Texas Woman's University
University Regulation and Procedure

Regulation and Procedure Name:	**Purchase of Goods and Services**
Regulation and Procedure Number:	**URP: 04.360**
Policy Owner:	**Finance and Administration**

POLICY STATEMENT

The purpose of these regulations and procedures is to provide clear processes that should be followed when acquiring goods and/or services for Texas Woman's University ("TWU" or "University").

APPLICABILITY

This policy is applicable to TWU Students, Faculty, Staff, Guests, and University Affiliates.

DEFINITIONS

1. "Bid" means an offer to contract submitted in response to an invitation for bid. The term *bid* may also be referred to as a response.

2. "Contract" means a legally binding written agreement executed between TWU 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, cooperative agreements, memorandums of understanding (MOU), interagency contracts, interlocal contracts, easements, licenses and purchase orders.

3. "Emergency Procurement" occurs 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 TWU.

4. “Exempt Procurement” means certain goods or services which are exempt from competitive procurement rules, either by statute or if the exemption is in the best interest of the public or TWU.

5. “Goods” means supplies, materials, or equipment as defined in Texas Government Code § 2155.001. Goods do not include services or real property.

6. “Higher Education Research Security Council" (“HERSC”) means the council established by Section 51.957 of the Texas Education Code.

7. “Procurement (Procure)” means purchasing, renting, leasing, or otherwise acquiring any goods and services, including all functions that pertain to the acquisition through the contract closeout.

8. “Proposal” means a written or formal response to a request for proposal (“RFP”), intended to be used as a basis to negotiate a contract.

9. “Proprietary Purchase” means a good or service produced or marketed by a contractor having the exclusive right to manufacture or sell it.

10. “Purchase Order” means a legal document issued to a contractor that formalizes the terms and conditions of any purchase of goods or services.

11. “Quote” means a document setting forth an offer to sell goods or services at a certain price under specified conditions.

12. “Response” means a submission to TWU from a potential contractor in response to a solicitation.

13. “Service(s)” means the furnishing of labor, time, and effort by a contractor or auxiliary enterprise, including construction projects, which may involve, to a lesser degree, the delivery or supply of products.

14. “Solicitation” means a method or process used to obtain responses for the purpose of gathering information or entering into a contract.

15. “Specification(s)” means the description of the requirements for goods or services, including the scope of work, to be fulfilled by a contractor.

16. “University Affiliate” means any individual associated with TWU in a capacity other than as a Student or Employee who has access to TWU

resources through a contractual arrangement or other association. This includes the following individuals:

a. Contractors and Vendors: an individual, business, or governmental entity that has a fully executed contract to provide goods or services to TWU. This includes employees of contractors or vendors and independent contractors. The term *contractor* may be used interchangeably with the term *vendor*. The term *vendor may be* used interchangeably with the terms *supplier* and *contractor*.

b. Employee of a Governmental Agency: an individual employed by a federal or Texas state agency.

c. Employee of a TWU-Affiliated Institution: an individual who works for organizations that are tightly aligned with the University.

d. Pre-Employment Individual: an individual who will be hired by the University and the hiring department has sponsored their access to TWU resources.

e. Other University Affiliate: any individual who does not fit into any other category and needs access to TWU resources.

REGULATION AND PROCEDURE

I. Regulations

A. These regulations and procedures will apply to the procurement of all goods and services using any University funds with the exception of subcontracts and other agreements required in fulfilling the university's obligations under federal, state, local, and private grants.

B. Only the Chief Procurement Officer, his/her designees, and other university personnel designated by the Chancellor and President may commit the university to the purchase of either goods or services or both.

C. Departments must verify that any purchase is allowable on the funding type they will be utilizing.

D. Every purchase must have a clear business purpose that supports the mission of the university.

E. Purchases resulting in personal benefit for any employee or student are a violation and may result in disciplinary action.

F. The Chief Procurement Officer or his/her designee has the authority to make exceptions to these regulations and procedures which, in his/her determination, are essential for the continued operation of the university and are in compliance with all federal and/or state laws.

G. All purchases must be in compliance with URP 04.300: Historically Underutilized Businesses.

H. All purchases must comply with the Human Resources Code, Chapter 122, relating to purchases from people with disabilities.

I. All purchases must comply with URP 4.765: Information Security for System and Services Acquisition.

J. In the event of any conflict between these regulations and procedures and any state or federal purchasing regulations, state and federal regulations shall prevail.

K. Purchases on federal funds must comply with the federal Office of Management and Budget ("OMB") regulations regarding Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards including the micro-purchase threshold.

II. Procedures

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. A group purchasing program; or

4. An 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. 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 to the procurement of goods and services from persons with disabilities (WorkQuest);

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 use of the unique material specified.

C. Procurement of goods and services must comply with state and federal laws, institutional policies, regulations, and procedures and Regent Policies.

D. Purchase orders are not intended to be used strictly as a payment tool; therefore, a purchase order must be created prior to the commitment or obligation. The only other allowable purchasing method is the Procurement Card (*See* Procurement Card Program for PCard guidelines). A purchase order submitted after the commitment has been made and/or after the goods and services are received will constitute a non-compliant order.

E. Procurement and Contract Services is under no obligation to authorize payment for expenditures not made in compliance with these regulations and procedures, and financial responsibility for any such payment may become the personal liability of the employee who affected the improper purchase or transaction.

III. Procurement Methods

A. iProcurement Purchase

The department may create a requisition to encumber funds. The bid/proposal rules in these regulations and procedures must be followed.

B. Standing/Blanket Orders

Standing or blanket orders may be established with vendors for repetitive purchases throughout a fiscal year. For contracted vendors, exempt purchases, or proprietary goods and services, these may be established for any dollar threshold. For non-contracted vendors, quotes must be obtained as detailed in the bids/proposal section of these regulations and procedures.

C. Procurement Card ("PCard")

The procurement card is an acceptable purchasing method for infrequent, low-dollar procurements. All PCard transactions must comply with these regulations and procedures and the PCard guidelines (*See* Procurement Card Program).

IV. Preferred Purchasing Contracts

A. WorkQuest

Goods and/or services that are available through the Texas Works Wonders program (currently WorkQuest) must be purchased through this entity unless non-utilization of WorkQuest can be adequately justified. Bids/proposals are not required when utilizing the WorkQuest contract.

B. State of Texas Contracts

The Texas Comptroller establishes term contracts, as well as Texas Multiple Award Schedule ("TXMAS") contracts for goods and services. These contracts are accessible on the comptroller's website. Bids/proposals are not required when utilizing state of Texas contracts. The Department of Information Resources ("DIR") also maintains state contracts for IT and telecommunication products and services.

C. General Services Administration ("GSA")

The GSA Advantage is the federal government's online catalog and ordering system. Schedules 70 and 84 are available to state-level government. Vendors can extend pricing and contract terms to all

governmental agencies. Bids/proposals are not required when utilizing GSA contracts.

D. Purchasing Cooperative Programs

Purchasing cooperatives allow purchases to be made directly with the vendor as the bidding and negotiation has been completed by the cooperative. Bids/proposals are not required when utilizing cooperative contracts. A summarized listing of the purchasing cooperatives of which the university is a member is available on the Procurement Cooperative Purchasing website.

E. University Negotiated Contracts

The Office of Procurement and Contract Services has awarded competitive contracts to several vendors based upon a request for proposal ("RFP") process. Bids/proposals are not required for purchases when utilizing a university-negotiated contract.

V. Other Purchasing Methods

A. Proprietary Goods or Services (Sole Source)

1. A Sole Source or Proprietary Purchase is a product or service that has a distinctive characteristic that is not shared by competing products or services. When the specification limits consideration to one manufacturer, product, or service provider, and the amount of the purchase exceeds the bidding threshold, you must submit a completed Sole Source Justification Form with the departmental purchase requisition.

2. The written justification must include:

a. Explanation of why the unique specifications for the good or service are required

b. Provide Description of requested items or services and their purpose(s)

c. Explain why the product or service requested is the only one that can satisfy your requirements

d. Identify other sources reviewed and why they are unacceptable

e. Details on the unique features of the good or service

3. The sole source justification form is located on Procurement and Contract Service's website.

4. This form must be sent to Procurement and Contract Services and approved prior to purchase.

B. Emergency Purchases

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 state. TWU Procurement and Contract Services reserves the right to require additional quotes/bids on emergency purchases. All attempts should be made to utilize contracted vendors during these situations.

C. Exempt Purchases

1. Certain goods or services are considered exempt from the competitive procurement rules, either by statute or if the exemption is in the best interest of the public. Bids/proposals are not required when procuring exempt goods or services; however, the department should attempt to negotiate the best value with the vendor.

2. Exempt purchases include:

a. Advertising

b. Artwork (original)

c. Direct Publications (subscriptions, newspapers, videos, software from manufacturer)

d. Lecturers/Guest Speakers/Entertainers

e. Legislative Information Services

f. Exhibit Spaces

g. Training Services

h. Membership Fees & Dues

i. Registrations Fees and Related Expenses

j. Catering, Meals, and Food Services (not food for resale)

k. Purchases from Federal Agencies

l. Purchases from Local Governments or Quasi-Governmental Agencies

m. Postal Services

n. Purchases from other State Agencies, including Public Institutions of Higher Education

o. Utilities

p. Conference Expenses (not including promotional items for attendees)

q. Freight

r. Hotels & Conference Rooms

s. Medical Services

t. Employee Travel (all travel guidelines must be followed)

u. Student Travel

D. Competitive Bidding/Proposals

If the “best value” for the commodity or service is not obtained from one of the above-listed procurement types, then the department shall comply with the procurement rules listed in the following section of these regulations and procedures.

VI. Bid/Proposal Requirements

A. Current bid/proposal limits, regardless of the source of funds may be found on the Procurement Guidelines website.

B. The department is required to solicit and procure from HUBs to the fullest extent possible. For assistance in identifying potential HUBs, contact Procurement and Contract Services at procure@twu.edu.

C. State and federal laws and TWU university policies and regulations strictly prohibit splitting transactions to circumvent the bidding requirements outlined in this URP.

VII. Prohibited Purchases

A. Personal Purchases

1. Personal purchases are not allowed under any circumstance.

2. Purchases in which the officer or employee of TWU has received a personal benefit from the vendor are prohibited.

B. Vendors on Hold

Departments may not make any purchase or payment to a vendor who is on hold with the State of Texas or the federal government. Individuals who obligate the university with a vendor who is on hold will be held personally liable. To check if a vendor is on hold, please visit the Vendor Hold Search website.

C. Funding Types

Certain funding types have restrictions on what may and may not be purchased (e.g., no food on state funds). A basic summary can be found on the Budget Office website.

D. Foreign Adversary Countries

1. TWU requires any company that submits a bid or proposal with respect to a contract for goods or services to certify that the company, and any of its holding companies or subsidiaries, is not:

   a. Listed in Section 889 of the 2019 National Defense Authorization Act (“NDAA”); or

   b. Listed in Section 1260H of the 2021 NDAA; or

c. Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or

d. Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

2. TWU may not enter into or renew a contract to provide testing, tutoring, or other education software included on a list of prohibited software, applications, and developers published by the HERSC.

REVIEW

This policy will remain in effect and published until it is reviewed, updated, or archived. This policy is to be reviewed once every six years. Interim review may be required as a result of updates to federal and state law or regulations, Board of Regents policies, or internal processes or procedures.

REFERENCES

Texas Government Code § 2155.001

Texas Education Code § 51.9335

Texas Human Resources Code, Chapter 122

Executive Order No. GA-48

U.S. Department of Commerce 15 C.F.R. § 791.4

2019 National Defense Authorization Act (NDAA) Section 889

2021 National Defense Authorization Act (NDAA) Section 1260H

URP 04.300: Historically Underutilized Businesses

URP 04.765: Information Security for System and Services Acquisition

List of Prohibited Software/Applications/Developers (HERSC)

State of Texas Comptroller Procurement Contracts Website

Department of Information Resources Website

Vendor Hold Search Website

TWU Procurement Cooperative Purchasing

TWU Procurement Card Program

TWU Travel Guidelines and Policies

TWU Procurement Guidelines Website

TWU Budget Office Website

FORMS AND TOOLS

Sole Source Justification Form

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