

Sam Houston State University
A Member of The Texas State University System

Finance & Operations Procurement and Business Services Policy FO PUR-09
PURCHASES / OTHER

The University strongly encourages soliciting HUB vendors whenever possible. Certified HUB vendors can be found at: <https://mycpa.cpa.state.tx.us/tpasscdblsearch/index.jsp>

CHAIN PURCHASING

Chain purchasing is the attempt to circumvent the policy limitations by using two or more BearKatBuy Requisitions and P-Card transactions for the same or related commodities within the period of one to three business days. **CHAIN PURCHASING IS NOT ACCEPTABLE AND MAY RESULT IN DISCIPLINARY ACTION AGAINST THE INDIVIDUAL, PROSECUTION AS FELONY FRAUD.**

CONTRACTING FOR EXTERNAL CONSULTANTS AND PROFESSIONAL SERVICES

The procedure for contracting with external consultants and providers of professional services are complex in nature. Please consult with your Purchaser for guidance and processing of these services.

PROFESSIONAL AND CONSULTANT SERVICES

Before entering into a Professional or Consultant Services contract, the department must determine whether the individual should be hired as an independent contractor through the procedures outlined herein or as an employee through the Human Resources hiring processes. To make this determination, refer to the IRS 20-Question test:

[IRS 20-Factor Test: Independent Contractor or Employee](#)

Definitions

“Professional Services” means those services within the scope of the practice, as defined by state law, of:

1. accounting
2. architecture
3. landscape architecture
4. land surveying
5. medicine
6. optometry
7. professional engineering
8. real estate appraising
9. professional nursing

or those services provided in connection with the professional employment or practice of a person who is licensed or registered as:

1. a certified public accountant
2. an architect
3. a landscape architect
4. a land surveyor
5. a physician, including a surgeon
6. an optometrist
7. a professional engineer
8. a state certified or state licensed real estate appraiser
9. a registered nurse

“**Consulting Services**” means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

A consultant may be used only if there is a substantial need for the consulting services and only if the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.

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“Major Consulting Services Contract” (as per the Texas Government Code Chapter 2254) means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$25,000. **NOTE** that the \$25,000 threshold is not a one-time cost, but rather a cumulative amount for on-going consulting services.

“Consultant” means a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

“Special Services Contracts” are contractual services not covered under Texas Gov’t Code 2254, but which are considered professional services by Comptroller and IRS reporting guidelines. In these situations where no competition exists, such as for visiting speakers, guest lecturers, expert witnesses, and performing artists, etc., per SHSU policy, a contract may be made by noncompetitive negotiations.

For these services, State of Texas Comptroller expenditure codes and other reporting requirements necessitate that these services be categorized as professional services and be processed under the same rules and guidelines. To ensure adherence to these rules and guidelines, and for there to be consistency and order to the process, a procedure and a contract form was developed to accommodate those requirements for such contractual services.

Examples of typical special services:

1. Lecturer
2. Guest Artist
3. Pianist
4. Accompanist
5. Choreographer
6. Poetry Reading
7. Expert Witness
8. Guest Speaker

Selection of a Provider

A “Professional Service” (as per the Texas Government code, Chapter 2254) provider is not to be selected on the basis of competitive bid but rather 1) on the basis of demonstrated competence and qualifications to perform the services; and 2) a fair and reasonable price, as long as professional fees are consistent with and not higher than the recommended practices and fees published by the various applicable professional associations and do not exceed the maximum provided by law. Architectural, engineering, or land surveying services must be procured in the following manner in accordance with Government Code 2254.

1. Select the most highly qualified provider based on demonstrated competence and qualifications;
2. Attempt to negotiate a contract with the selected provider at a fair and reasonable price;
3. If a satisfactory contract cannot be negotiated with the most highly qualified provider, formally end negotiations with that provider; select the next most highly qualified provider; and attempt to negotiate a contract at a fair and reasonable price. The selection process for architectural, engineering, or land surveying services shall continue in this manner until a contract is accepted by all parties.

A “Consulting Service” provider is to be selected based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services. If other considerations are equal, preference shall be given to a consultant whose principle place of business is in the state or who will manage the consulting contract wholly from an office in the state.

If a solicitation will enhance the selection process for either professional or consulting services, contact the Assistant Director of Procurement and Business Services to discuss options for making informal price comparisons or preparing a formal Request for Proposal. If consulting services are purchased using processes allowed under Best Value Procurement, the following section does not apply.

Major Consultant Contracts greater than \$25,000 must be submitted to the Secretary of State for publication in the Texas Register for a minimum of 30 days prior to entering into any contract/agreement. The published invitation must include a finding and explanation by the President that the consulting services are necessary. Professional or Consulting Service solicitations greater than \$25,000 will be posted on the Electronic State Business Daily unless Purchasing determines that no value is added by the posting.

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Procedures for Securing Professional or Consulting Services

1. Determine if the need is for that of a professional or a consultant service.
2. Determine if the selection of a professional or consulting service provider would be enhanced by informal price or qualifications comparisons or a formal Request for Proposal or Request for Qualifications process.
3. Complete the applicable Professional/Consulting Services Agreement and obtain all necessary signatures.
4. **ENTER THE BearKatBuy REQUISITION.** Amounts may be estimated. If the vendor will perform same service on multiple dates, a Blanket Requisition is to be entered with separate lines for each date.

Responsible for Implementation:

Contact for Revision:

Forms: "Authorization of Professional Services" form found under Procurement and Business Services:

<http://www.shsu.edu/administrative/policies/forms/>

For information on purchasing Professional or Consulting Services, please contact your Purchaser or the Assistant Director of Procurement and Business Services.

EMERGENCY PURCHASES

An **emergency purchase** is defined as **"a purchase of goods or services so badly needed that a department will suffer financial or operational damage unless they are secured immediately."** In the case of an emergency, departments must notify the Department of Procurement and Business Services immediately. If the emergency happens after normal business hours, the department will notify the Department of Procurement and Business Services on the next business workday.

A written emergency justification is required.

Bids are not required for purchases of \$15,000 or less, however, departments are encouraged to obtain bids when possible. For purchases in excess of \$15,000 three informal bids must be obtained, except when securing bids would significantly impede the process of completing the purchase. Procurement will process all bid requests.

Proper procurement planning for anticipated needs is the policy and practice at Sam Houston State University. Early consultation with agency purchasing staff is helpful in reducing the number of emergency purchases. Emergency purchases should be rare and based on complete unforeseeable circumstances. However, normal purchasing procedures cannot be reasonably expected to provide the needed goods or services within the needed time frame. Recommendations to declare an emergency regarding Facilities activities will be directed through the Vice President for Finance and Operations. Other Vice Presidents of Sam Houston State University may also make recommendations regarding an emergency purchase to the University President. The decision to declare an emergency purchase over \$15,000 is the sole responsibility of the President.

If time allows, the agency will follow the competitive sealed bid process, including obtaining the required number of bids. The time frame for which the bids will be advertised will be determined by the degree of the emergency. Documentation is to be retained by the Procurement and Business Services Department on all emergency purchases. Bidding for an emergency purchase is executed by the Procurement and Business Services Department, who is responsible for awarding the order to the lowest and best bid, considering the emergency conditions. All sealed bids will be opened in the office of the Procurement and Business Services Department by the Executive Director of Procurement and Business Services or the Assistant Director, with a minimum of one witness, employed by Sam Houston State University. All members present at the bid opening will be required to sign the bid tabulation sheet. Sam Houston State University will have the responsibility for handling complaints and protests. The approval thresholds are as follows:

Amount/Approval of Bid:

\$0 - \$15,000	Approved by Department, no bids required.
\$15,001 - \$25,000	Procurement and Business Services will obtain bids, approve, & execute.
\$25,001+	Approval thru Sam Houston State University President's Office; Procurement and Business Services will obtain bids, approve, & execute.

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An emergency purchase requires a letter of justification which will become a part of the file. The letter should be signed by the Executive Director of Procurement and Business Services or the Assistant Director of Procurement and Business Services.

- State the reason for the emergency purchase by explaining what the emergency is and/or what caused the emergency situation;
- State the financial or operational damage that will occur if needs are not satisfied immediately (Do not just say there will be a loss or some damage.); and
- State why the needs were not or could not be anticipated so that items could have been requisitioned through regular delegated procurement procedures.

The provisions of Section 2161.181 of Texas Government Code, relating to Historically Underutilized Businesses (HUBs) do apply to an emergency purchase. The bids for an emergency purchase will include the appropriate "HUB Subcontracting Plan" forms as provided with the bid request, when applicable.

No employee may negotiate or make representations as to intent to purchase with any vendor of goods or services. Such employee would be subject to discipline, up to and including dismissal.

GROUP PURCHASING PROGRAM

The Procurement and Business Services Department and University departments may purchase materials, supplies, or equipment through group purchasing programs. All Requisitions utilizing a Group Purchasing Cooperative must be processed through the Procurement and Business Services Office and the assigned purchaser will handle all distribution. Organizations the University is a member of currently are:

Choice Partners	<u>http://www.choicepartners.org/</u>
Educational and Institutional Cooperative (E&I)	<u>www.eandi.org</u>
First Choice Cooperative (First Choice)	<u>http://www.fccoop.org/</u>
National Cooperative Purchasing Alliance	<u>http://www.ncpa.us/</u>
National IPA / TCPN	<u>http://www.nationalipa.org/</u>
National Joint Powers Alliance	<u>http://www.njpacoop.org/</u>
Provista	<u>https://www.provistaco.com/</u>
Purchasing Solutions Alliance (PSA)	<u>www.psabuy.org</u>
Region VIII Education Service Center Interlocal Agreement	<u>http://www.tips-usa.com/index.cfm</u>
Southeast Texas Purchasing Coop	<u>http://www.esc5.net/page/SETPC_Home</u>
Texas Association of School Boards (BuyBoard) <i>(Contact Procurement and Business Services to obtain user name/password.)</i>	<u>www.buyboard.com</u>
U.S. Communities	<u>http://www.uscommunities.org/</u>

EXEMPTIONS FROM THE COMPETITIVE BID PROCESS

• **Classified Advertising**

Expenses such as newspaper, magazine, radio, television, billboards, classifieds, yellow page ads, and all other printed advertisements (does not include fees paid to public relations or advertising firms for their services in developing or executing coordinated campaigns or programs). If advertising for personnel positions, the ad copy/text must first be approved by Human Resources, regardless of dollar amount.

• **Conference Expense**

Expenses related to conference room rental and services such as audio/visual/network and food services (does not include goods purchased for attendees or transportation services).

• **Direct Publications**

Direct publications are publications only available from a single source. Any publication that could be purchased using a competitive process is not considered a direct publication. For example, publications that are available through subscription services are not direct publications. Purchases for direct publication(s) over the \$15,000 threshold must be processed through the Procurement and Business Services Department so the correct documentation and coding can be attached.

Departments should provide proof that materials are only available from this one source. (Back up documentation from the publisher/manufacture, patent, or copyright information.)

• **Freight**

• **Goods and Services provided by the Texas Department of Criminal Justice (TDCJ)**

• **Goods and Services provided by the Texas Industries for the Blind and Handicapped (TIBH)**

• **Internal Repairs**

• **Lease of Space (Please review The Texas State University System policies on 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 a BearKatBuy Requisition and specific lease information.

• **Lecturers/Guest – Speakers/Entertainers**

Fees for speakers/lecturers/entertainers hired on a one-time basis.

• **Legislative Information Services**

Bill analysis services.

• **Membership Fees and Dues**

• **Moving Expenses**

(Employee) institutional funds only.

• **Newspaper and Magazine Subscriptions Direct from the Publisher**

• **Registration Fees and Associated Books and Materials**

• **Rental of Exhibit Space**

Booths for display purposes.

• **Purchases from Federal Agencies**

• **Utilities**

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TEXAS SALES TAX EXEMPT CERTIFICATES

A copy of the Texas Sales and Use Tax Exemption Certification (“Exemption Certificate”) will be available for download and use from the following website: <http://www.window.state.tx.us/taxinfo/taxforms/01-339.pdf>

Employees of SHSU with signature authority who are purchasing an item necessary to Sam Houston State University’s exempt functions should complete all blank sections of the Exemption Certificate, sign it, and provide it to the Texas vendor to ensure the purchase is tax free. Please be specific as possible when completing the “Description” area of the certificate. A copy of the completed Exemption Certificate should be maintained in your records. Upon any questioning during a state audit, responsibility for explaining the purchases will fall upon the individual whose signature is presented at the bottom of the certificate.

Tax Exempt forms should be issued for individual Purchase Orders rather than blanket tax exemptions.

The Tax Exemption form is issued to the vendor who requests the form and the department should attach a copy of the exemption form to the BearKatBuy Requisition/PO. There is no need to send a copy of the exemption form to Disbursements or Procurement and Business Services.

INTERNAL REPAIRS

Bids are not required for internal repairs to state-owned property that cannot be reasonably defined prior to the actual repair. An internal repair occurs when the extent of the repairs could not be determined until the problem was clearly defined.

CAUTION: By definition an internal repair must contain labor and may also include parts; the term “internal repairs” must be indicated on the purchase documentation.

PROPRIETARY PURCHASES

A proprietary purchase is justified only when equivalent product or service competition is not available. When the specification requirement limits consideration to one manufacturer, one product or one service provider, a written justification must be provided and is subject to Procurement and Business Services approval. The proprietary specifications must be stated in the solicitation when the purchase exceeds \$15,000. A proprietary letter is not needed for purchases under \$15,000.

Requirements

A justification of proprietary purchases must be submitted by the department on the form found at: <http://www.shsu.edu/dotAsset/9fde135c-8bc2-48b2-b653-57da24c753a3.pdf>

The form must be signed by the department head or the Principal Investigator (of a grant account), justifying why no other source or brand can meet their needs.

In completing and signing a letter of recommendation for a sole source purchase or service, the responsible party(s) acknowledges their responsibility to formally address any protest(s) or audit finding(s) resulting from the sole source recommendation. Backup documentation, such as: research on the product or service, copyrights, patents, contact with the vendor(s), name(s), date(s) of contact, and list of concerns addressed to those vendor(s) should accompany your letter of recommendation.

Authorization

The only person(s) authorized to sign a proprietary purchase are the President of the University, the Executive Director or Assistant Director of Procurement and Business Services.

HISTORICALLY UNDERUTILIZED BUSINESSES’ (HUBs) PURCHASES:

ITAC 113.11 requires that state agencies and universities increase their efforts to allow Historically Underutilized Businesses the opportunity to sell to the state. Departments and purchasers shall contact a minimum of two certified HUBs. HUB is defined as Hispanic American, Black American, Asian American or Native American. Ownership is defined as controlling interest (51%). The key is that we are required to make an effort to identify and call these businesses. The vendor must be a certified HUB with the state of Texas

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How To Find HUB Bidders

Procurement and Business Services and departments have access to the TPASS's on-line registry of certified historically and underutilized businesses. We encourage departments to contact us before soliciting informal bids and we will assist the department in determining the correct commodity classification. The website for certified HUB vendors is <http://www2.cpa.state.tx.us/cmb/cmbhub.html>.

TECHNOLOGY PURCHASES

All technology resource related purchases and gifts must be reviewed by SHSU Information Technology Division and receive approval, prior to a formal submission of request for acquisition or acceptance of gift per IT-S03 Technology Acquisition Oversight Statement.

USED EQUIPMENT

As a rule, the purchaser should procure new equipment, but sometimes it is necessary or advantageous to purchase used or demonstrator equipment and supplies. The most common reasons are:

- the inability to secure new equipment;
- the lack of adequate funds for new equipment; or
- used equipment will satisfy the agency's need at a substantial savings. (Cost comparison to new equipment must be provided by requesting department.)

Purchases of used and demonstrator equipment are to be processed as follows:

The ordering entity must:

- obtain a minimum of three (3) signed bids which have been properly prepared whenever possible;
- if only one bid is received, prepare a statement explaining why no competition exists;
- provide a letter from an authorized person connected with the ordering entity that:
 - a) states that the equipment or supplies have been personally examined, and
 - b) describes the condition and value of the equipment or supplies.

Reviewed by: Tessy Rappe', AVP Finance & Operations
 Renee' Starns, Exec. Director, Procurement & Business Services

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