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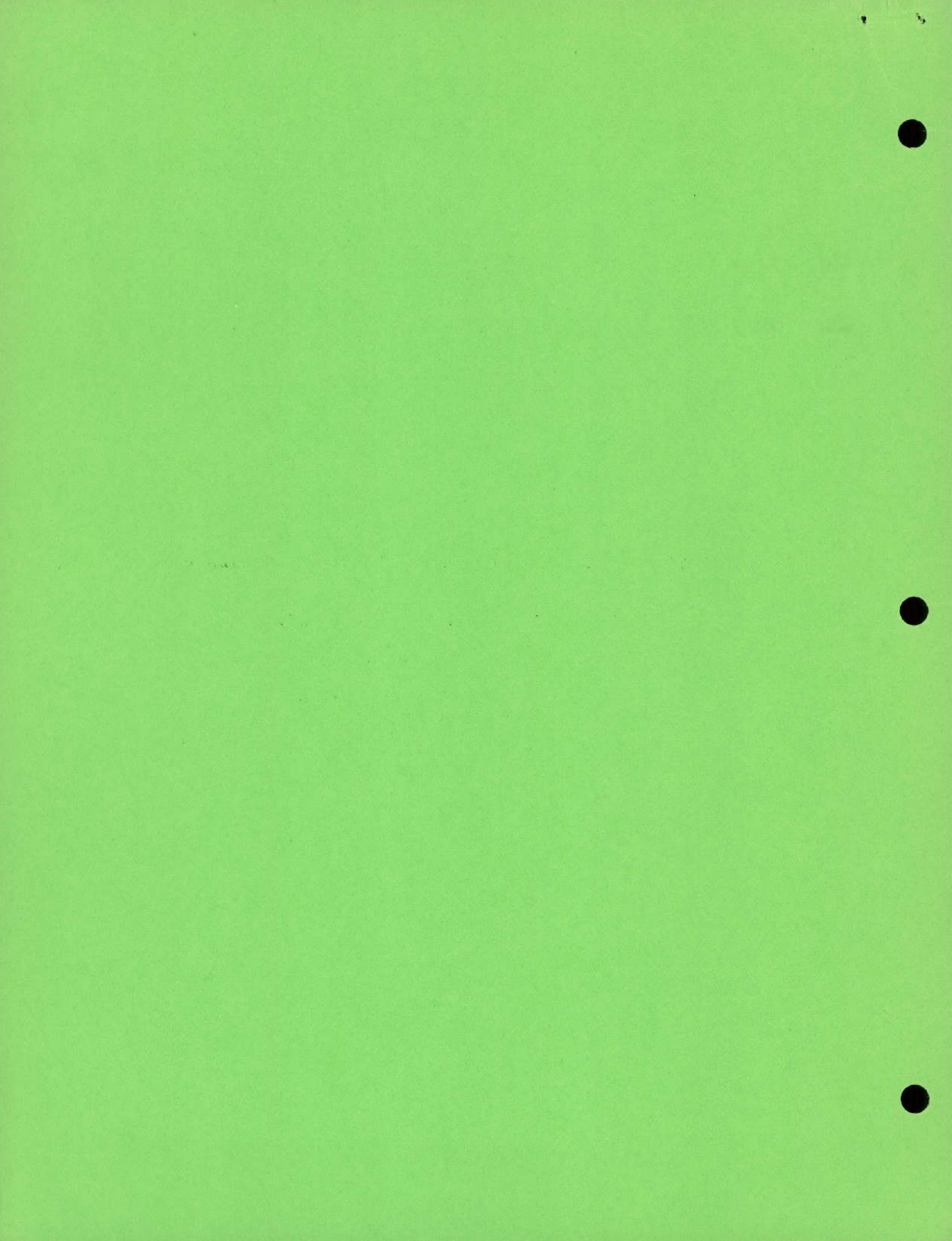
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STATE PURCHASING AND GENERAL SERVICES COMMISSION

PURCHASING DIVISION POLICY MANUAL

Adopted by the Commission
March 11, 1982



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SECTION I
INTRODUCTION

The State Purchasing and General Services Commission (SPGSC) is a state agency created by Article 601b, Vernon's Texas Civil Statutes. It is the only agency in the State of Texas established to perform support functions for other state agencies on a statewide basis.

In a memorandum dated March 31, 1980, a former Commission enunciated a fundamental policy for the State purchasing system from which other policies flow. This policy emphasizes the fact that the SPGSC is a service agency for the benefit of other state agencies.

In its October 22, 1980 report, the Operational Audit Committee of the Governor's Budget and Planning Office found a need for a policy manual to document policy statements such as the above to provide guidelines for management of the State purchasing system.

This is that policy manual.

It is designed for change. The Operational Audit group found that policy statements would be discussed at monthly Commission meetings. Every now and then, someone would sense the continuing impact of one of these statements and create a memorandum to all the employees of the SPGSC. Sometimes, these memorandums would filter through the system to user agencies or vendors for their

information.

This policy manual is an effort to capture these key thoughts (and others that have evolved and will come to mind) in a relatively brief form for the benefit of all concerned. It documents guidance from the three Governor-appointed Commissioners concerning how they want the purchasing system for the State of Texas to function within the statutory framework provided by the Legislature.

Whenever a policy manual is mentioned, the question of definition arises. What is a policy in contrast to a law, or a rule, or a directive, or a procedure?

"There appears to be no consensus about the meaning of policy Policies are generally considered to be guides to action or channels to thinking. More specifically, policies are guides to carrying out an action. They establish the universe in which action is to be taken Policies usually enjoy a long life Policies direct action to the achievement of an objective or a goal." [Steiner and Miner, 1977, pp.24-25]

"A policy is a statement which describes in very general terms an intended course of action. After the fundamental objectives of an activity are established during the planning process, policies are developed to serve as general guidelines in channeling future action toward the objectives. Policies, as distinguished from

procedures, do not set down a series of explicit steps to be followed in performing a task. Rather, they state broadly the intended course of action. After a policy has been formulated, specific procedures are then developed for handling common recurring decisions.

"From an operating manager's [SPGSC staff and purchasers at user agencies] point of view, an established policy serves two functions. First, it serves as a base to be used in formulating operating procedures. Second, it serves as a general guide in making decisions about unusual problems which fall outside clear-cut procedural boundaries." [Lee and Dobler, 1977, p. 397]

Policies that represent the majority views of the three commissioners can be defined as their expressed or implied intent to control procurement actions in the achievement of one of the Governor's aims: to create a more business-like approach in providing goods and services for the benefit of Texas taxpayers.

SECTION II
PURCHASING POLICIES

1. SPGSC is the state agency to encourage the concepts of centralized purchasing and competitive procurement throughout all State agencies.

2. Procurement of services common to several agencies should be centralized.

3. Centralization of purchasing is concerned solely with the placement of purchasing authority. It has nothing to do with the location of purchasers. Purchasing authority should be centralized--
 - a. when the same goods or services are needed by two or more agencies;

 - b. when quantity discounts can be gained through consolidated purchases;

 - c. when transportation savings can be achieved through consolidated purchases;

 - d. when more effective inventory control can be achieved through central stores;

 - e. when the user agency lacks the capability to buy for

itself;

- f. to develop purchasing specialists whose primary concern is purchasing (purchasing specialists inevitably buy more efficiently than less skilled persons who view purchasing as a secondary responsibility);
 - g. to eliminate excessive cost and impulse purchasing;
 - h. to reduce sellers' expenses thus permitting sellers to lower their prices;
 - i. to reduce the amount of and increase the reliability of record keeping;
 - j. to reduce the number of orders processed for the same quantity of goods thus reducing purchasing, receiving, inspection, and accounting costs.
4. SPGSC should delegate purchasing functions to user agencies in those instances where centralized purchasing does not serve the best interests of the State of Texas. Purchasing authority may be delegated--
- a. when goods or services are peculiar to a particular user agency;
 - b. when the cost of transporting the goods or services

exceeds the savings achieved through centralized buying.

5. The overwhelming majority of goods and services acquired for the State of Texas shall be accomplished through competitive procurement practices.

6. There are two recognized methods of competitive procurement for open market purchases: competitive sealed bids and competitive sealed proposals. The competitive sealed proposal method should be employed when factors other than acquisition price are significant.
 - a. Competitive sealed proposals are appropriate when any of the following conditions exist:
 - (1) The dollar value of a specific purchase is not sufficient to justify the administrative cost of competitive sealed bids.
 - (2) The specifications of an item or service to be purchased are less than explicitly clear to both purchaser and seller.
 - (3) Sellers comprising the market are unwilling to price competitively.

- (4) When many variable factors bear not only on price, but also on quality and service.
 - (5) When a purchaser is contracting for a portion of a seller's production capacity, rather than for a product the seller has designed and manufactured.
 - (6) When the business risks of producing goods or services cannot be accurately predetermined.
 - (7) When tooling and set-up costs represent a large percentage of total costs.
 - (8) When a long period of time is required to produce the items purchased.
 - (9) When it is anticipated that production of the required items will be interrupted frequently due to numerous change orders.
 - (10) When quality and service are more important than price.
- b. Written findings and determinations of the Director of Purchasing that approve competitive sealed proposals should be business judgments in compliance with State of Texas law, but tailored to the situation at hand in the best interests of the taxpaying citizen.

- c. Requests for Proposals. Proposals should be solicited through a Request for Proposals(RFP).
- d. Public Notice. Adequate public notice of the Request for Proposals should be given in the same manner as competitive sealed bids.
- e. Receipt of Proposals. Proposals should be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A Register of Proposals should be prepared and open for public inspection after contract award.
- f. Evaluation of Proposals. The Request for Proposals should state the relative importance of price and other evaluation factors.
- g. Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposals, discussion may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure a full understanding of, and responsiveness to, the solicitation requirements. Offerors should be accorded fair and equal treatment with respect to any opportunity for discussion and

revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there should be no disclosure of any information derived from proposals submitted by competing offerors.

- h. Award. Award should be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State of Texas taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria should be used in the evaluation. The contract file should contain the basis on which the award is made.

[It is the intention of the majority of the Commissioners to present the Competitive Sealed Proposal method of purchasing to the next session of the Legislature in 1983 for inclusion in Article 601b, Vernon's Texas Civil Statutes. We do not intend to implement this method of purchasing until it is authorized by the Legislature.]

- 7. SPGSC staff should take an active role in seeking mutually acceptable resolutions of disagreements between user agencies and vendors. When a mutually acceptable agreement

is not obtained, the disagreement should be referred to the Commissioners of the SPGSC for resolution.

8. Unresolved disagreements between user agencies and the SPGSC staff should be referred to the Commissioners of the SPGSC for resolution.

9. Unresolved disagreements between sellers and the SPGSC staff should be referred to the Commissioners of the SPGSC for resolution. When an unresolved disagreement pertains to a contract for which an award has been made, the SPGSC staff's position will prevail unless rules of the SPGSC or statutes have been violated.

SECTION III
PURCHASING ORGANIZATION

1. Due to geographical dispersion of user agencies throughout the State of Texas, not all purchasing can or should be handled by the SPGSC (the central purchasing agency). Conversely, purchasing cannot be totally delegated without loss of advantages from combined purchasing power from requirements common to two or more user agencies.

The Commissioners of the SPGSC, being responsible for the control of an effective and economical system for purchasing in the State, establish general policies for the guidance of centralized and delegated purchasing.

Each user agency should have its own purchasing manager who is thoroughly conversant with local requirements and sources of supply, and able to render effective service to the top management of the user agency. These services include curtailing expenses, controlling inventories, and managing procurement dollars to stay within the agency's budget.

Although user agency purchasing managers and their purchasers are organizationally a part of the user agency, there is a purchasing policy/procedure control line that flows from the SPGSC. User agency purchasing managers are responsible to their respective user agency's top management for obtaining the best buys for goods and services within the user agency's

allocated budget. User agency purchasing managers are also responsible for compliance with purchasing policies and procedures emanating from the SPGSC and the State purchasing statute.

2. It is appropriate to appoint representatives from the public and private sectors to meet at the convenience of the Commissioners to assist the Commissioners in policymaking. They should make certain that all policy statements are in writing for the information and guidance of all elements of the State purchasing system.
3. The Commissioners of the SPGSC should have an independent channel of communication to all elements of the State purchasing system. An internal auditor and liaison person should provide the Commissioners with feedback data concerning the impact of their policies on the system, and the need for change.
4. SPGSC should provide training in the full range of purchasing skills for its purchasers and systems analysts, and encourage more individuals to achieve professional certification.
5. Career development within the State purchasing system (SPGSC and user agencies) is essential to enhance current and anticipated job requirements. SPGSC should develop a long-range manpower plan encompassing all elements of the State

purchasing system to create a timetable for training, rotation, promotion, and hiring.

6. Sound management principles should be employed to ensure the effective implementation of policies for the State purchasing system. The SPGSC staff should develop a management by objectives (MBO) system that addresses long-range goals, strategic plans, goal setting for elements of the purchasing system, action planning, and implementation and progress reviews. These elements of the MBO system should be related to career and manpower planning, manager training and self-development, manager compensation, and individual performance reviews.

SECTION IV
PURCHASING ETHICS

1. General Ethical Standards for Employees. Public employment is a public trust. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

2. General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Policy Manual is also a breach of ethical standards.

3. Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that--
 - a. the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement;

 - b. the employee, or any member of the employee's immediate family, has a financial interest in a business or organization pertaining to the procurement; or

 - c. any other person, business, or organization with whom the employee or any of the employee's immediate family

is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

4. Discovery of Actual or Potential Conflict of Interest, and Disqualification. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction. The employee may, at the same time, apply to the Executive Director of the SPGSC for an advisory opinion as to what further participation, if any, the employee may have in the transaction.
5. Gratuities. It shall be a breach of ethical standards for any employee or former employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any purchasing activity.
6. Kickbacks. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee a gratuity or an offer of employment in connection with influencing a purchasing activity.
7. For the purpose of interpreting Paragraphs 5 and 6, above, purchasing activity includes--
 - a. approvals, disapprovals, or recommendations concerning a

purchasing transaction;

- b. preparation of any part of a program requirement or a purchase request;
- c. influencing the content of any specification or procurement standard; and
- d. acting in any advisory capacity including rendering of advice, investigation, or auditing in any purchasing proceeding. For this purpose, purchasing proceeding includes applications, requests for rulings, determinations of claims or controversies and other matters pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

8. Contingent Fees. It shall be a breach of ethical standards for a person to be retained or to retain a person, to solicit or secure a State of Texas contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

9. Representation of Contractor. At the option of SPGSC or the user agency, a person, before being awarded a State of Texas contract, may be required to represent in writing, that such

person has not retained anyone in violation of Paragraph 8, above. Failure to do so constitutes a breach of ethical standards.

10. Contemporaneous Employment Prohibited. It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the State of Texas.

11. Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the State of Texas, in connection with any--

- a. judicial or other proceeding, application, request for a ruling, or other determination;
- b. contract;
- c. claim; or
- d. charge or controversy,

in which the employee either participates personally and substantially through decision, approval, disapproval,

recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the State of Texas is a party or has a direct and substantial interest.

12. Use of Confidential Information. It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

SECTION V

PURCHASING RESPONSIBILITIES AND QUALIFICATIONS

1. SPGSC is responsible for evaluation of vendor performance, and quality of goods and services supplied to the State of Texas.
2. SPGSC is responsible for reporting, if required, the percentage of purchasing by the State of Texas that is handled through competitive procurement versus the percentage that is handled without competition.
3. SPGSC and the purchasing departments of user agencies are responsible for keeping such files and records as are needed for efficient buying, and for ensuring the delivery of the required quantity and quality of goods at the right time.
4. SPGSC and the purchasing departments of user agencies are responsible for obtaining the proper equipment, materials, supplies, and services in the right quality, in the right quantity, at the right price, and from the right source.
5. Integrity, dependability, initiative, human relations skills, analytical ability, and an inquiring mind are the personal characteristics required for success in the purchasing profession. Emphasis should be placed on acquiring an unusually high degree of initiative, tact, cooperative ability, patience, and aptitude for detailed investigation.

6. A successful purchaser must develop two types of "know-how"--
business and technical.

a. Business know-how is composed of a thorough understanding of purchasing principles, as well as a general understanding of the business functions involved in and related to purchasing. How to obtain the "best buy", (not necessarily the lowest acquisition price) is the key to professional purchasing.

b. Technical know-how involves an understanding of commodities, materials, manufacturing processes, and services that can and should be performed by vendors. State-of-the-art knowledge is essential.

SECTION VI
PURCHASING FUNDAMENTALS

1. SPGSC purchasers have no authority to change specifications without concurrence from the user agency. In addition, the SPGSC should readily respond to requests for assistance from user agencies in developing adequate specifications.

2. Comprehensive, fair standards for evaluating seller qualifications and seller performance in accordance with statutory requirements should be followed. Such standards should be uniformly applied to make certain that only qualified sellers with good performance records are offered the opportunity to compete for State procurements. Full utilization of computer capabilities should be employed for these purposes.

3. Realistic lead times for delivery of all contract purchase items should be established and communicated to each user agency. Penalties for late delivery should be enforced uniformly against all contract vendors.

4. SPGSC should combine orders in a system of scheduled purchasing and, in every possible way, try to benefit from purchasing in bulk, provided the needs of the user agencies can be fully met by these procedures. When user agency needs cannot be met in a timely manner, scheduled purchasing should not be employed.

5. Purchasers should require sellers to provide samples of their goods only when it is essential for assessing the quality of a product before ordering a significant quantity. If the cost of the sample is more than the cost of issuing a purchase order, the purchaser's agency should elect to pay for the sample. Such prudence removes any possible obligation that could accrue from accepting free material. On the other hand, if the purchaser sees no possible value in investigating a seller's product, the sample should not be accepted. Unsolicited samples should be returned to sellers at sellers' expense whenever practicable; otherwise, disposed of as surplus property.
6. Emergency procurements should be handled with the assumption that the user agency is accurately presenting its critical needs. In order to insure the integrity of the system, it is appropriate to follow up with a review of emergency requests so that abuses may be avoided.
7. Timeliness of delivery is a critical factor in supplying the needs of user agencies. Selecting suppliers of known ability in production and reliability of promise; establishing a definite mutual understanding of delivery with the supplier at the time the order is placed; and fixing responsibility for delivery with the prime source of supply are essential.

SECTION VII
RELATIONSHIP TO OTHER AGENCIES

1. The Purchasing Division of SPGSC was created to serve the agencies of this State, and should be advisor and helper to user agencies. This role includes:
 - a. providing efficient and courteous procurement service to all user agencies,
 - b. assisting in determining the needs of user agencies when assistance is requested, and
 - c. applying all policies, procedures, and rules in a fair, equitable, and uniform manner.
2. There are occasions when a user agency needs a particular product or service. The user agency should have the right under those circumstances to get what it needs when it needs it, and to expect full cooperation from SPGSC.
3. The SPGSC recognizes that there are purchasing professionals on the staffs of many user agencies. The activities of SPGSC purchasers therefore should be closely coordinated with user agency purchasers so as to avoid duplication of effort, and to promote mutual professional esteem and respect.
4. User agencies have equal responsibility for ensuring that

purchases are made in compliance with the purchasing statute and SPGSC rules and procedures.

If the SPGSC staff doubts that a requested purchase would be in compliance, it should communicate its reservations to the user agency and offer its assistance including recommended ways that the purchase could be accomplished in compliance with the law.

If the user agency then insists on a purchase that the SPGSC staff considers not in compliance with the law, the SPGSC staff and the user agency should jointly seek a resolution decision from the Commissioners of the SPGSC.

5. It is SPGSC's responsibility to keep user agencies informed concerning lead times necessary to centrally procure goods and services.
6. SPGSC should assist agencies wishing to enter into mutually acceptable interagency contracts.

SECTION VIII
CONCLUDING COMMENTS

Users of this manual may want to refer to individual policy statements for reference purposes. It is suggested that they use a combination of the section and paragraph numbers.

There are those who will search for specific rules in these policy statements. These will be found in rules and procedures authored by the SPGSC staff to provide follow-up action for the policy guidelines.

Since this policy manual is designed for change, there is a need for a procedural comment. There are two ways to change it:

1. As the Commissioners or Executive Director of the SPGSC sense the need for change, they may direct the Policy Advisory Committee to author a change for the Commissioners' approval, and publish a new page(s) for insertion;

2. Any person who has a helpful suggestion for a new policy, or an amendment to a present policy, or a deletion of a policy should present his or her ideas, in writing, to the Liaison Officer of the SPGSC. The Liaison Officer will refer the suggestion to the Commissioners for review and consideration. The Commissioners may choose to refer the matter to the

Policy Advisory Committee for further consideration.

As a concluding thought it might be well to keep in mind Governor Clements' statement conjoining the private sector (three appointed Commissioners) with the public sector (State purchasers):

"The expertise of the private sector is a resource too rich for government to ignore, and the goal of a better government is a goal too important for the business community to ignore. . . . I'm absolutely convinced that the more business gets involved in government, the more businesslike our government will be."

APPENDIX A

GLOSSARY

ADEQUATE PUBLIC NOTICE for open market purchases means (1) actual notice received by sellers reasonably expected to submit competitive responses, and (2) notice received with sufficient time for the adequate preparation of responses. Since there is no statutory requirement for newspaper advertising in open market purchases, adequate time may be less than seven (7) days. On the other hand, technical complexity may dictate more than seven (7) days. Fair and reasonable business judgments should govern.

COMPETITIVE NEGOTIATION is a technique for purchasing goods and services, usually of a technical nature, whereby qualified suppliers are solicited, negotiations are carried on with each offeror, and the best offer (in terms of performance, quality of items, price and so forth), as judged against proposal criteria, is accepted.

CONFIDENTIAL INFORMATION means any information which is available to an employee only because of the employee's status as an employee of the State of Texas and is not a matter of public knowledge or available to the public on request.

DIRECT OR INDIRECT PARTICIPATION means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice,

investigation, auditing, or in any other advisory capacity.

FINANCIAL INTEREST means--

- (1) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive any money or other thing of value whatever;
- (2) ownership of such interest in any property or any business as may be specified by the Commissioners of the SPGSC; or
- (3) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

GRATUITY means a payment, loan, subscription, advance, deposit of money, services, or anything of value (including a rebate), present or promised.

IMMEDIATE FAMILY means a spouse, children, parents, brothers and sisters, and such other relatives as may be designated by the Commissioners of the SPGSC.

NEGOTIATION is one of the major methods of procurement, and is

employed under certain permissive circumstances when formal advertising is determined to be infeasible and impracticable. It is a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

OFFICIAL RESPONSIBILITY means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct State of Texas action.

POLICY means a written, overall guide setting up boundaries that supply the general limits and direction in which managerial action will take place; its principal purpose being to enable executive leadership to relate properly the organization's work to its objectives.

PROCEDURE means a series of related tasks that make up the chronological sequence and the established way of performing the work to be accomplished.

PURCHASE REQUEST means that document whereby a user agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item or service, delivery schedule, transportation, criteria for evaluation, suggested sources of

supply, and information supplied for the making of any written determination required by the Commissioners of the SPGSC.

RULES mean SPGSC statements of general applicability that implement, interpret, or prescribe law or policy, or describe the procedure or practice requirements of the SPGSC; published in accordance with the Administrative Procedure and Texas Register Act, Article 6252-13a, V.T.C.S.

USER AGENCY means any department, commission, board, office, or other agency in the executive branch, or any court or agency of the judicial branch of the State of Texas government; a State university system or an institution of higher education.

APPENDIX B

REFERENCES USED BY THE
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