



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER

Operating Policy and Procedure

HSC OP: 72.02, **Guidelines for Proprietary Purchasing**

PURPOSE: The purpose of this Health Sciences Center Operating Policy and Procedure (HSC OP) is to establish the policies and procedures to be followed when making proprietary purchases.

REVIEW: This HSC OP will be reviewed on November 1 of even-numbered years (ENY) by the Managing Director of Procurement Services, with recommendations for revisions forwarded through administrative channels to the Executive Vice President for Finance and Operations.

POLICY/PROCEDURE:

1. **Policy.**

- a. Texas Government Code, Title 10, Subchapter A, Sec. 2155.063 provides that a purchase of or contract for goods or services shall, whenever possible, allow competition.
- b. Purchasing shall review the specifications and purchase conditions of goods or services considered for purchase. If Purchasing finds that specifications and/or conditions of a purchase request require a good or service that is proprietary to one manufacturer and does not allow competition or an equivalent, then Purchasing shall require the requesting department to justify why a proprietary good or service is required.
- c. Proprietary purchases in excess of \$50,000.00 must be justified in writing.

2. **Proprietary Products.** Proprietary Products are manufactured under exclusive rights derived from a trade name patent, copyright or other legally protected right. Products of one manufacturer will be considered as proprietary if they have a distinguishable feature or characteristic which is not shared or provided by similar and competing products.

3. **Proprietary Services.** Proprietary Services are defined as services that only one provider can perform.

4. **Procedure.** Requests for proprietary purchases should only be used when the need is such that competition is restricted to one manufacturer or service provider. This procedure is implemented by completing and attaching the "Sole Source or Proprietary Purchase Justification" form https://www.fiscal.ttuhscc.edu/fsm/forms_home.aspx.

- a. The Justification does not require the department to defend the need for the product or service, but it is necessary to (1) identify the unique features of the particular product or service; (2) explain the need for the unique features of the product or service; and/or (3) explain why other products or services are not acceptable.
- b. **Federal Funds.** The standards for justification of a sole source award using federal funds rather than state funds are significantly more rigid and typically will require a competitive process prior to award. When federal funds are being used, sole sourcing should ONLY be considered in extreme situations such as for the procurement of:

- 1) There has been an unpredictable emergency with no time to bid. (e.g., Human life, health or University property is in jeopardy.)
- 2) Subcontracts whereby the agreement to work with another individual or institution was written into the grant award.