

TEXAS A&M UNIVERSITY-KINGSVILLE

Title: Buyer Liability

Procurement Rule No.: P-270

Date 6/4/96

I. Purpose

To provide familiarity with purchasing law to all Purchasing personnel.

II. Scope

This policy applies to all employees.

III. General

Every Buyer should have sufficient knowledge of the law to enable him to understand the relationship between himself and the University, and the legal consequences of the acts that he performs in the University's name.

With knowledge of the legal fundamentals of purchasing, the Buyer will be better equipped to recognize the need for legal guidance and seek it when necessary.

Acts of Purchasing Agents, Buyers and authorized personnel are binding upon the University, within the limits of the express authority given them. Sellers accustomed to dealing with a particular Buyer, who has general authority, are justified in believing that his successor will have the same degree of authority, however, with State Government, the seller must assure him/herself that the buyer does have express authority.

The purchaser must also know definitely if and when the salesman is authorized to conclude a contract. Useless he is additionally authorized, the salesman's authority is usually limited to soliciting orders. The salesman's employer ratifies and accepts them.

IV. Personal Liability

The Purchasing employees and those delegated Purchasing authority represent the University in buying transactions and are governed by the law of agency. As an agent, Buyer has the "express authority" granted by the University and is guided by written, unwritten, and established practices and procedures.

So long as Buyer acts within the scope of "expressed authority," and is neither negligent, dishonest, nor acting in bad faith, Buyer is not likely to become personally liable for such actions. However, personal liability may occur if the scope of express authority is exceeded. Buyer is always liable for tortious acts, such as assault and battery.

To protect against personal liability, the Buyer must avoid the following types of situations:

1. Making a false statement about authority.
2. Making any false statement with an intent to deceive
3. Taking any action without authority that could result in damages to another.
4. Performing an illegal act, even with the authorization of employer.
5. Performing any damaging act outside Buyer's scope of authority.
6. Entering into agreements that exceed the Buyer's express authority.

In each of these cases, the seller ordinarily has no recourse to the University, since no valid contract exists between the seller and the University. The only recourse which the seller commonly has is to sue the Buyer personally. Under some circumstances, Buyer may be answerable to the University and to the seller with whom Buyer has been dealing.