

Exclusive Acquisitions Audit

Audit Report # 16-13
November 29, 2016

The University of Texas at El Paso
Institutional Audit Office

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November 29, 2016

Dr. Diana Natalicio
President, University of Texas at El Paso
Administration Building, Suite 500
El Paso, Texas 79968

Dear Dr. Natalicio:

The Office of Auditing and Consulting Services has completed a limited scope audit of Exclusive Acquisitions processed by the Purchasing & General Services Department. The objectives of this audit were to determine compliance with applicable federal and state regulations as well as The University of Texas System and institutional policies and procedures.

We appreciate the cooperation and assistance provided by the Purchasing & General Services Department staff during our audit.

Sincerely,

Lori Wertz
Chief Audit Executive

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EXECUTIVE SUMMARY

The Office of Auditing and Consulting Services has completed a limited scope audit of the Purchasing & General Services Department (Purchasing). The audit scope was limited to purchases under the exclusive acquisition methodology during Fiscal Year 2016.

During the audit we tested the following:

- A. Compliance
- B. Monitoring
- C. Policies and Procedures
- D. Fraud Consideration

Purchasing has updated policies and procedures for Exclusive Acquisitions in response to new requirements set forth in Senate Bill 20. No exceptions were noted.

BACKGROUND

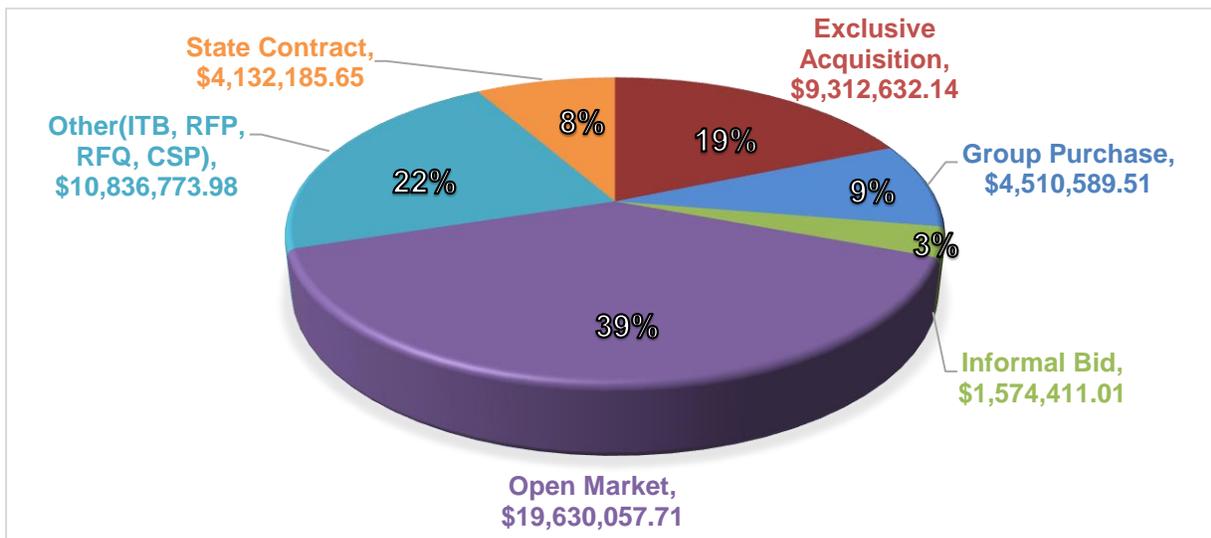
The Purchasing & General Services Department (Purchasing) provides the framework to allow The University of Texas at El Paso (UTEP) campus to procure goods and services necessary to attain the University's educational mission. It also coordinates the supporting functions of central receiving, records management, and contract administration, thus creating a value chain for the University.

Senate Bill 20 (SB 20) related to state agency contracting was passed in the 84th Legislative Session. Requirements include new competitive bidding thresholds, ethics training for procurement officials, and purchase order and contract transparency reports. The University of Texas System (UT System) Policy 180 *Conflicts of Interest, Conflicts of Commitment, and Outside Activities* also mandated changes to the process of Exclusive Acquisitions to align with SB 20's push for increased transparency and accountability.

Exclusive Acquisition (formerly referred to as Sole Source) is a valid procurement method given that is justified in one of the following ways:

- Proprietary/Best Value (Only known supplier for the product)
- Emergency
- Professional Services

During Fiscal Year 2016, Purchasing issued 19,891 purchase orders equivalent to \$49.9 million. From these, \$9.3 million were justified by the Exclusive Acquisition methodology representing 19% of all purchase orders made by the University.



*ITB: Invitation to Bid, RFP: Request for Proposal, RFQ: Request for Quotation, CSP: Competitive Sealed Proposal.

AUDIT OBJECTIVES

The objectives of this audit were:

- To review exclusive acquisitions and determine compliance with:
 - Applicable federal and state regulations
 - UT System and institutional policies & procedures
- To determine the level of monitoring the process owners have over exclusive acquisition contracts and purchase orders
- To determine if Purchasing's Policies and Procedures are complete and up to date with relevant federal and state requirements
- To evaluate the possibility of fraud in the exclusive acquisition process

SCOPE AND METHODOLOGY

The audit scope was limited to a review of purchase orders issued during the period of September 1, 2015 to August 31, 2016.

Audit methodology included the use of process mapping, review of applicable laws and regulations, data analytics, interviewing key personnel, and reviewing supporting documentation.

The audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* issued by the Institute of Internal Auditors.

To accomplish our audit objectives, we performed the following procedures:

- gained an understanding of the University's Policies and Procedures for exclusive acquisition of goods and services,
- analyzed exclusive acquisition purchase orders in Miner Mall (UTEP's web-based e-procurement system) to determine compliance with laws, regulations, and institutional policies,
- reviewed purchase order and contract transparency reports, and
- assessed Purchasing's Operating Procedures Manual compliance with the requirements from Senate Bill 20 (84th Legislative Session).

RANKING CRITERIA

All findings in this report are ranked based on an assessment of applicable qualitative, operational control and quantitative risk factors, as well as the probability of a negative outcome occurring if the risk is not adequately mitigated. The criteria for the rankings are as follows:

Priority - an issue identified by an internal audit that, if not addressed timely, could directly impact achievement of a strategic or important operational objective of a UT institution or the UT System as a whole.

High – A finding identified by internal audit that is considered to have a medium to high probability of adverse effects to the UT institution either as a whole or to a significant college/school/unit level.

Medium – A finding identified by internal audit that is considered to have a low to medium probability of adverse effects to the UT institution either as a whole or to a college/ school/unit level.

Low – A finding identified by internal audit that is considered to have minimal probability of adverse effects to the UT institution either as a whole or to a college/school/unit level.

AUDIT RESULTS

A. Compliance

The Texas Government Code §2155.067 establishes the standards for the justification of Exclusive Acquisitions. Also, Senate Bill 20 (SB 20) outlines new compliance requirements such as reporting all purchase orders and contracts regardless of value and funding source.

A1. Justification of Exclusive Acquisition methodology

To comply with state law, Exclusive Acquisition methodology for procurement has to be justified as proprietary/best value, emergency purchase, or professional services. We selected a sample of five of 26 contracts that had Exclusive Acquisition as the method of procurement and 20 purchase orders out of 207 that were also processed as Exclusive Acquisitions. Backup documents for the justification were reviewed via Miner Mall.

All of the purchases in our sample had a valid justification for the use of Exclusive Acquisition methodology. No exceptions were found.

A2. Verification of Transparency Reports

SB 20 requires the posting of all contracts and purchase orders regardless of value and funding source. We verified that Purchasing compiled this information into the Contract Transparency Report and the Purchase Order Transparency Report.

Purchasing has issued the Fiscal Year 2016 (FY16) Contract and Purchase Order Transparency Reports and they are available through their website. No exceptions were found.

B. Monitoring

Purchasing has a specific staff member assigned to the approval of Exclusive Acquisitions. Each purchase is evaluated individually before being approved. The whole process is conducted in Miner Mall. Per University policy, all purchases of goods must be sent to Central Receiving or have a valid justification for not sending the goods to another location.

B1. Purchases of goods are sent to Central Receiving

We selected a sample of five of contracts that had Exclusive Acquisition as the method of procurement and 20 purchase orders (POs) out of 207 that were also processed as Exclusive Acquisitions. Each PO was checked in Miner Mall to see if it was a goods purchase, and if so, the corresponding Quantity Receiving Report from Central Receiving was verified.

All of the purchases in our sample had a Quantity Receiving Report or a valid justification to send goods to other parts of campus. No exceptions were found.

C. Policies and Procedures

SB 20 requires specific policies and procedures to be adopted by state agencies. We verified the two provisions that have the most impact on Purchasing.

C1. Issuance of Contract Management Handbook

SB 20 requires state agencies to issue a Contract Management Handbook that delineates consistent contracting policies. This document was requested from Purchasing.

Purchasing is currently working with the Office of General Counsel in developing the Contract Management Handbook. The most recent draft was provided for our review. No exceptions were found.

C2. Purchasing Operating Procedures

SB 20 made several modifications and additions to the Texas Government Code (TGC) and the Texas Education Code (TEC) related to purchasing and contracting. Effective September 1, 2015, TEC §51.9337 requires that, *“The chief auditor of an institution of higher education shall annually assess whether the institution has adopted the rules and policies required by this section and shall submit a report of findings to the state auditor.”*

Based on our review of current institutional policy and the UT System Board of Regents’ Rules and Regulations, Purchasing has generally adopted all of the rules required by TEC 51.9337. No exceptions found.

D. Fraud Consideration

To assess the possibility of fraud, the new regulations imposed by SB 20 were used for testing. To comply with SB 20, purchasing agents are required to attend ethics training. Also, exclusive acquisitions must have an affirmation by the requestor regarding accuracy/conflict of interest completed before a purchase order is issued.

D1. Procurement Ethics Training

Based on interviews with key personnel from Purchasing, we identified staff members who are directly involved in exclusive acquisitions and have control over approvals. We requested documentation of ethics training attended during FY16 for those staff members.

Purchasing officials with control over approvals of exclusive acquisitions received ethics training during FY16. No exceptions were found.

D2. Requestor Affirmation Regarding Conflict of Interest

We obtained the FY16 Purchase Order and Contract Transparency reports from Purchasing. We selected a sample of five out of 26 contracts that listed Exclusive Acquisition as the method of procurement and 20 out of 207 POs that were also processed as Exclusive Acquisitions.

The PO number was entered into Miner Mall to obtain backup documentation. Within Miner Mall, the "Exclusive Acquisition Requisition Form" can be found. It contains the requestor affirmation regarding conflict of interest/accuracy. This affirmation was checked for every PO in the sample. For contracts, all the POs associated with each contract were traced and reviewed for the affirmation.

All POs within the sample contained a requestor affirmation regarding accuracy/conflict of interest. In addition, procurement agents complete the UTEP Conflict of Interest and Outside Activity Disclosure annually. No exceptions were found.

CONCLUSION

Based on the results of audit procedures performed, we conclude that Purchasing generally complies with state and institutional regulations and policies governing Exclusive Acquisitions.

We wish to thank the management and staff of Purchasing for their assistance and cooperation provided throughout the audit.