

PURCHASING POLICY MANUAL
Revised June 1, 2005

SECTION 3 - LEGAL ISSUES:

POLICY TITLE: VIOLATION OF PURCHASING POLICY AND UNAUTHORIZED ACTS

1. Purchasing Policies:

The University Purchasing Policies are based upon the provisions of the KRS 45A, 56, 57, 164 and 164A. They further embody sound business principles. Faculty and Staff who violate purchasing policies or otherwise act outside their authority do so at their own personal risk.

2. Proper Authority:

Purchases made without proper authority may become binding upon the University only upon ratification by the Vice President for Administration and Finance. Such purchases must be fully explained in writing.

3. Unauthorized Purchase:

If the purchase is not ratified by the Vice President for Administration and Fiscal Services, the obligation remains the personal obligation of the person making the purchase who shall act immediately to remove the name of the University as being party to the transaction.

4. Unauthorized Use of Tax Exempt Number:

Under no circumstances shall the tax exempt number of the University be used except when an official purchase has been authorized.

5. Purchase of Personal Items:

University policy does not permit the purchase of personal items, unless contracts are established for a specific purchase. The tax exempt number shall not be used for this type of purchase.

KRS 45A
KRS 56
KRS 57
KRS 164
KRS 164A

POLICY TITLE: ETHICS IN PURCHASING

1. It is a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or any other contractual matters, in which, to his/her knowledge:
 - a. He/she, or his/her family members (immediate) has a financial interest therein; or
 - b. A business or organization in which he/she or any member of his/her family (immediate) has a financial interest as an officer, director, trustee, partner, or employee; or
 - c. Any other person, business, or organization with whom he/she or any member of his/her family (immediately) is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

2. Purchasers of goods and services shall not take, receive, or offer to take or receive (directly or indirectly) any rebate, percentage of contract, money (or other things of value) as an inducement (or intended inducement) from any vendor bidding for University contract(s) or otherwise seeking to make sales to the University.
 - a. In personal contracts with the suppliers each employee represents the University and should reflect and present the interests and needs of all departments. Each employee shall remain scrupulously free from obligations to any supplier.
 - b. University employees who accept gratuities shall be deemed guilty of a felony, and upon conviction, shall be punished by a fine not to exceed five thousand dollars (\$5,000) or an imprisonment of not less than one (1) year or more than ten (10) years, or both so fined and imprisoned.

45A.990
164A.210

POLICY TITLE: GIFTS AND GRATUITIES

This policy applies to all employees, and should provide guidance to all those engaged in the purchasing function.

1. No University employee shall accept gifts, personal loans, entertainment or other special considerations from an individual or business organization doing business with the University.
2. Loans are not to be accepted from an individual or organization having prospective dealings with the University unless such individual or organization is in the business of making loans.
3. No University employee shall permit any influence which could conflict with the best interest of the University, or prejudice the University's reputation.
4. Association with supplier representatives at luncheons, dinners, or business organization meetings are helpful in establishing better business understanding, and is neither questionable nor unethical, provided the buyer keeps him/herself free of obligations.
5. Individuals who represent the University must be beyond challenge or reproach in every business transaction, and not allow themselves to be put into a position where their judgments can be influenced.
6. Any University employee who is offered or receives such payment or gift shall refuse it or return it to the giver in a tactful manner, advising the giver of the University's policy.

Any University employee not complying with this policy shall be subject to appropriate disciplinary action.

POLICY TITLE: CONFLICT OF INTEREST

1. Conflict of Interest of Officers and Employees:

The purpose of a conflict of interest statute is to remove or limit the possibility of personal influence that might bear upon a University officer or employee's decision in his/her capacity as a University officer or employee.

- a. No officer or employee of the University shall make transactions of any business with himself/herself, or with any corporation, company association, or firm in which he/she or his/her spouse has any interest greater than five percent (5%) of the total value.
- b. No University officer or employee shall knowingly himself/herself or by his/her partners or through any corporation which he/she controls or in which he/she owns or controls more than ten percent (10%) of the stock, or by any other person for his/her use or benefit or on his/her account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, sale or purchase of the value of twenty-five dollars (\$25) or more, made, entered into, awarded or granted, unless said contract, agreement, sale or purchase was made or let after public notice and competitive bidding.
- c. No University officer or employee, including persons who serve without salary or other payment for their services, shall knowingly receive or agree to receive, directly or indirectly, compensation for any services rendered or to be rendered, either by himself/herself or another, in any cause, proceeding, application or other matter which the University functions.
- d. No member of the University Board of Regents shall have an interest in any contract with the University unless such contract shall have been subjected to competitive bidding, unless such regent shall have been the lowest bidder and unless such regent shall have first notified in writing the remaining members of the board, and the newspaper having the largest circulation in the county of the University, of his/her intention to bid on such contract.

2. Gratuities and Kickbacks:

It is the policy of the Department of Purchasing, to decline personal gifts or gratuities in connection with the purchasing function. The Department of Purchasing employees may not accept personal gifts or gratuities from any current or potential supplier of goods or services to the University.

3. PENALTIES:

Any University employee who violates any provisions of KRS 45A.330 to 45A.340 shall be guilty of a Class B misdemeanor and forfeit employment. Any willful violation of KRS 45A.690 to 45A.725 shall be a Class A misdemeanor.

KRS 45A.340
KRS 45A.990

POLICY TITLE: CODE OF ETHICS

1. Give first consideration to the objectives and policies of my institution.
2. Strive to obtain the maximum value for each dollar of expenditure.
3. Decline personal gifts or gratuities.
4. Grant all competitive suppliers equal consideration insofar as state or federal statute and institutional policy permit.
5. Conduct business with the potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.
6. Demand honesty in sales representation whether offered through the medium of verbal or written statement, an advertisement, or a sample of the product.
7. Receive consent of originator of the proprietary ideas and designs before using them for competitive purchasing purposes.
8. Make every reasonable effort to negotiate an equitable and mutually agreeable settlement of any controversy with a supplier; and/or be willing to submit any major controversies to arbitration or other third party review, insofar as the established policies of my institution permit.
9. Accord a prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.
10. Cooperate with trade, industrial and professional associations, and with governmental and private agencies for the purposes of promoting and developing sound business methods.
11. Foster fair, ethical and legal trade practices.
12. Counsel and cooperate with the NAEB (National Association of Educational Buyers) members and promote a spirit of unity and a keen interest in professional growth among them.

POLICY TITLE: BONDING REQUIREMENTS FOR VENDORS

1. Bid Bonds

When justified, the Department of Purchasing may require a bid bond when advertising for bids as surety that a bidder will hold his/her offer firm for a specified period of time. If the invitation to bid so specifies, a bidder must file with the requesting agency a "bid bond or certified check in the amount specified". The bond must be received either with the bid or prior to the bid opening, or the bid shall not be considered.

- a. The amount of the bond must be specified in the invitation to bid.
- b. In addition to signing the bid bond as principal, the bidder must have the bond signed by a surety company authorized to do business in the Commonwealth of Kentucky. A list of such companies may be obtained from the Department of Insurance, Capital Plaza Tower, Frankfort, KY 40601. If the surety on a bond has its authority to do business in this state revoked, (see 2b), the bidder must promptly obtain another surety on the bond.
- c. The bond must be conditioned on full performance of all obligations imposed on the bidder by the invitation to bid, including the obligations to keep his/her price firm for as long a period as specified in the invitation, and the obligation to file a "performance bond" when required by contract. The bid bond shall provide that upon failure to perform any such obligations, the University may recover from the bidder and the surety, or either, any and all damages suffered because of such failure.
- d. If a bidder expects to submit bids from time to time and wants to file a continuing bond for all bids made during a certain period of time up to a stated amount, he/she may do so.
- e. If a bidder elects to submit a certified check in lieu of a bid bond, it will be security for full performance of all obligations referred to above.
- f. If a bidder is not the successful bidder, the certified check will be returned to that bidder promptly after the award is made. The successful bidder's check shall be returned after the contract is awarded or as soon as such bidder has filed a performance bond, provided one is required. Checks will be returned by certified mail (return receipt requested). The return receipts will be attached to each bidder's bid and filed in the bid folder.

2. Performance Bonds and Labor and Material Payment Bonds

The Department of Purchasing may require the successful bidder to file "Performance Bond" in a designated amount with the Department of Purchasing when it appears to be in the best interest of the University to do so. The bond may be required to be posted either at the time the bid is submitted or prior to the award of the contract. The vendor shall be liable for any damages caused the University by his/her failure to file the bond. Failure to submit a bond when required will be ground for rejecting the bid.

- a. The Performance Bond may be required in an amount up to 100% of the amount of the contract, depending upon the nature of the transaction.
- b. The successful bidder must have the bond signed by a surety company authorized to do

business in the State of Kentucky. A list of such companies may be obtained from the State Department of Insurance. If the surety's authority to do business in Kentucky is revoked, the bidder must promptly obtain another surety on the bond.

- c. The bond shall be conditioned on the bidder's complete performance of all obligations imposed by the contract including payment of all labor and material. The bond shall provide that if the bidder fails to perform any such obligations, the University may hold the bidder and his/her surety jointly and severally liable for any and all damages resulting from the breach of contract.
- d. If the bidder does not have stock of the commodity or equipment to be purchased in the amount sought, nor the facilities to produce the item in such an amount, not to guarantee satisfactory service, the University may, in addition, require the bidder's source of supply to file a Performance Bond, with surety, conditioned on such source supplying the bidder as stated in the bid.
- e. The purchasing agency shall furnish a certified copy of a bond to any person who requests such and pays a reasonable fee for such a copy. The copy shall be prima facie evidence of the contents, execution, and delivery of the original.

Ref. KRS 45A.190
KRS 45A.195
KRS 45A.185

POLICY TITLE: FISCAL YEAR CLOSING OF UNIVERSITY PURCHASE TRANSACTIONS

1. Near the end of each fiscal year, the Office of the Comptroller and the Department of Internal Auditing shall notify (by memorandum) all departments the deadline date for the submission of each type of document affecting "old year" business transactions and the earliest date for submitting "new year" documents for processing.
2. Purchasing will notify all departments via year end closing memorandum instructions. Documents submitted before June 30th (applicable to "new year" funds) must be marked "Deferred" and, if an identification number is applicable, must bear "new year" numbers.
3. Goods and services to be paid from current (or "old year") funds must be received no later than June 30th. Goods and services received after June 30th shall be paid from "new year" funds.

POLICY TITLE: PAYMENT OF VENDOR INVOICES

The University shall take the initiative in expediting the payment of vendor(s) invoices within 30 working days of both the receipt of correct invoice, and receipt of goods or services in satisfactory condition, as specified and in accordance with the terms and conditions of individual purchases or Purchase Orders.

1. Vendor payment:

The University shall make a concentrated effort to meet the vendor(s) payment terms and to take full advantage of any time discounts allowed.

2. Penalty for late payment:

An interest penalty of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days which follows receipt of the vendor's invoice. The Department of Purchasing shall investigate failure to achieve prompt payment and make every effort to accomplish payments on a timelier basis.

KRS 45.451

KRS 45.453

KRS 45.454

POLICY TITLE: COMPLAINTS AGAINST VENDORS

1. Complaints Against the Vendor:

When the University first experiences a relatively minor problem or difficulty with a vendor, the University shall contact the subject vendor directly and attempt to informally resolve the problem. However, if the vendor does not act promptly and satisfactorily, the University shall immediately file a vendor complaint report. It is important the vendor complaint report be filed in a timely manner and fully documented as to the nature of the problem(s).

2. Vendor Responses:

Upon receipt of the vendor response to the complaint, the Department of Purchasing will consult with the using department to determine if the proposed corrective action is satisfactory or if alternatives offered by the vendor are acceptable.

3. Vendor Complaint Form:

Whenever the University contacts a vendor to resolve a complaint and receives no cooperation or satisfaction, an official vendor complaint report should be filed. Copies of the official report shall be filed in the Vendor History File for future evaluations and decisions relating to the vendor's performance under contract.

The vendor complaint report and/or attachments should contain:

- a. The purchase order or contract number.
- b. Vendor name.
- c. Commodity or service involved.
- d. Name of complainant.
- e. Nature of the complaint.
- f. Action taken to date by the University.
- g. Proposed University corrective action.

When goods or services are delivered by a vendor that does not conform to the purchase order, the vendor should be notified promptly. In the event rejected materials are not replaced within (30) days after written notice, the University may sell the rejected items and submit the proceeds to the vendor, less expenses.

4. Typical Complaints:

- a. Late delivery
- b. Unauthorized substitution
- c. Failure to respond to letter or phone call

- d. Poor service
- e. Failure to respond promptly to service calls.
- f. Incorrect invoices
- g. Failure to meet specifications
- h. Shipment made collect
- i. Failure or slow replacement of damaged goods

Copies of all vendor complaint reports, supporting documentation and subsequent communications will be placed in the permanent file maintained on each vendor.

KRS 45A.110
200 KAR 5:304
200 KAR 5:315

POLICY TITLE: ADVICE OF CHANGE

1. Increases:

Increases in quantities in excess of ten (10) percent shall not be permitted unless authorized in the invitation to bid, request for quotation, or request for proposal. Unit prices shall not be increased unless prescribed in escalator clauses in the contract.

2. Authorization:

An Advice of Change in order for University contracts shall be initiated and approved by the Department of Purchasing to be effective.

3. Reason for Change:

Supporting documentation shall include:

- a. Fully support the basis for change with reference to appropriate contract provisions.
- b. Supporting documentary evidence that validates the change.
- c. Actual change must be specific and complete.
- d. The effective date of the change must be stated.

4. Advice of Change:

An advice of change in order cannot be used to extend or amend a personal service contract. (See policy on Personal Service Contracts.)

KRS 45A.030 (2)
KRS 45A.200 (1a)
200 KAR 5:311

POLICY TITLE: COOPERATIVE PURCHASING

The Universities shall attempt in every practical way to insure that the University is supplying its real needs at the lowest possible cost. To accomplish this, the Universities shall enter into cooperative purchase agreements with agencies of state and local governments; other public or private institutions of higher education; local school districts; and institutions of health care, where it is to the mutual advantage of the parties involved through cost savings and/or benefits to the Universities through such cooperative contracts.

KRS 45A.300

KRS 164A.575

POLICY TITLE: PURCHASING RECORDS MAINTAINED BY THE UNIVERSITY

1. Each purchasing department shall maintain records with documentation to support each purchase transaction, and shall include the following:
 - a. Copy of each purchase requisition.
 - b. Copy of each invitation for bid, request for quotation, or request for proposal.
 - c. Copy of each returned invitation to bid, request for quotation, or request for proposal.
 - d. Bid tabulation.
 - e. Copy of each contract document, including attachments, which must be made a part of the contract.
 - f. Comments by the buyer concerning the basis selected for placing the order and making the contract award if other than the low bid is accepted.
 - g. Copy of each local purchase order issued.
 - h. Copy of each receiving report.
 - i. Record of payment.
 - j. Copy of each report and any correspondence related to any transaction, including complaints on vendor performance.
2. The above records are public records, and must be structured for easy accessibility for auditing purposes.
3. Records of purchasing transactions must be kept at least **five (5)** years or until completion of a state or independent audit, as required by law, whichever is later.

POLICY TITLE: APPLICATION OF TAXES TO NONPROFIT INSTITUTIONS

1. The University is a nonprofit educational institution which qualifies for exemption from income taxation under section 501(c) (3) of the internal revenue code as follows:
 - a. Tax does not apply to sales of tangible personal property or services to such institutions provided the property or service is to be used solely within the educational, charitable, or religious function.
 - b. Tax does not apply to sales of food to students in school cafeterias or lunchrooms if the University operates their own services.
 - c. Tax does not apply to sales by school bookstores of textbooks, workbooks, and other course materials if self operated.
2. The exemption applies only to sales made directly to units of state government and cannot be claimed by a construction contractor purchasing property to be used in fulfilling a contract with the University. A tax exempt certificate will be supplied to vendors, upon request, to be retained in their records as evidence of non-taxable sales. Every invoice should show that delivery was made to a unit of state government and should bear the unit's exemption number.
3. The University should make application for tax exempt status in states which do not voluntarily acknowledge our exempt status.
4. Northern Kentucky University is in an enterprise zone through [REDACTED], sales tax on construction materials.

KRS 139.410
KRS 139.470(7)
KRS 139.495

POLICY TITLE: APPROVALS, CERTIFICATIONS AND FILINGS

Various contracts, forms and procedures associated with Purchasing require different approvals and distribution. Although not intended to be all-inclusive, the following list represents significant requirements of the model procurement code (KRS 45A) and other applicable statutes.

1. All Personal Service Contracts must be approved by the Personal Service Contract Review Subcommittee of the Legislative Research Commission. In addition the following approvals, submittals are required:
 - a. Legal Services Contract is forwarded to the Governor's office. Approval is obtained by that office from the Attorney General who forwards back to Governor for signature. Contract is then forwarded to the University to then be filed with the Legislative Research Commission. KRS 12.210, OAG 84-255 and OAG 92-19.
 - b. Audit Services - Approval to contract with an independent auditor is not required as the audit is now mandated by KRS 164A.570. However, informational copies of all audit contracts are to be filed with the State Auditor's Office. Secondly, copies of the Completed Audit are to be forwarded to the Governor, Secretary of Finance, Auditor of Public Accounts, Director of LRC, Executive Director of the Council on Higher Education and all members of the Board of Regents. The Secretary of Finance and Administration Cabinet may prescribe the minimum scope of the audit.
 - c. Architectural and Engineering Services - Contract approved by A/E selection committee as defined in KRS 45A.810 prior to submittal to LRC. Each member of the selection committee will also sign a certification confirming the selection process. KRS 45A.830.
 - d. Copies of Personal Service Contracts costing less than \$10,000.00 must be submitted to LRC for informational purposes only, prior to their effective date. KRS 45A.700.
2. All Printing Contracts are required to be approved by the Governor's office prior to award of contract to the vendor. KRS 57.091.
3. Insurance Contracts exceeding \$10,000.00 annual premium that are not awarded based on competitive bidding or competitive negotiation shall be approved by the Commissioner of Insurance. KRS 45A.022.
4. Emergency Purchases above small purchase limits must be approved by the Vice President of Administration and Finance and the President of the University. KRS 164A.575 (12).
5. Proposed Administrative Regulations must be approved by the Board of Regents prior to submittal to LRC for publication, public hearing and adoption. KRS 164A.560. The LRC submittal process is described in KRS 13A.220.
6. Campaign Contributors or any entity in which a person has a substantial interest, contributing more than the maximum legal contributions to a slate of candidates for Governor and Lieutenant Governor, are prohibited from entering into any contract with the University, unless the contract is awarded on a competitive bid basis [KRS 121.056(2)]. A certification to this effect should be obtained from all individuals or firms entering into personal service contracts or contracts described in KRS 45A.080, 45A.085, 45A.090 and 45A.095. (KRS 45A.110, KRS 45A.115)

7. Small Business and Minority Business Reports. Although not required by law, agencies are requested to maintain records relating to the level of purchasing activity with small businesses and minority businesses. Requests for these reports may come from various state entities reporting to the legislature or agencies dealing with these classes of businesses. KRS 45A.570.
8. Purchases of Recycled Material Content Products shall be reported to the General Assembly and the Governor by January 1 of each year. KRS 45A.523.
9. Purchases of Real Property require the approval of the Secretary of Finance after obtaining an appraisal from a qualified appraiser. KRS 164A.575 (6).
10. Sale of Real Property requires Board of Regents approval and all instruments required by law to convey title must be executed and signed by the appropriate officer of the Board. The Finance Cabinet or the Transportation Cabinet establishes the appraised value. KRS 164A.575 (7).
11. Real Property Purchased or Leased from a member of the Board of Regents or employee of the Board requires the Board member or employee to submit a written application to be approved by the Board that undue influence was not exerted to consummate the transaction. The request and findings shall be recorded and kept by the Secretary of State. KRS 164A.575 (8).
12. Non-Competitive Negotiations report. Within 90 days following the close of the fiscal year, a report shall be prepared detailing all purchases made under the provisions of KRS 45A.095 (non-competitive negotiations). This report shall be kept on file for 5 years and be made available to the general assembly and the public upon request.