FAMIS, screen 173 can be used to determine whether a vendor is a HUB. Please see System Regulation 25.06.01 for further information regarding the A&M System HUB Program.

**Exempt Purchases**

The purchase of certain commodities and services may be exempt from competitive bidding or may be required by statute to be procured through specific purchasing methods. The following services are exempt and may be purchased by departments, regardless of dollar amount:

- Classified advertising (including newspaper and magazine advertisements; does not include public relations or advertising campaign related services);
- Conference expenses (expenses related to conference room services such as audio/visual/network and food services; does not include goods purchased for attendees or transportation services);
- Freight;
- Goods and services provided by the Texas Department of Criminal Justice;
- Goods and services provided by the Texas Industries for the Blind and Handicapped;
- Hotels and conference rooms (does not include hotel rooms for programs and conferences that are regularly scheduled throughout the year; for example, a department that hosts seminars/workshops throughout the year and is responsible for making lodging accommodations for participants is not exempt if the projected cost of the rooms exceed $5,000);
- Internal repairs;
- Lecturers/guest speakers/entertainers (fees for speakers/lecturers/entertainers hired on a one-time basis; does not include fees for speakers/lecturers on a continuous basis);
- Library materials
- Legislative information services (bill analysis services);
- Membership fees and dues; * Allowable moving expenses initially paid by the employee and later reimbursed to the employee by institutional funds;
- Newspaper and magazine subscriptions (direct from the publisher);
- Purchases from federal agencies;
- Registration fees and associated books and materials;
- Rental of exhibit space (booths for display purposes);
- Services provided by other State of Texas agencies, TAMUS components or by other local governments (see Interagency Agreements/Contracts in the Purchase Voucher section of these guidelines for additional information);
* Student travel (expenses related to student travel with the exception of air and bus charter); and

* Utilities.

**Excess Obligations Prohibited**

The General Appropriations Act, approved each biennium by the Texas Legislature, contains the following provision:

> No department or agency specified in this Act shall incur an obligation in excess of the amounts appropriated to it for the respective objects or purposes named. As a specific exemption to this provision the Texas Building and Procurement Commission may determine that a proposed installment purchase arrangement is cost effective and certify this finding in response to an agency request. Such a finding may be made for obligations incurred for the purchase or lease of automated information system equipment only if such department or agency has filed with the Department of Information Resources (DIR) a long-range automated information system plan and such plan has been approved by DIR. In the event this provision is violated, the Comptroller shall deduct an amount or amounts equivalent to such over-obligation from the salary or other compensation due the responsible disbursing or requisitioning officer or employee, and apply the amount to the payment of the obligation. This provision is specified pursuant to Section 10, Article XVI, of the Constitution of Texas.

Excess obligations apply to those purchases in which the purchase or service extends beyond a biennium. Any equipment, lease with option to buy, lease purchase, installment purchase, or any other type of purchase which incurs obligations beyond the current appropriations act is strictly prohibited by the Texas Constitution, unless the obligation is expressly contingent upon continued legislative appropriations. The following procedures and programs are constitutional:

* Any equipment lease, lease with option to buy, lease purchase, or installment purchase made through the Texas Public Finance Authority’s (TPFA) master lease program; or

* An installment purchase in which the agency requests the TBPC to certify the purchase beyond the current biennium. The TBPC considers an installment purchase to be any purchase in which installment payments are made and there is an opportunity for the title to pass between the buyer and seller, including lease purchase. These purchases must contain a clause which enables the state to cancel the agreement at its option, or upon failure of appropriations so that no unconstitutional obligations are incurred. The following information must be included with the requisition for the TBPC to make the required certification:

  * A statement containing the total dollar amount of anticipated interest charges over the life of the purchase to the extent it can be determined;

  * A statement comparing the anticipated cost savings to be realized through the present acquisition of the equipment, with the outright purchase of the equipment at a later time, when adequate funds become available;
* A statement affirming that the agency expects to be able to make payments beyond the current biennium without having to rely on an increased level of general revenue appropriations; and

* A letter certifying that “In spite of the additional interest cost to the State, this purchase could not be accomplished as economically through any other available means. Therefore, the lease (or installment) purchase of this equipment is the most cost effective means of obtaining the needed equipment.” **Note:** This letter needs to be signed by the director of purchasing or higher authority in the requesting agency.

**Vendor on Hold Status**

State law requires agencies and institutions to verify whether or not a vendor is on warrant hold with the State Comptroller’s office prior to purchasing or signing a contract for the purchase of goods or services. This verification can be made no earlier than seven days prior and no later than the date of entering into the transaction. If the vendor is on hold, the agency cannot sign the contract unless the vendor agrees to a contract clause under which any payments owed to the vendor will be applied to the debt/delinquent taxes owed to the state until paid in full. Similarly, a state agency cannot make spot purchases without first determining that the vendor is not “on hold.” (A spot purchase is defined as a purchase made and picked up directly at the vendor’s establishment.)

The state has created two web sites to assist state agencies in determining whether vendors are “on hold.” Franchise Tax Certificate of Account Status information for Texas corporations can be found at http://ecpa.cpa.state.tx.us/coa/Index.html. Taxpayer and Vendor Account Information can be found at http://ecpa.cpa.state.tx.us/vendor/tpssearch1.html. After entering the vendor’s 11 digit TIN (taxpayer identification number) and clicking the “Search” button, the message “Taxpayer is not on vendor hold” or “Taxpayer is on vendor hold” will be displayed. If the displayed message indicates that the vendor is not on hold, you can proceed with the bidding or purchasing process. If the message displayed indicates that the vendor is on hold and you still wish to contract with them, your contract must require payments to be applied toward eliminating the debt or delinquency. If the vendor wishes to clear up the “hold,” they should contact the State Comptroller’s office.

Agencies such as the Texas Building and Procurement Commission and the Department of Information Resources approve “term” contracts for estimated quantities under which state agencies may elect to purchase goods and services for a guaranteed price for a specific period of time. The State Comptroller will no longer require state agencies making purchases under “term” contracts to check a vendor’s debt and tax status with each order, if all of the following conditions exist:

1. The purchase is under a “term” contract;

2. The vendor for the “term” contract was not on warrant hold when the contract was approved; and

3. The “term” contract contains a clause stating that any payment owed under the contract will be applied toward eliminating any indebtedness to the state.

If all three conditions have not been met, the agency must verify a vendor’s debt and tax status for each purchase order.

**Receiving Freight**

For those departments that receive freight directly from vendors, the following procedures should be closely followed to ensure that responsibilities are placed with the proper party:
1. At the time of delivery:

   a. *Do Not Sign* – Never sign the freight bill until you have inspected the incoming boxes or cartons. Remember, a driver cannot leave until the freight bill is signed, damage is checked out, and noted in writing on all copies of the freight bill (bill of lading).

   b. *Verify Count* – Always look at the carton quantities which are listed on the freight bill. The number received should be exactly the same number of cartons as shipped. (Note: At this point the concern is not the contents of each box, only the number compared to the freight bill.)

   c. *Examine Each Carton* – Each carton should be in good condition when it arrives. If it is not, describe completely what is wrong with each carton on the copy of the freight bill. Have the driver indicate the same on his copy and have him sign your copy, as well. If a carton appears to be damaged, insist that it be opened before the driver leaves so that both you and the driver can make a joint inspection of the contents. Any concealed damage should also be noted on the freight bill. (Note: Always retain a copy of the freight bill.)

2. Steps to take when visible or concealed damage is discovered:

   a. *Retain all damaged cartons* – Damaged cartons should never be removed from the assigned receiving area.

   b. *Call Carrier* – Report all damage to the local office of the freight carrier making the delivery and request that an inspector be sent to look over the freight. This should be done immediately after the driver leaves or the damage is discovered. Never allow more than 15 days before making this call as they will almost certainly deny the claim.

   c. *Document* – Write the date and name of the person with whom you spoke at the carrier’s office on your freight bill.

3. Steps to take when the damage is being inspected by carrier representative:

   a. *Get Department copy of Purchase Order* – Observe on this document whether the shipment was sent f.o.b. destination or f.o.b. shipping point.

   b. *Read Before You Sign* – The inspector will fill out a report of the damage and ask you to sign it. If you do not agree with his conclusions, do not sign it. Make an attempt to get the inspector to request replacement of the items whenever possible.

   c. *Call Purchasing* – If you have problems at this point, contact your purchasing department. They will be able to advise you.

   d. *Forward All Copies* – In all cases, forward your copies of the Inspection Report, freight bill, and invoice (where available) to the purchasing department. The purchasing department will negotiate with the seller of the merchandise and try to get new merchandise shipped to you to replace the damaged items.

4. After the inspection report is sent to the purchasing department:
a. *Do Not Destroy the Damaged Merchandise* – The freight company will eventually pick it up if they haven’t already done so. When they do, they will issue a Salvage Receipt.

b. *Purchasing will notify you* as soon as the details of securing the new merchandise are made.

**Other Helpful Information**

The Department of Information Resources maintains a catalog purchasing program for computers, computer peripherals, software, telecommunication equipment and supplies. Although A&M System Members are no longer required to utilize the catalog purchase program, departments are encouraged to use the program whenever economically feasible. State funds may not be expended for the purchase of an automated information system unless the contract contains a clause requiring accessibility by persons with visual impairments.

A state agency that contracts for services shall require the contractor, in performing the contract, to purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside the state.

A state agency authorized to purchase passenger vehicles or other ground transportation vehicles for general use must purchase economical, fuel-efficient vehicles assembled in the United States unless a purchase would have a significant detrimental effect on the use of the vehicle. Other requirements exist relating to the purchase of vehicles; please contact your purchasing department for additional information.

The products of workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or a physical disability must be given preference if the products meet state specifications regarding quantity, quality, delivery, life cycle costs and price.