

**TITLE: PROCUREMENT**

**PURPOSE:** Establish the procurement policies for the Center for Health Care Services hereinafter referred to as the Center. The policy ensures the appropriate use of Center resources in the procurement of goods and services. This is a revised policy and supersedes policy 3.3 dated April 9, 2007.

[Key Words: Purchases, Request for Bids, Request for Proposals, Conflict of Interest, Integrity, Disclosure, Gratuities, Professional Services, Component Purchases, Contract, Separate Purchases, Sequential Purchases, High Technology, Petty Cash, Property Acquisition, Surplus Property].

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**POLICY STATEMENT:**

The procurement process of the Center ensures the purchase of goods and services on the basis of demonstrated competence and quality at the most advantageous price that represents best value to the Center and its consumers.

**POLICY ELABORATION:**

**I. GUIDING PRINCIPLE:**

The Center shall comply with the Texas Health and Safety Code, Chapter 533 and any other procurement methods and procedures not prescribed in this policy, that are specifically required by its funding sources.

The Center values fair competition, high standards for performance, and ethical behavior. It strives for a reasonable balance between autonomy and control and actively promotes efforts to ensure the attainment of these values through the following:

- A. Using a Contracting and Procurement Department.
- B. Securing items through a competitive process.
- C. Encouraging and promoting participation by all sectors of the business community including small, minority, and/or women-owned or veteran businesses in the procurement process.
- D. Implementing a plan to identify and remove barriers (e.g., processes, specifications or conditions) which have no definite or objective relationship to matters of quality or competence, yet serve to unfairly discriminate against any vendor including small, minority, and/or women-owned or veteran businesses.
- E. When all other factors are equal the Center will select items offered by local Bexar County sources.

## **II. DEFINITIONS:**

- A. "Bid" is an offer made submitted in response to a bid invitation. Bids are usually non-negotiable.
- B. "Capital purchases" are purchases of equipment with an expected life/use of two or more years and a dollar value of \$1,000 or greater.
- C. "Consulting Services" is the practice of studying and/or advising in a manner not involving the traditional employer/employee relationship. A consultant is a person that provides or proposes to provide a consulting service.
- D. "Contract" is a legal agreement between two parties in which consideration is exchanged for goods and/or services in which the document details the terms and conditions of a purchase as defined in this policy. A

purchase order is a contract document.

- E. "Exceptions" is a one time occurrence that does not fit in the general rule pattern or judgment.
- F. "Exemptions" where it is acknowledged that it is outside the scope of normal approved protocol
- G. "Gratuities" are gifts from vendors to individual staff members that include, but are not limited to money, personal favors, property transfers, event tickets, loans and free trips.
- H. "High technology item" is a service, equipment, or good of a highly technical nature, including:
  - 1. Data processing equipment and software, and firmware used in conjunction with data processing equipment;
  - 2. Telecommunications, radio and microwave systems;
  - 3. Electronic distributed control systems, including building energy management systems;
  - 4. Complex medical devices utilized in patient diagnosis or treatment; and
  - 5. Technical services related to these items.
- I. "HUBs" is the acronym for Historically Underutilized Businesses, including women and minority-owned businesses as defined in Texas Government Code Section 2161.006(2) and Title I Texas Administrative Code Chapter 111, Subchapter B, Rule 111.12
- J. "Intangible purchases" are items that cannot be counted, touched or have their physical properties verified by

receiving.

- K. "Item" is any service, equipment, good or other tangible or intangible property, including insurance and high technology items.
- L. "Management Staff" are Center staff at the Director level or higher, or an employee who, by virtue of his or her position regarding a Center purchase, exercises substantial influence over the selection of acquisition of a good or service.
- M. "Procurement" – The process used by any unit/department designated by the Center to participate in the purchase of items including but not limited to: prices, terms, delivery, quality and quantity of goods and services.
- N. "Professional Services" means those services performed by an individual who is licensed, certified, registered, or otherwise authorized under state law and who acts within the scope of the individual's license, certification, registration, or other authorization as defined by Texas state law to include but not limited to:
  - A. medicine
  - B. nursing
  - C. nutrition
  - D. pharmacist
  - E. professional counseling
  - F. psychology
  - G. social work
  - H. speech-language pathology
  - I. rehabilitation
- O. "Purchase" is any kind of acquisition including a lease of an item.
- P. "Real Property" - - means land, including

improvements and fixtures on the land, property of any nature appurtenant to the land or used in connection with the land, and a legal or equitable estate, interest or right inland, including leasehold interests, terms for years and a judgment, mortgage or other lien.

- Q. Respondent – is a person or entity that submits a response to a solicitation instrument.
- R. “Responsible bidder” is a bidder who is willing and able to perform the requirements specified in the RFB.
- S. “Responsive bid” is a bid that is submitted in accordance with the terms and conditions specified in the RFB.
- T. “RFB” is a request for bid which is a written request for submission of a bid.
- U. “RFI” is a Request for Information which is a general invitation to contractors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of solicitation.
- V. “RFP” is a Request for Proposal which is a written request for proposals concerning services that the Center intends to acquire by means of proposals submitted by potential respondents.
- W. “RFQ” is a Request for Qualification which is a request for qualifications or specialized expertise in response to the scope of service required. No pricing is solicited with an RFQ.
- X. "Separate purchases" are purchases, made separately, of items, that in normal procurement practices would be purchased in one purchase.
- Y. "Sequential purchases" are purchases, made over a period, of items that in normal procurement practices

would be purchased in one purchase.

Z. "Services" are labor purchased to assist or benefit the Center.

AA. "Sole Source" is a contract solicitation that is limited to one product or contractor because of a distinctive feature or characteristic of the product or service.

BB. "Supplies" are items that are consumed within one year and tools and minor equipment that do not conform to the definition of capital purchases.

CC. "Surplus Property" means personal property that:

1. is not salvage property or items routinely discarded as waste;
2. is not currently needed by the organization;
3. is not required for the organization's foreseeable needs; and
4. possesses some usefulness for the purpose for which it was intended.

DD. "Year" is any twelve consecutive month period.

### **III. CONTRACTING AND PROCUREMENT DEPARTMENT RESPONSIBILITIES:**

A. The Center utilizes a Contracting and Procurement Department for the purchase of goods.

1. The Chief Administrative Officer is responsible for developing and maintaining procedures consistent with this policy.
2. The Contracting and Procurement Department

shall participate in and conclude all negotiations affecting procurement including: prices, terms, delivery, quality and quantity of goods and services.

3. The Contracting and Procurement Department is responsible for the issuing of purchase orders.
  4. The Contracting and Procurement Department maintains and updates on a continuous basis a bidder's list.
  5. The Contracting and Procurement Department reports surplus property and its value to the Chief Administrative Officer on an as needed basis to determine its disposition.
- B. Procurement records are maintained for five years. The records must be maintained in good order and reasonable controls established to prevent loss or unauthorized tampering.

#### **IV. PROCUREMENT STRUCTURE:**

- A. All separate, sequential, or component purchases of items obtained from the same supplier by the same department are treated as if they are part of a single purchase and of a single contract and require the appropriate approval authority.
1. Each manager/director is responsible for assuring that a contract or purchase order is secured for the items that they purchase via the competitive process or as an exempt acquisition. Intentional splitting of purchases to avoid the competitive process is a violation of the Procurement Policy.
  2. Expenditures made by employees on behalf of the

Center for miscellaneous items are reimbursed from Petty Cash up to a maximum amount of \$50.00 per day per individual. Petty cash reimbursement should only be used to accommodate immediate, infrequent needs that can be purchased for \$50.00 or less.

3. Expenditures made by employees on behalf of the Center for items relating to meetings or special functions are reimbursed from Petty Cash up to a maximum of \$100.00 per day per individual. Petty cash reimbursement should only be used to accommodate immediate, infrequent needs that can be purchased for \$100.00 or less.

B. Purchases \$2,000 or less do not require competitive bidding (TAC 113.11).

1. Purchases in excess of \$2,000 but not over \$10,000 require at least three informal bids. The Center shall make a good faith effort to locate and consider HUBs, including woman and minority-owned or veteran businesses.

Informal bids are unsealed competitive bids, submitted by letter, telephone, telegram, electronic or other written means. If the bid is submitted by telephone, the person soliciting the bid must document the date, vendor name and vendor representative, the description of the goods or services being purchased, the bid amount and quantity (if applicable) for each submitted bid, prior to the amount of the awarding of the bid.

C. Purchases in excess of \$10,000 but not over \$25,000 require at least three formal bids. The Center shall make a good faith effort to locate and consider HUBs, including woman and minority-owned or veteran



businesses.

Formal bids are unsealed competitive bids, submitted by letter, telegram, electronic means or other written document.

- D. Purchases of community services, goods and non-community services that are expected to exceed \$25,000 must include a competitive bid or proposal solicitation process (publicly inform potential bidders of procurement opportunities). One of the following methods must be used to notify the public:
1. For community services contracts, the Center must publish an RFP Notice in a local newspaper or professional association newsletter or announce by direct mail to all known provider(s) of those community service(s) at least 10 calendar days, but not more than 90 calendar days, prior to the due date for the submission of proposal. This is in accordance with Texas Administrative Code Title 25 Chapter 412.58
  2. For goods and non-community services, publish a notice (advertisement-business daily) until the latest of 21 calendar days, or the date bids will no longer be accepted, or the date it is decided not to make the procurement.
  3. Publish the entire bid or proposal solicitation package (RFP, RFB, etc.) until the latest of 14 calendar days, the bids will no longer be accepted, or the date it is decided not to make the procurement.
  4. The Center shall prepare a HUB Procurement Plan for the acquisition of any goods or services when the acquisition is expected to exceed

\$100,000 in the aggregate.

- E. The Contracting and Procurement staff will secure bids or written quotations and shall maintain a record of all vendors contacted to include solicited bids. Each vendor must submit a quote or written bid to the Contracting and Procurement Department by way of method identified on the solicitation document. These proposals and/or bid responses must be received in accordance with the time and date specified.

## **V. COMPETITIVE PROCUREMENT PROCESS:**

- A. Request for Bid Process:
  - 1. The award of a contract or purchase order for items secured pursuant to a request for bid (RFB) shall be made to the lowest responsible bidder.
  - 2. A notice of a proposed purchase will be published in a newspaper of general circulation in the Bexar County, with the publication occurring at least 14 calendar days before the bid opening date.
  - 3. The Contracting and Procurement Department will advertise in publications that can best alert potential vendors to the needs of the specific RFB. This includes trade journals, local publications and any other media that conveys the Center's needs to the vendors who would be providing the item.
  - 4. If the item to be purchased is for public works, i.e., for construction, repair, renovation, improvement, or addition to the real property of the Center, the notice must include:
    - a. A description of the work;

- b. State the location at which the bidding documents, plans, specifications, or other data may be examined by all bidders; and
  - c. State the time and place for submitting bids and a time and place bids will be opened.
5. If the item to be purchased is not for public works, the notice must include:
  - a. The specifications describing the item to be purchased or a statement of where the specifications may be obtained;
  - b. The time and place for receiving and opening bids and the name and position of the Contracting and Procurement Department employee to whom the bids are to be sent;
  - c. The type of bond required of the bidder if any.
6. If the Center chooses to use unit pricing in its RFB, the information furnished bidders must specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.
7. The Center requires bid and performance bonds only when necessary to protect its assets, or when required by law.
8. If the contract is for the construction of public works or exceeds \$100,000, the bid specifications may require the bidder to furnish a good and

sufficient bid bond in the amount of five (5) percent of the total contract price. A bid bond must be executed with a surety company authorized to do business in this state.

9. Not later than the 10th day after the day of the signing of a contract or issuance of a purchase order following the acceptance of a bid or proposal, the bidder or proposal offerer shall furnish a performance bond to the Center, if required by the Center, for the full amount of the contract if that contract exceeds \$50,000.
10. For those contracts or purchase orders that are for \$50,000 or less, the Center may provide in the RFB Proposal that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the Center.
11. A notice of proposed purchase of equipment with an estimated value in excess of \$50,000 may include a request for information about the costs of the repair, maintenance, or repurchases of the equipment. The Contracting and Procurement Department may require the bidder to furnish, to the Center in a contract for the purchase of the equipment, a bond to cover the repurchase costs of the equipment.
12. Supplies and/or equipment may be standardized to a specific brand or manufacturer when it is in the best interest of the Center to do so.
13. No unlawful discrimination will be made against bidders, vendors or contractors because of race, color, religion, sex, age, national origin, physical disability/handicap.
14. A request for information (RFI) is used to survey

the market to determine what items are currently available to accomplish a mission. Information obtained through the RFI process may be used to develop specifications for a Request for Bid (RFB) and/or a Request for Proposals (RFP). Award is not made from the RFI.

15. Bids and bid modifications received after the time defined in the RFB or RFP for receipt will not be considered and will be returned unopened.
16. A copy of a certificate of insurance, a certificate of authority to self insure issued by the Texas Department of Insurance Division of Workers Compensation commission, or a coverage agreement showing statutory workers' compensation insurance coverage for the person's or entity's employees rendering services to the Center must be provided to Procurement prior to the award of a contract for public works, (i.e., for construction, repair, renovation, improvement, or addition to the real property of the Center).
17. The Center shall reserve the right not to award a contract and to reject all bids if it determines that acceptance of even the most favorable bid is not in the best interest of the Center.
18. The Center will from time to time acquire and dispose of real property through purchase, sale or lease. The Board shall approve all purchases, sales and leases of real property and all such transactions shall conform to any relevant contractual obligation the Center may have with one of its funding agencies.

**B. Competitive Proposal for High Technology Items**

1. The competitive proposal process is provided for high technology items. Public notice for the RFP

is made in the same manner as provided in the competitive bid procedures. The RFP specifies the relative importance of price and other evaluation factors.

2. The award of the contract or purchase order is made to the vendor whose response to the RFP is determined to be the best evaluated offer. Evaluation may include discussion/negotiation with the vendors relative to the evaluation factors as set forth in the RFP.
3. Discussions/negotiations may be conducted with one or more of the respective vendors whose proposal(s) are determined to be reasonably able to be selected for award. The vendors will be accorded fair and equal treatment with respect to the opportunity for discussion and revision of proposals. Revisions are permitted after submission and before the award of the contract for the purpose of obtaining the best and final offers.
4. If provided in the RFP, the proposals may be opened so as to avoid disclosure of contents to competing vendors. The information will be kept confidential during the process of negotiation. However, all proposals that have been submitted shall be available and open for public inspection after the contract or purchase order is awarded, except for confidential information contained in the proposal and identified as such.

## **VI. EXEMPTIONS TO THE COMPETITIVE PROCESS:**

- A. The acquisition of the following items is exempt from the competitive process. (Approval authority is as defined in

Section IX of this policy).

1. An item that must be purchased in the case of a public calamity when it is necessary to complete the purchase promptly to address the needs of the citizens or to preserve the property of the Center.
2. An item that must be purchased in the case of an emergency to ensure the health or safety of the consumers and employees of the Center.
3. An item necessary because of unforeseen damage to Center property.
4. Consulting or Professional service. The Center can contract for these services if there is a substantial need and if services cannot adequately be performed with its own personnel.
5. Any work performed and paid for by the day, as the work progresses.
6. Procurement of facilities, land or rights of way are exempt and must be approved by the Board of Trustees. Real estate agencies utilized in the procurement of facilities, land and/or rights of way are selected by the RFP process. Selection of the agency is based on established criteria.
7. An item that can be obtained from a sole source, including but not limited to:
  - a. Items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;
  - b. Films, manuscripts, or books;

- c. Electric power, gas, water and other utility services.
- d. Captive replacement parts or components for equipment.
- e. Items or services for which there is a distinct characteristic and/or feature offered, that only one source can or will provide.

## **VII. CONTRACTING DEPARTMENT RESPONSIBILITIES:**

- A. The Center utilizes the Contracting and Procurement Department for the procurement and purchase of goods and services.
  - 1. The Contracting and Procurement Director is responsible for developing and maintaining procedures consistent with this policy for the procurement of external provider network services for the Center
  - 2. The Contracting and Procurement Department shall participate in and conclude all negotiations affecting Contracting and Procurement including: prices, terms, delivery and quality of services.
  - 3. The Contracting and Procurement Department is responsible for the award of contracts. The Chief Executive or assigned designee is the contracting officer for the Center. No other individual is authorized to sign and obligate the Center to contract for goods and services.
  - 4. The Contracting and Procurement Director is responsible for ensuring that contracts are awarded to responsible providers of the external



provider network. To qualify for award a prospective provider must affirmatively demonstrate its responsibility, and when applicable the responsibility of any proposed subcontractors. Key areas in determining responsibility include:

- a. Having financial resources adequate to perform the contract;
- b. Being able to comply with the required performance schedule taking into consideration all existing commitments (including awards pending);
- c. Having a good performance record;
- d. Having a sound record of integrity and business ethics;
- e. Disclosing any financial arrangement that the vendor has with any staff member or management staff of the Center, or their immediate family members.
- f. Having a sound quality control program that complies with solicitation requirements or the ability to obtain one;
- g. Having the necessary organization, experience, accounting and operational controls, technical skills, and production and property controls, or the ability to obtain them;
- h. Having the necessary technical equipment and facilities, or the ability to obtain them;

- i. Having personnel with the necessary license and professional qualifications to provide the services; and
- j. Being otherwise qualified and eligible to receive an award.

## **VIII. OTHER PROCUREMENT METHODS**

### **A. Request for Proposal – Procurement of Services.**

1. The RFP is provided for procurement of services. The RFP uses a process of competitive sealed proposals. One of the key differences between the RFB and RFP process is that discussions and negotiations are allowed with the considered respondent and best and final offers are solicited.
2. The RFP will specify the relative importance of the evaluation factors.
3. Selection shall be based on the demonstrated competence and qualifications for the type of services to be performed and at fair and reasonable prices.
4. The RFP shall be advertised in the same manner as specified in the RFB.

The Contracting and Procurement Director shall have a plan that rates qualified proposals on compliance with non-discrimination and affirmative action. It is the intent of this provision to promote the public policy of encouraging and fostering services with small, minority and women-owned business.

5. When services are requested by an RFQ procurement method, the following two step process is to be used:

a. After the person or firm is selected based on competence and qualifications the Center shall proceed to negotiate a contract at a fair and reasonable price.

b. If the Center is unable to negotiate a satisfactory contract with the most highly qualified provider, the Center shall formally end negotiations and begin negotiations with the second most highly qualified provider. This sequence shall continue until a contract is made.

6. Procurement through Interlocal Cooperation Act

The Center may contract or agree with another local government or with the state or state agency, including The Texas Multiple Award Schedule (TXMAS) of the Office of the State Comptroller and/or Texas Department of Information Resources, to procure items jointly or from one another pursuant to the Interlocal Cooperation Act.

Nothing in this policy restricts or attempts to restrict the Center from entering into such cooperative agreements to conserve and coordinate the use of the public funds. Such purchases are exempt from Section V of this policy but must have the appropriate approval authority indicated in Section IX A or B.

7. Group Procurement Program

Provided the Center does not become a stockholder, the Center may join a group purchasing

organization, alliance or cooperative such as the Government U.S. Communities Purchasing Alliance, Texas Multiple Award Schedule (TXMAS) or other inter-governmental purchasing group. The Group Purchasing program will be administered by a business entity that offers discount prices on goods and services to the Center. Nothing in this policy restricts or attempts to restrict the Center from entering into such agreements to conserve the use of public funds. Such purchases are exempt from Section V of this policy but must have the appropriate approval authority indicated in Section IX A or B.

8. Emergency Procurement

Purchases required to remedy an emergency situation are exempt from Section V of this policy but must have the appropriate approval authority indicated in Section IX prior to order placement.

9. Negotiated Procurement

If no responsive bids or responsible bidders are identified in response to Section V – Solicitation for Goods, the Contracting and Procurement Department is authorized to negotiate a purchase. Contracting and Procurement may negotiate with the Group Purchasing Organization vendors for a lower price for specific items to ensure the lowest possible acquisition price. Documentation of the negotiations is maintained in the Contracting and Procurement Department. (Approval authority is as defined in Section IX A or B).

10. Capital Procurement

Capital funding is utilized to secure capital assets

and services. Funding for the total project is to be secured prior to utilizing the RFB or RFP process. Capital funding approval includes the Chief Administrative Officer, budget office and financial accounting. All approvals are to be documented on the purchase order.

11. Unauthorized Procurement

The Center utilizes a centralized procurement process. Only the methods delineated in this policy can obligate Center funds. Unauthorized or "after the fact" procurement that are not prior approved by an approval authority defined in Section IX are considered a violation of the procurement policy.

**IX. APPROVAL AUTHORITY:**

A. Goods Approval Authority Levels

1. Goods secured through the RFB or RFP process:

<b>AUTHORITY</b>	<b>DOLLAR RANGE</b>
Director	Up to \$ 5,000
Chief Administrative Officer	Up to \$ 10,000
President/CEO	Up to \$ 100,000 Budgeted
Finance Committee	Up to \$ 100,000 Non-budgeted
Board of Trustees	Over \$ 100,000

2. Competitively exempt goods acquisitions:

<b>AUTHORITY</b>	<b>DOLLAR RANGE</b>
Chief Administrative Officer	Up to \$ 10,000
President/CEO	Up to \$ 100,000 Budgeted
Finance Committee	Up to \$ 100,000 Non-budgeted
Board of Trustees	Over \$ 100,000 Non-budgeted

3. Competitively exempt emergency goods acquisitions:

<b>AUTHORITY</b>	<b>DOLLAR RANGE</b>
Chief Administrative Officer	Up to \$ 10,000
President/CEO	Up to \$ 100,000 Budgeted
Board of Trustees	Over \$ 50,000

B. Capital and service acquisition approval authority levels

1. Capital and service acquisitions secured through the RFB or RFP process:

<b>AUTHORITY</b>	<b>DOLLAR RANGE</b>
Director	Up to \$ 5,000
Chief Administrative Officer	Up to \$ 10,000
President/CEO	Up to \$ 100,000 Budgeted
Finance Committee	Up to \$ 100,000 Non-budgeted
Board of Trustees	Over \$ 100,000

2. Competitively exempt capital and service acquisitions:

<b>AUTHORITY</b>	<b>DOLLAR RANGE</b>
Chief Administrative Officer	Up to \$ 10,000
President/CEO	Up to \$ 100,000 Budgeted
Finance Committee	Up to \$ 100,000 Non-budgeted
Board of Trustees	Over \$ 100,000

3. Competitively exempt emergency capital and service acquisitions:

<b>AUTHORITY</b>	<b>DOLLAR RANGE</b>
Chief Administrative Officer	up to \$ 10,000
President/CEO	up to \$ 100,000 Budgeted
Board of Trustees	over \$ 50,000

4. The disposition of surplus property:

<b>AUTHORITY</b>	<b>DOLLAR RANGE</b>
Chief Administrative Officer	up to \$ 10,000
President/CEO	up to \$ 100,000 Budgeted
Board of Trustees	over \$ 50,000

**X. CONTRACTS:**

- A. Contracts are awarded for periods that are in the best interest of the Center. If the contract is greater than one year, the Center retains the option to renegotiate at the end of each year.

An increase of 10 percent or greater over the previous year requires the contract to receive full authorization according to the approval levels in Section IX.

- B. The Contracting and Procurement Director may recommend cancellation of a contract at the annual renewal due to inadequate vendor performance or when it appears that re-bidding the contract would be in the best interest of the Center.
- C. The Contracting and Procurement Director is authorized to provide for a contract extension of no more than 120 days beyond a contract's expiration date.
- D. Non-performance by a vendor on an executed contract may warrant contract cancellation. The Contracting and Procurement Director shall prepare a written recommendation citing the identified deficiencies. This is presented to the Director(s) who utilize(s) the service or supply for concurrence. The approval authority of the original contract must approve the cancellation.

- E. To rescind a contract that has been approved but not yet executed, the requesting department will submit written justification to the Contracting and Procurement Director. The approval authority of the original contract must approve the recession.
- F. Contract amendments during the term or renewal term that add to the dollar value of the approved contract must be approved in accordance with the levels specified in Section IX. The contract must be approved in accordance with the levels specified in Section IX should the total value of the amended contract fall into a higher approval category.
- G. The Center may negotiate a modification of the contract after award of a contract but before the contract is executed, if the modification is in the best interests of the Center and does not substantially change the scope of the contract or cause the contract amount to exceed the next lower bid.

Modifications that add to the dollar value of the contract must be approved in accordance with the levels specified in Section IX. Should the total value of the modified contract fall into a higher approval category, the contract must be approved in accordance with the levels specified in Section IX.

#### **XI. CONFLICT OF INTEREST:**

A staff member of the Center who participates in the procurement process, and/or who will review, recommend, or decide upon the award to a vendor and/or who will order goods and services pursuant to a contract, and who owns stock in or has partial ownership of, or derives some income or personal benefit from the recommended or selected vendor must report these facts to the Chief Administrative Officer in



writing. The Contracting and Procurement Department is responsible for ensuring that a conflict of interest does not affect the outcome of vendor selection. Employees or Officers of the Center will not act as vendors of goods, supplies or services for the Center.

## **XII. GRATUITIES:**

Center employees may not solicit a gratuity for business purposes or otherwise from a vendor without the prior authorization of the President/CEO. Gratuities to employees may be accepted only for use in the Center and only if the value of each item is under \$25. Center employees may accept a meal with a value of less than \$25 from a vendor during the course of a business meeting. No cash gratuities are to be accepted. Center employees should not be influenced by gratuities in their decision process. Any Center employee who receives a vendor offer of a gratuity that cannot be accepted under this policy must report that offer to the President/CEO.

## **XIII. VENDOR INTEGRITY AND NON-PERFORMANCE:**

A. Vendors are expected to comply with the Center's requirements. Vendors who display questionable ethical behavior in their business relationship with the Center will be removed from the bidder's list.

The Center will not do business with individuals or entities that are listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federal or state programs. If such debarment or exclusion occurs subsequently, the Center will terminate the business relationship upon learning of such sanction. Nor will the Center do business with individuals or entities whom pay or offer remuneration to

any staff member or management staff of the Center, or to their immediate family members, to induce vendor selection by the staff member. If such payment or offer of payment for selection occurs subsequently, the Center may terminate the business relationship or take any other appropriate action upon learning of such payment or offer.

- B. The Contracting and Procurement Department will retain records detailing vendor performance regarding price, quality, integrity and services. A vendor may be removed from the Bidder's List if problems are encountered including unsatisfactory delivery, unacceptable products, failure to honor price quotations or over or under-shipments. The Contracting and Procurement Department will notify the vendor in writing of the identified problem(s). The vendor must provide a written response within 10 calendar days. The Contracting and Procurement Department will provide a written recommendation thirty days from the original complaint date. The recommendation must be approved by the Chief Administrative Officer. The President/CEO will make the final decision on removal from the Bidder List.
- C. A vendor removed from the Bidder's List will remain off the list for a minimum of one year. Reinstatement to the Bidder's List requires satisfying the Contracting and Procurement Department and the users of their products and/or services that the problem(s) that resulted in their removal from the list have been resolved.

#### **XIV. VENDOR APPEAL PROCESS:**

A vendor may file an appeal relative to purchases secured through the formal bid process (RFB or RFP) following procedures set forth in the terms and conditions of the bid

document. Purchases secured through the informal bid process or as an exempt purchase are not subject to the formal appeal process.

## **XV. EXCEPTIONS:**

A. The President/CEO or assigned designee Officer is authorized to approve justified exceptions to the Procurement Policy. Exceptions to the Procurement Policy approved by the President/CEO or assigned designee Officer are reported to the Board of Trustees at their next regularly scheduled meeting for consent and/or discussion.

B. Justification for the Use of Exceptions

An exception from the competitive procurement process must be justified in writing. The documentation, in a specific and objective manner, must clearly identify the exemption and the rationale for the exception's applicability. The Chief Executive Officer's decision to approve the justified exemption shall be based on the following information:

1. A statement regarding the need for the particular item to enable the department to perform its mission. This statement must include information regarding the characteristics of this particular item or service, which make it uniquely suited to the needs of the Center.
2. A statement regarding the evaluation of all known similar brands of equipment or providers of service against the requested item. The brands or vendors evaluated must be specified and a statement must be made why the requested product or service is the only one acceptable to meet the needs of the Center.

3. A statement regarding whether the requested item has been previously standardized by the Center, whether it will be used with other items of the same type and whether item is part of a project upgrade.
4. A statement regarding differences between the requested item and its competitors.
5. A statement regarding the result if the next most nearly acceptable item is purchased rather than that requested.
6. In the event the exception from the competitive procurement process is based on Section VI.A.1. through 3. (Emergency Purchases), written support documenting the exception is still required but may be provided 72 hours after the exception is approved.

## **XVI. POLICY INFRACTIONS:**

Employees of the Center have a responsibility to report infractions of this policy in a timely manner to their supervisor, the executive management or the President/CEO.

The Chief Administrative Officer can suspend procurement approval authority for repeated violations of the Procurement Policy based on prescribed criteria related to intent and severity. Repeated violations can result in disciplinary action including termination. The department manager/director is responsible for knowing and complying with the requirements of the Procurement Policy.

## **XVII. POLICY REVIEW:**

The Procurement Policies are reviewed and approved by the Board of Trustees. The contents may be amended by the Board at the review and as is necessary to ensure the effective functioning of the procurement process.

### **REFERENCES/BIBLIOGRAPHY:**

TEX. HEALTH & SAFETY CODE § Chapter 533.  
TEX. HEALTH & SAFETY CODE § Chapter 534.  
TEX. GOV'T CODE § 2254.001 et seq. (Vernon Pamp. 1996).  
TEX. GOV'T CODE § 791.011 et seq. (Vernon 1994).  
TEX. LABOR CODE, § 406.096 (Vernon 1996).  
TEX. LOCAL GOV'T code 263.151(2)  
42 U.S.C. § 1395nn (1997).

**OFFICE OF PRIMARY RESPONSIBILITY:** Chief Administrative Officer