

March 1, 1999

IMPORTANT!

MEMORANDUM

TO: Business Officers

FROM: Philip V. Albano, Director
Administrative and Facility Services

SUBJECT: Procedures to Implement New Legislation

The 1998 Session of the General Assembly enacted three bills that give the community colleges the authority for purchasing flexibility, to enter into lease purchase and installment purchase agreements, and to use the proceeds from the sale or lease of donated property as specified by the donor. Vice President Kennon Briggs sent you copies of the bills on September 9, 1998, attached to numbered memo CC-98-272. The laws state that the State Board of Community Colleges (State Board) must adopt rules to implement these laws. Rules adopted by the State Board must go through the rule making process. To that end, the State Board has begun the rule making process, adopted temporary rules, and approved guidelines. Ms. Clay Hines, our legal assistant, prepared numbered memo CC-98-296 with the proposed temporary rules attached, and Mr. Briggs distributed the guidelines at the ACCBO conference. As we begin the public hearing process, you will have the opportunity to comment on the rules. While the rules are proceeding through the rule making process, you may begin to operate under the temporary rules.

Attached are separate sheets addressing the implementation of each piece of legislation. Please furnish the appropriate sheets to those individuals at your college who will be responsible for the implementation.

Should you have any questions, please contact me or Charles Valrie.

/pva

Attachments

pc: President H. Martin Lancaster
Mr. Kennon Briggs
Presidents

CC99-073
Paper Copy

PURCHASING FLEXIBILITY

This legislation allows community colleges more purchasing flexibility that will allow the college to “shop state contracts.” This means, if a community college or the Center for Applied Textile Technology can find the same supplies, equipment, or materials that are on a state term contract at a price that is lower than the state contract price, the college can purchase them at the lower price. The procedures are as follows:

1. The item must be exactly the same, the same brand, model, style, etc. For example, a 19-inch Sony TV is not the same as a 19-inch Panasonic TV!
2. The purchase price, including the cost of delivery, must be lower, not equal!
3. The cost of the purchase cannot exceed the college’s delegation.
4. The college must keep a detailed record of all purchases made from non-certified sources. The record will contain the following:
 - a. A descriptive name of the item purchased;
 - b. The purchase order number;
 - c. The state-term contract number for the item purchased;
 - d. The cost of the item had it been purchased under the state-term contract;
 - e. The actual total cost paid (including the cost of delivery but not the cost of taxes) for the item purchased from the non-certified source;
 - f. Savings per unit;
 - g. Number of units purchased; and,
 - h. Total cost.

The college will submit a report of these purchases to the State Board of Community Colleges (State Board) as of June 30 and December 30. Enclosed is a copy of a form that may be used. The college must also maintain in their purchasing file, for a period of three years, the documentation pertaining to these purchases for compliance review by the Division of Purchase and Contract (P&C).

The staff of the Administrative and Facility Services Section will review these semiannual reports, make an annual report to the State Board, and furnish P&C with a copy of this report. P&C will study the results of your purchases to determine what changes, if any, should be made statewide and report to the General Assembly. If you report a great deal of savings, P&C will need to study their existing contracts to determine why the state contract price is not the lowest price. They might also decide to initiate more “convenience contracts,” which would allow you to use the contracts only if you want to use them. They also might recommend that other state agencies be allowed to have this same flexibility. So, there is a lot riding on the outcome of your results.

LEASE PURCHASE AND INSTALLMENT PURCHASE AGREEMENTS

This legislation now authorizes community colleges to enter into lease purchase and installment purchase agreements. The procedures are as follows:

1. The local board of trustees must approve all contracts.
2. If the contract is for \$100,000 or less, or for three years or less, **no** approval from the State Board of Community Colleges (State Board) or county commissioners is required.
3. If state funds are used and the contract exceeds \$100,000 or three years, it must be approved by the State Board.
4. If local funds are used and the contract exceeds \$100,000 or three years, it must be approved by your county commissioners in the form of a resolution. The commissioners must also acknowledge in writing that the college may require appropriations from them in order for the college to meet the obligations of the contract.
5. If local funds are used and the contract is for \$500,000 or more, and for five years or more, it must be approved by both your county commissioners and the Department of State Treasurer, Local Government Commission.
6. A college may not have in effect at any one time more than five state-funded contracts which exceed \$100,000, or three years in length. A college may have any number of “smaller contracts” for \$100,000 or less, or for three years or less, at any one time.
7. No contract may contain a non-substitution clause that restricts the right of the trustees to:
 - a. Continue to provide a service or activity, or
 - b. Replace or provide a substitute for any property financed or purchased by the contract.
8. The legislation contains a non-appropriations clause and we recommend that each contract contain a non-appropriations clause similar to this:

No deficiency judgment may be rendered against the board of trustees, the tax-levying authority, the State Board of Community Colleges, or the State of North Carolina in any action for breach of a contractual obligation under this contract. The taxing power of the tax-levying authority and the State is not pledged directly or indirectly to secure any moneys due under this contract.

LEASE PURCHASE AND INSTALLMENT PURCHASE AGREEMENTS

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In addition to the above, you must follow the Division of Purchase and Contract's procedures for lease or installment purchases. For installment purchases, it is recommended that you seek a separate contract for the financing in order to secure the best financing charge.

Contracts that must be approved by the State Board need to be submitted to the Administrative and Facility Services Section by the 15th of the month preceding the next regularly scheduled State Board meeting. So as not to delay the awarding of the contract, you may submit, for approval, contracts that are a part of the bid package and will be used to obtain the financing.

I want to stress the importance of submitting these contracts to us in a timely manner. By law, the State Board must approve these contracts before you sign them.

When the contracts are submitted, the department staff will review them for conformity with the legislation, and present those contracts conforming with the law to the State Board for approval. An annual report will be made to the State Board on the state-funded contracts exceeding \$100,000, or three-year terms, and the amount of state funds obligated for the next year.

DONATED PROPERTY

This legislation allows the boards of trustees to sell or lease property that has been donated to the college and to use the proceeds for educational purposes as specified by the donor. Prior to this legislation the colleges could only use the proceeds for capital outlay purposes. The procedures are as follows:

1. The State Board of Community Colleges (State Board) must approve the acquisition, by any means, of all real property.
2. Prior to a board of trustees accepting any donated property that has conditions as to how to use the proceeds from the sale or lease, the college must submit to the Administrative and Facility Services Section a copy of the documents transferring the property.

The department staff will review the documents for compliance with the legislation and present those donations which meet the requirements of the legislation to the State Board for approval.

When a college intends to sell or lease this property they must, as per G.S. 115D-15, seek State Board approval. Once State Board approval has been obtained, the college must then dispose of the property by complying with the procedures authorized under Article 12 of Chapter 160A of the General Statutes.

Donations made to a college's foundation are not affected by this legislation.

