

## **PROCEDURES FOR PROCUREMENT POLICY**

### **INTRODUCTION**

In discharging its responsibilities, Procurement Services may:

Initiate, conduct, and conclude solicitations and negotiations for the purchase of goods and services for the College.

Obligate the College for the purchase of goods or services.

Recommend changes in quality, quantity, or kind of material requisitioned and/or suggest appropriate alternatives.

Select qualified vendor/suppliers.

### **CORRESPONDENCE WITH VENDORS/SUPPLIERS**

To avoid violating statutes, code, rules, policies, procedures, and guidelines, at the time when a College employee knows (or should have known) that a solicitation for quotes, bids, or proposals must be completed to acquire goods or services, all correspondence with potential vendors/suppliers, shall be processed through Procurement Services through the time until the contract has been awarded. This requirement is not required when the total purchase is less than \$5,000, or if the vendor currently has a State or College bid Contract.

### **LIMITATIONS AND RESTRICTIONS ON PROCUREMENT**

The purchase of goods, services, or construction by College employees shall be authorized only if (1) established procurement processes and codes are followed, (2) the purchase is conducted in compliance with a) the Utah Public Officers' and Employees' Ethics Act, and b) the College Conflict of Interest policy, and (3) there is evidence that the purchase price is fair and reasonable.

Unless specifically approved in writing (or purchase order) by a purchasing agent of the College, orders or commitments for procurement by College employees are not binding on the College, except as permitted by the College using the small dollar limits and purchasing card.

### **NONCOMPLIANT PURCHASES**

A noncompliant purchase may be rescinded or nullified. Restocking fees may apply, and will be paid for by the division, department, or College employee.

Documentation detailing the facts that gave rise to a noncompliant purchase must be submitted to Procurement Services in a timely manner. Documentation must include the associated invoice and written approval of the noncompliant purchase by the President or Vice President responsible for the individual who made the purchase

College employees who make repeat noncompliant purchases may be subject to disciplinary action.

### **SMALL DOLLAR PURCHASES OF GOODS AND SERVICES**

The Single aggregate procurement threshold is \$5,000.

The Individual procurement threshold is \$5,000.

The Public advertised threshold is \$50,000 and above.

The Annual Cumulative threshold is \$100,000.

This threshold does not include any pricing that has been competitively bid.

Procurements for goods and services will be handled as follows:

#### Goods and Services

College divisions, departments, or employees may not independently apply for merchant-issued credit cards, or credit cards issued by other financial institution, in behalf of the College to make purchases.

Small dollar purchases are to be made at the departmental level and can be done independent of Procurement Services for purchases under \$5,000.

Small dollar purchases are encouraged to be procured with a College P-card by authorized P-card cardholders, in compliance with the College P-Card policies, procedures, and guidelines, or through the requisition process.

College divisions and departments are responsible for making small dollar purchases in compliance with College policies, procedures, and guidelines.

#### Procedures for procurements up to \$5,000.

Departments/College employees may select the best-known source without seeking for competitive quotes. However, it is recommended that College employees compare multiple sources for pricing of goods or services before procuring them.

It is highly recommended that departments get their pricing/quotes in written form. According to the Uniform Commercial Code, any offer over \$500 has to be in written form, for it to be binding and enforceable.

#### Procedures for procurements over the \$5,000.

Quotes must be solicited from at least three (3) different sources/vendors if available. Quotes must be in written format. Other acceptable forms are faxed, or e-mail quotes. It is suggested that they attach the documents to the appropriate payment method.

Internet pricing are acceptable in the following areas:

Books, DVDs, CDs, and other items commonly circulated by the College Library(s)

Acceptable requisitioning procedures for procurements under \$5,000 are;

Purchasing Card (P-Card) - (See P-Card Policy)

Requisition Process

Procedures for procurements between \$5,000 and \$50,000

These procurements are conducted by Procurement Services as informal procurements, via Request for Quotes (RFQ's), or Request for Proposals (RFP's) and in accordance with all applicable codes, policies, procedures, and guidelines.

Must receive and retain written, faxed, or e-mail quotations

Procurements over \$50,000

These procurements are conducted by Procurement Services as formal, advertised purchases, via Invitation to Bid or Request for Proposal. Procurement Services will make the award to the successful bidder/vendor, in consultation with the requesting department and in accordance with all applicable code(s) and policies, then issue a purchase order, or if approved, by a College Purchasing Card (P-card).

State Contracts

Some goods and services may be available via State Cooperative Contract(s). The use of these contracts for purchases is highly encouraged, provided the good(s) or service(s) on contract meets the requirements of the requesting department or College employee. A list of State Cooperative Contracts can be viewed online via a searchable database through a web-link on the Procurement Services webpage. The College or Procurement Services may enforce the use of State or College contracts for small dollar purchases.

Ongoing purchases

Purchases which are for ongoing, continuous, and regularly scheduled procurement of goods or services must go through the proper bidding process, if the annual purchase amount is over \$5,000. College employees may NOT use the small dollar purchase procedures to make these types of purchases.

Exceptions

Good or Services that do not lend themselves to the bidding process, because of the competitive sector or nature of the business are not required to go through a competitive solicitation process are the following:

Airfare

Media advertising and marketing: - such as Television, Radio, Billboards, Newspaper and Magazines, Internet, website, new media, Mobile, phone, tablet, digital media and publishing, Social Media, Sponsorships, Direct Mail, postage, postal services, and fees,

Groceries

Fast Food Services

Hotels

#### PAYMENT FOR GOODS AND/OR SERVICES

The methods of payment for goods or services to vendors/suppliers are as follows (in preferred order):

Purchasing Card (P-Card)

Purchase Order

Check Request

A check request should only be used if the vendor does not accept one of the first two methods. Examples of using a check request (but not limited to) would be as follows:

Paying officials at athletic events

Paying for professional entertainment, such as bands and entertainers which require payment upon arrival

Speakers, Honorariums, etc.

Payroll vendors - such as insurance, tax payments, etc.

Returns for overpayments/fees

The College President, Vice President for Finance and Administrative Services, and Director of Procurement Services are authorized to determine if a check request is appropriate to be used instead of a P-card or purchase order.

In the unlikely event that a College employee uses a personal credit card for payment of goods or services, they can seek reimbursement through the proper College channels. The College may or may not reimburse the individual for taxes associated with the purchase. Also, all benefits which may accrue by using an employee's personal credit/debit card may become the College's because College funds are used to pay for the goods or services.

#### GRATUITIES & KICKBACKS

In accordance with the Utah Procurement Code (63G-6a-2304.5) it is unlawful to use your position or influence to receive a gratuity, bribe, or kickback.

It is unlawful for a procurement participant to use the procurement participant's position or influence to obtain a personal benefit for the procurement participant, or for a family member of the procurement participant, from an interested person.

It is unlawful for a procurement participant to ask, receive, offer to receive, accept or ask for a promise to receive a kickback for a procurement participant or for another person.

A person who violates this code is guilty of either a felony or misdemeanor charge, and shall be dismissed from employment (Utah Procurement Code 63G-6a-2304.5, 2305, and 2306).

Hospitality gift is acceptable when it is less than \$10 in value and the person is not involved in any ongoing procurement.

#### PROTESTS

Aggrieved bidders, vendors, or potential bidders or vendors, may protest the solicitation's specifications or award decision in accordance with the Utah Procurement Code, Utah Code Annotated, (63G-6a-1601 et seq.)

The aggrieved party may appeal a protest decision in accordance with the Utah Procurement Code, Utah Code Annotated, (63G-6a-1701 et seq.)

#### CONSTRUCTION UNDER \$100,000

Division or departmental requests for construction projects with an estimated cost under \$100,000 must be coordinated through the College's Facilities Department. Facilities will submit a requisition(s) for construction projects. Bid bonds and performance bonds shall be required per DFCM requirements and guidelines. Performance bond requirements may be waived by Facilities Director or Vice President of Finance and Administrative Services as per DFCM instruction and authority.

The DFCM construction contract template must be used for construction related procurement, unless using a State Cooperative Contract, in which the contract is already in place.

#### EMERGENCY PURCHASES

An emergency condition is defined in State Code as a situation which creates a threat to public health, welfare, or safety, such as those arising from natural disasters, epidemics, riots, equipment failures, or other reasons, as determined by the College administration.

A request for an emergency procurement must include written supporting documentation describing the nature of the emergency.

An emergency condition creates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement procedures. Emergency procurement requests shall be limited to only those goods, services, or construction immediately necessary to attend to the emergency.

Purchase requests under emergency conditions, must be authorized in advance by the Procurement Services Department and/or the President, or Vice President of Finance and Administrative Services.

#### SOLE SOURCE PURCHASES

When a good or service is available from only one source in the marketplace (meaning the good or service stands alone and is without competition), the good or service may be considered a sole source. A proprietary item does not justify as a sole source if more than one source exists for that proprietary good or service.

Examples of circumstances which may necessitate a sole source procurement:

The compatibility of equipment, accessories, replacement parts or service is the paramount consideration.

A purchaser can demonstrate that a unique combination of features, functions and attributes is necessary or required for a particular application(s) or purpose of an otherwise competitively available item.

A good or service is needed for a trial use, testing, or pilot program.

Public utility services.

Copyrighted material available from only one source.

Transition to a new contract is cost-prohibitive.

Transition to a new contract would cause critical loss of continuity.

When a division or department advocates a good or service is a sole source (before making the purchase), a Sole Source Request form must be submitted to Procurement Services. All questions outlined on the form should be completed to ensure adequate justification of a sole source purchase.

Procurement Services will verify the justification and rationale and post a formal advertising of the intent to award a sole source as outlined below. If a sole source purchase is deemed appropriate by Procurement Services, final approval must be authorized by the Vice President of Finance and Administrative Services. Only after final approval may departments proceed with the purchase.

Sole source requests for goods or services require a formal advertised Sole Source Notification process to a wide competitive marketplace and for a specified time. This notification process is required by the Utah Procurement Code and provides potential competitors with the opportunity to respond with information regarding their ability to provide the requested good or service. If it is determined through this process that the good or service is not a sole source, the College will proceed with a competitive solicitation and advertisement process.

## CONTRACTS

All contracts, before being signed, must be approved by the College's attorney or appointed Attorney General's Office attorney.

All contracts for the College can only be signed by one of the College's Procurement Agents.

Signing authority for certain types of contracts can be delegated to another College employee by one of the Purchasing Agents. Examples include the Sevier Valley Center (SVC), or the Director of Student Life for Entertainment contracts. These contracts still require a review by the attorney representing the College, unless the vendor signs the approved Standard College contract.

## PURCHASES FOR OTHER GOVERNMENT AGENCIES

The procurement of goods and/or services from other governmental agencies, including public institutions of higher education, and correctional industries, may be made without competition as determined by Procurement Services.

#### LIMITED PURCHASE DELEGATIONS

A Limited Purchase Delegation is issued by a College Purchasing Agent to a Procurement Services employee for the purpose of conducting procurement activities on behalf of the College.

A Limited Purchase Delegation may be issued by a College Purchasing Agent to another College employee for the purpose of conducting specific procurement procedures for a specific good or service, as prescribed by the delegation. A written Limited Purchase Delegation prescribes the scope of authority, limitations and responsibilities of the delegate.

The delegate must follow the Limited Purchase Delegation and all State and College code, statutes, policies, procedures and guidelines. The Limited Purchase Delegation may be revised and rescinded at the discretion of the College Purchasing Agent.

If an employee with Limited Purchase Delegation leaves their department or the College, the delegation becomes invalid and does not automatically reassign to the replacement employee, or to another department employee.

#### RULES FOR THE AWARD OF A CONTRACT UNDER CIRCUMSTANCES THAT MAKE AWARDING THE CONTRACT THROUGH A STANDARD PROCUREMENT PROCESS IMPRACTICAL AND NOT IN THE BEST INTEREST OF THE PROCUREMENT UNIT.

Pursuant to Utah Code 63G-6a-802(1)(c), a contract may be awarded without engaging in a standard procurement process where the Director of Procurement determines in writing that:

- (1) transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or
- (2) the award of a contract is under circumstances that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit. Factors that may be considered are the need for a product or service in a time frame that a standard procurement process will likely not be able to meet; unforeseen circumstances that arise; good faith of the requesting department or person. In addition, a factor figuring in denial of a request is whether the requesting department or person failed to timely notify Procurement of the need for a product or service, engaged in unwarranted delay, or could have acted sooner to request a standard procurement process.

A request for award of a contract without engaging in a standard procurement process must be made in writing, must cite justification for the exception, and must acknowledge that the exception is unusual and should not be sought in the future except in extraordinary circumstances.

Publication of notice of the procurement will be made in accordance with Section 63G-6a-112, if the cost of the procurement exceeds \$50,000 including publishing notice at least seven days before the acquisition of the procurement item including in the notice contact information and other information relating to contesting or obtaining additional information relating to the procurement; and the earliest date that the procurement unit may make the procurement, typically at the end of the 7 day period.

Procurement shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the College.

## ETHICAL REQUIREMENTS

All College employees are subject to the provisions and penalties associated with provisions of the Utah Public Officers' and Employees' Ethics Act

Utah Procurement Code - Ethical Requirements (63G-6a-2201 et seq.)

Utah Procurement Code - Unlawful Conduct and Penalties (63G-6a-2301 et seq.)

Utah Procurement Code - Gratuities – Kickbacks (63G-6a-2303 & 2304 et. seq.)

A College employee may not take for personal use, a rebate check, gift card, coupon, gift or promotional offer, intended for the College, as the result of a purchase made by the College with College funds (or reimbursed to the College employee).

Free / Extra supplies, equipment, or materials furnished to the College and without charged to the College (such as buy 10 get 1 free, etc.), may be accepted but must remain the property of the College.

If any free items over \$10 in value are received, they must be reported to the College Advancement Office and Business office to assure that the gift is recorded.

A College employee may not participate in the procurement process or in a purchase transaction between the College and a business entity in which the employee has a financial interest. The College employee must submit a written disclosure of their business interest to Procurement Services and to the College employee's immediate supervisor.

A College employee is forbidden to receive compensation as a result of, or in connection with, any transaction between the College and a business entity in which the College employee has substantial interest.

## GIFTS

See College Gift policy.

## FLOWERS

See College Flower policy.

## TRAVEL EXPENSES



See College Travel policy.

See College P-Card policy.

#### REAL PROPERTY

See Board of Regents policy.

#### RECORD RETENTION

Procurement documents will be retained as prescribed by the applicable State Archives record(s) retention schedule.

#### OTHER RULES

Procurement Services will adopt State Procurement Rules as outlined in R33 in the absence of specific College procurement policies and procedures.