

Stephen F. Austin State University Contract Management Guide

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INTRODUCTION

Stephen F. Austin State University adheres to a policy of centralized purchasing. The procurement department, under supervision of the Director of Procurement and Property Services/HUB Coordinator, has sole authority for the negotiation and purchase of all goods and services for the university with the exception of items listed in university policy 1.4, Items Requiring Board of Regents Approval. In addition, specific delegations under proper administrative approval are allowed as outlined in policy 17.5, Delegated Purchasing Authority.

PURPOSE

Contract management refers to the entire contracting process from planning through administration. The purpose of the SFA Contract Management Guide is to provide general overall guidance to purchasers in the handling of day to day purchases and to comply with Texas Gov't Code 2261.256, Texas Education Code 51.9337, and university policy 17.1 Best Value Procurement. The results should be consistent contracting policies, practices and review procedures.

This manual supplements the following other manuals used by the Procurement Office. The electronic files are located in the Common Folder/Manuals:

- Procurement Manual
- iContracts Workflow Procedures Manual
- Contract_Solicitation Clauses Manual
- Procurement – Working with Banner Manual
- Contract Review Procedures (used in conjunction with the Contract Checklist)
- Receiving Overrides for Banner

TRAINING

Training is required for officers and employees authorized to execute contracts, or exercise discretion in awarding contracts in accordance with Texas Government Code 2155.078, Texas Education Code 51.9337, and university policy 17.25 Procurement Training.

1. The Procurement Director is responsible to ensure that purchasers receive appropriate training applicable to their level of purchasing authority.
 - a. Director and Assistant Director
 - b. Contracting Specialists
 - c. Buyers
2. The President and members of the Board of Regents will be trained by the university's general counsel.
3. The Procurement Director provides training for all employees with access to enter or approve requisitions in the university's financial system.

DEFINITIONS

Blanket Order (BO): A blanket order is a type of purchase order that typically extends over multiple years and may involve issuing Release PO's for multiple departments or for annual accounting purposes. The BO may reference attachments including, but not limited to, a bi-lateral contract, quote, terms and

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conditions, cooperative contract number, etc. The circumstances of each BO dictate whether the BO is sent to the vendor or whether the Release PO's are sent to the vendor. A blanket order may be:

- a purchase order document completed by the procurement department with a unique BO Number and issued to a single vendor outlining the specifications and pricing associated with a purchase;
- a purchase order document associated with a bi-lateral contract issued for tracking purposes.

Change Order: A document which is used to document changes in specifications or pricing to PO's, BO's or Release PO's; see Contract Amendment.

Contract: A written agreement where a contractor provides goods or services and the agency pays for such goods and services in accordance with the established price, terms and conditions, or revenue or no cost contracts. Expenditure contracts will always be associated with a PO or BO. The written agreement may be:

- a purchase order or blanket order with or without additional documents required by the vendor including a quote, terms and conditions, etc.;
- a contract document outlining all the terms of the agreement and requiring signature by both parties.

Contract Amendment: A document which is used to document changes to contract documents other than PO's, BO's or Release PO's; see Change Order.

Contractor/Vendor: A business entity or individual that has a contract to provide goods or services to Stephen F. Austin State University. The terms are used interchangeably.

Purchase Order (PO): a purchase order is typically for a single transaction, but may extend over multiple years. The PO may reference attachments including, but not limited to, a bi-lateral contract, quote, terms and conditions, cooperative contract number, etc. The term purchase order as used throughout this document may refer to a PO or BO. A purchaser order may be:

- a purchase order document completed by the procurement department with a unique PO Number and issued to a single vendor outlining the specifications and pricing associated with a purchase;
- a purchase order document associated with a bi-lateral contract issued for accounting and tracking purposes.

Release PO: A Release PO is a purchase order document associated with a Blanket Order representing purchases for a department, and/or purchases for a period of time. A Release PO is often issued for internal accounting purposes, but may also be act as a contract document. Release PO's are completed by the procurement department with a unique PO Number and issued to a single vendor outlining the specifications and pricing associated with a Blanket Order.

Requisition: An electronic document from a department identifying a need that the procurement office is responsible for filling by determining the appropriate procurement method, communicating with the vendor, and issuing a contract.

ETHICS

The University has established policies regarding ethics. All training includes information about ethics in contracting. More information about these policies and how they relate to procurement is outlined in the Procurement Manual. The policies are:

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- 2.6 Ethics
- 17.21 Purchases From Employees
- 17.22 Purchasing Ethics and Confidentiality

CONFLICT OF INTEREST

All contractors are checked to determine whether a conflict of interest exists with any employee or member of the SFA Board of Regents. Refer to the iContracts Workflow Procedures Manual and the Contract Review Procedures Manual for detailed procedures on verifying conflict of interest. All issues are to be brought to the Director for review, research and a final determination of whether a conflict of interest exists. In addition to the policies outlined under the Ethics section above, refer to these related policies:

- 8.2 Financial Conflicts of Interest in Sponsored Activities
- 11.19 Outside Employment

Conflict of interest information is gathered and updated in accordance with Texas Gov't Code 2261.252. The procurement director annually updates information from the Board of Regents, the president, general counsel, and director of procurement, or as changes occur. Employees are required annually to disclose any potential conflicts of interest via an online conflict of interest survey managed by the Director of Procurement and Director of Human Resources.

RISK ASSESSMENT

Risks are inherent in all stages of the procurement process. SFA has developed a Risk Assessment tool to provide for guidance in the initial assignment of a requisition to a purchaser and the final responsibility for completion of the purchase order once the contract value, procurement method and type of contract document are known. Refer to the Contract Review Procedures for detailed procedures on how risk is determined.

THE PROCUREMENT PROCESS

Detailed procedural information related to procurement planning, preparing and advertising solicitations, evaluation and award, contract processing, etc. are found in other manuals.

- All the steps to be considered during the procurement process from planning through evaluation and award are outlined in detail in the Procurement Manual.
- All the steps required to complete a Purchaser Order, Blanket Order, or Change Order in the university's financial system are outlined in detail in the Procurement – Working with Banner Manual.
- All the steps associated with processing contract documents are outlined in the Contract Review Procedures and iContracts Workflow Procedures Manual.
- All the steps to be verified for completion of a contract file are outlined in the Contract Checklist.

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DETERMINATION OF CONTRACT VALUE

SFA bases its determination of the proposed length of and compensation of a contract as the original term and agreed upon or optional renewal periods. The values derived are not to be split to avoid any bidding or reporting thresholds.

Departments will sometimes submit a requisition with only a partial value of a contract based on their perception of payments due in a given fiscal year, the payment method or source of funds. However, the purchaser is required to make a good faith determination of the total length and value of a contract and set up the PO/BO accordingly. Additionally, as information becomes known the risk analysis must be updated in accordance with the Contract Review Procedures.

DETERMINING THE PROCUREMENT METHOD

Refer to the Procurement Manual for detailed procedures for all procurement processes and considerations for all procurements. Some procurements are exempt from the solicitation process based on utilizing an existing contract or meeting other criteria. When a solicitation is required, the development of specifications and evaluation criteria are key to reducing the risk associated with the selection of a contractor including, but not limited to, the contractor's past performance, experience and financial stability.

CONTRACT FORMATION AND REVIEW

As the procurement proceeds, the purchaser must make a determination of what terms and conditions will govern the contract. Even though a vendor's terms and conditions are modified to reduce risk, the university assumes a greater risk when utilizing the vendor's terms and conditions or when a contract document goes through various edit cycles. Therefore, at SFA the Office of General Counsel reviews all contracts and the president signs, with very few exceptions. Exceptions are outlined in the Contract Review Procedures in accordance with university policy 1.3 Contracting Authority. Note that contract review does not include purchase orders and blanket orders for which there are no additional contract documents requiring signature.

Once terms and conditions are determined, the purchaser must update the risk assessment and, if required, hand off the purchase to a higher level of purchasing authority. The Contract Review Procedures provide detailed information on scoring and updating risk associated with the vendor's terms and conditions.

PO's and BO's automatically print the director of procurement signature unless the total amount is \$100,000 or greater.

- If the value is \$100,000 or greater and there are no additional contract documents requiring signature by the president, the PO/BO must be sent to the vice president for finance to review, and then it will be forwarded to the president for signature.
- If there are additional contract documents associated with the PO/BO, the president only signs the contract documents. The PO/BO is to be signed by the procurement director and becomes

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an internal document for accounting and tracking purposes, as the contract document provides for the terms and conditions that govern the agreement.

FEDERAL GRANTS

Procurement is involved in federal grants only to the extent expenditures are processed through standard procurement procedures. All other grants paperwork, regardless of the grantor, is handled by the Office of Research and Sponsored Programs.

The requisition workflow process identifies federal grant funds in the workflow and in the email generated by the workflow to the buyer assigned to the requisition.

Currently, SFA has posted on its website its intent to process federal grant funds the same as any other procurement. Depending on updated information, SFA may have to change processes effective 9/1/16 due to updated Uniform Guidance Implementation information.

CONTRACT ADMINISTRATION

Contract administration generally refers to the processes that occur after a contract is signed. At SFA contract administration is a shared responsibility between the purchaser and end user.

The goal of contract administration is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. Effective contract administration minimizes or eliminates problems and potential claims and disputes. Once the purchaser has completed the contracting process, responsibility for contract administration is usually handed off to the end user. There are some standing orders for which the purchaser may take on more of the contract administration responsibilities as needed.

The extent of contract administration will not be the same for all contracts. The level of contract administration necessary should be consistent with the complexity and level of risk of the contracts, its term and dollar value.

It is the contractor's responsibility to perform and meet the requirements of the contract. To do so, contractors sometimes need technical direction and approval from the end user. The end user is responsible to provide this technical direction and approval in a timely and effective manner. In addition, the end user is responsible to communicate with the purchaser if the contractor is not fulfilling the requirements of the contract. The purchaser is responsible to intervene where necessary to ensure that contract requirements are satisfied, that the goods and services are delivered in a timely manner, and that the financial interests of the university are protected.

The end user or the purchaser must be careful not to impose additional requirements on the contractor or manage the contractor's operations to the extent that the contractor is relieved of their responsibility to perform.

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CONTRACT ADMINISTRATION RESPONSIBILITY

The purchaser will work closely with a departmental end user throughout the procurement process. Once the contract is signed and/or the PO/BO is issued, responsibilities will typically break down as follows, although there will be overlap in some areas.

End User	Purchaser
Serving as a point of contact for disseminating the instructions regarding the work to the contractor/vendor	Consulting with legal counsel to address any legal concerns and/or issues
Managing changes to the contract	Approving and documenting changes to the contract
Managing any SFA property used in contract performance	Maintaining appropriate records
Receiving and responding to communications between the agency and the contractor	Receiving and responding to communications between the agency and the contractor
Identify and resolve disputes with contractor in a timely manner	Identify and resolve disputes with contractor in a timely manner
Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements	Exercising remedies, as appropriate, when a contractor's performance is deficient
Verify accuracy of invoices and authorize payments consistent with contract terms	Monitoring the budget/accounting process to ensure sufficient funds are available

MONITORING PERFORMANCE

Monitoring the performance of the contractor is a key function of proper contract administration. The purpose is to ensure that the contractor is performing all duties in accordance with the contract and for SFA to be aware of and address any developing problems or issues.

Small dollar value or less complex contracts normally require little, if any, monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed necessary. Conversely, large dollar contracts may need little monitoring if the items or services are not complex and SFA is comfortable with the contractor's performance and the level of risk associated with the contract.

Responsibility for monitoring contracts is as follows:

- The departmental end user is primarily responsible for monitoring performance and advising the purchaser of problems;
- The Physical Plant oversees all construction projects;
- The Director of Financial Management monitors construction contracts that are funded with a bond issue;

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- Contracts valued at \$1,000,000 or more require enhanced contract monitoring and must be reported to the SFA Board of Regents in accordance with Texas Gov't Code 2261.253, 2261.254 and 2261.255. The Director of Procurement will monitor, at a minimum, the information outlined in policy 17.1, Best Value Procurement and will update such information in a report to the SFA Board of Regents at their regularly scheduled meetings.

PAYMENT APPROVAL

The costs incurred by the contractor should be in accordance with the contract rate schedule. Invoicing is overseen by the Accounts Payable department. Most payments are handled by the three-way match process included in the university's financial system. Procurement completes the purchaser order; the department submits receiving; and accounts payable processes the invoice.

The system requires a match between quantity and pricing before a payment will be processed. Refer to the Receiving Overrides for Banner Manual for details of when it is acceptable to override the three-way match process.

CHANGE MANAGEMENT

Throughout the term of the contract it may become necessary to make changes to the contract. These changes may be minor, administrative changes such as a change of address or they can be substantial changes that affect the prices and delivery. If a contractor perceives that work beyond the scope of the contract was ordered by the agency, the contractor may claim that the contract was "constructively" changed, and the contractor may be entitled to additional compensation for the changes.

The purchaser is responsible to ensure that the change is within the scope of the contract and within the bounds of the procurement method utilized. Changes may not be made that expand a contract beyond the scope of what was included in a solicitation.

If the PO/BO included a contract document, a contract amendment may be necessary to define the change and secure signature from both parties agreeing to the change. If the PO/BO did not include a contract document, the change may be accomplished by issuing a Change Order to the PO/BO in the university's financial system.

VENDOR PROTEST AND DISPUTE RESOLUTION

Vendor protests may occur after a solicitation award is announced. Procedures for handling protests are covered by university policy 16.36 Vendor Protests.

Dispute resolution is a standard part of SFA terms and conditions and is covered by statute under Texas Government Code Chapter 2260. The goal of any dispute resolution process is to resolve all problems before they escalate to the next level. To avoid escalation of problems to the next level and to ensure the departmental end user has not exacerbated potential problems, it is imperative that SFA respond promptly to all contractor inquiries. Initial steps to be taken are:

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1. Identify the problem – many times what may appear to be a problem can be resolved by providing the contractor with information or clarification.
2. Research facts – the purchaser should obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
3. Evaluation – the purchaser should review all of the facts in conjunction with the requirements and terms and conditions of the contract. The purchaser should then consult with the procurement director to determine the appropriate course of action.

Proper dispute resolution is a core skill of successful contract management. Identification of problems early in the performance period, effectively communicating and formalizing the process in writing via a cure notice procedure or less formal written procedure is essential. A contract termination is a failure by BOTH parties to a contract. Termination is the last resort that rarely needs to be done.

TERMINATION

When a contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions. The purchaser must review the termination clause in the contract before taking any steps. The Director should be consulted in all cases. General Counsel may need to be consulted, particularly if the termination is due to default and/or damages are to be assessed.

Termination for Convenience

A termination for convenience, also known as no-fault termination, allows SFA to terminate any contract, in whole or in part, at any time in its sole discretion, if it is determined that such termination is in the best interest of the agency.

- The purchaser shall provide the contractor with written notice specifying whether all or part of the contract is being terminated. The notice of termination must give the date of termination. If the contract is being selectively terminated, the purchaser should specify which part(s) of the contract is being terminated.
- The contractor will generally be paid for allowable costs incurred up to the termination. The university will not be liable for payment to the contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of termination.

Termination for Default

A contract may be terminated for default when SFA concludes that the contractor has failed to perform, make progress, or any way breached the contract. SFA is not required to terminate a contract even though the circumstances permit such action. The purchaser may determine that it is in their best interest to pursue other alternatives. Examples of such alternatives include extending the delivery or completion date, allowing the contractor to continue working or working with the contractor's surety to complete the outstanding work.

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Termination for default should be used as a last resort and not as punishment. The purpose of a termination for default is essentially to protect the interests of the agency while obtaining the necessary goods or services from another source.

A contract may not be terminated for default when the failure to perform is due to excusable causes. In order to qualify as an excusable cause, the cause must be beyond the control, and without the fault or negligence of the contractor.

Prior to terminating a contract for default, a cure notice should be sent to the contractor. A cure notice is a letter provided to the contractor that provides them a period of time, usually 10 days, to correct or “cure” the deficiency or violation. Samples of Cure Notices may be found in the State of Texas Contract Management Guide.

Factors to consider prior to making a termination for default decision include:

1. Has SFA done everything within reason to assist the contractor in curing any default?
2. The provisions of the contract and applicable regulations.
3. The specific contractual failure(s) and the explanation provided for the failures.
4. The urgency of the need for the contracted supplies or services. The department may need to weigh the respective benefits and/or disadvantages of allowing a delinquent contractor to continue performance or re-soliciting a new contractor.
5. The availability of the supplies or services from other sources and the time required to obtain them (compared to the additional time the current contractor needs to complete the work).
6. Availability of funds and/or resources to re-purchase in the event such costs cannot be recovered from the delinquent contractor. Under a termination for default, SFA is within its rights to demand re-purchase costs from the defaulting contractor. Nevertheless, the contractor may not be financially capable to finance the re-purchase, or such demand may result in protracted legal action.

If a contract is terminated for default, the contractor is liable for actual damages and costs incurred by SFA unless the contract states otherwise.

If the contractor fails to cure the situation or provide a satisfactory explanation as requested, the contract may be terminated. The Notice of Termination should contain the following:

1. The contract number, if any, and date of contract;
2. The effective date of termination;
3. Reference to the clause under which the contract is being terminated;
4. A concise, accurate statement of the facts justifying the termination; and
5. A statement that the supplies or services being terminated may be re-purchased and that the contractor will be held liable for any additional costs incurred due to the re-purchase. Before including this statement, the contract should be reviewed to determine whether the right is available under the contract.

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CONTRACT ADMINISTRATION FILE

Keeping one complete master contract file is critical. The file will provide a basis for settling claims and disputes should they arise in administrative or court actions. All documents are maintained for a period of time consistent with the university's records retention rules maintained by the university library.

SFA scans all contracts into the university's imaging system. All imaged files are sorted and documents are grouped and scanned as outlined on the Contract Checklist. Only 2 types of files are maintained in hard copy form: standing orders and project files.

Standing orders are annual or multi-year contracts that are maintained and reviewed by the Contracting Specialists to ensure that renewal is desired by the departmental end user and occurs in a timely manner, including issuing solicitations, securing EIR documentation, etc. Many of the standing orders are multi-year contracts.

Project Files are single transaction, non-renewable contracts that are maintained at the purchaser's discretion, with the exception that any contract for which SFA required a bond, must be maintained as a project file to ensure that the original bond is available, if needed.

CONTRACT MANAGEMENT GUIDE – VERSION HISTORY

The Director of Procurement is responsible for updating the Stephen F. Austin State University Contract Management Guide in accordance with Texas Gov't Code 2261.256 and Texas Education Code 51.9337.

Release/Revision Date	Contract Management Guide Version	Description of Change
June, 2016	1.0	Original Release