POLICIES AND PROCEDURES

PROCUREMENT POLICY AND PROCEDURES (8/15)

State Purchasing Overview

The Texas Procurement and Support Services (TPASS) Division of the Comptroller of Public Accounts (CPA) has the authority to regulate state agency purchasing. Vendors apply to TPASS to be included on the state bid list. TPASS awards state contracts to vendors on the state bid list for products and services routinely ordered by state agencies every year.

On behalf of state agencies, TPASS purchases:

- Products that cost more than \$25,000 and are not on state contract and
- Services valued at more than \$100,000 and are not on state contract.

TPASS has delegated to state agencies the authority to purchase:

- Products, which cost \$25,000 and under (including any delivery charges) and are not on state contract;
- Services valued at \$100,000 and under and are not on state contract;
- Emergency purchases, no dollar limit;
- Direct publication purchases (books purchased direct from the publisher, software purchased direct from the manufacturer, etc.);
- Fuel, oil, and grease purchases;
- Distributor purchases (repair parts purchased from a dealer or distributor);
- Professional and consulting services;
- Proprietary purchases;
- Perishable food items;
- Research purchases;
- Internal repair purchases; and
- Automated information systems/telecommunications commodities and services purchases.

State agencies also have delegated authority to make exempt purchases. These are purchases of certain commodities and services that are exempt by specific statute from the purchasing authority of the CPA, exempt from competitive bidding, or may be required by statute to be purchased through another specific purchasing method. All purchases are made through the General Land Office (GLO) Procurement Division. The Procurement Division functions as the contact between TPASS, the vendor, and other GLO staff.

Accountability and Risk Analysis Procedure

Texas laws require that state agencies develop and comply with a purchasing accountability and risk analysis procedure.

Assessing Fraud, Abuse, or Waste

The GLO purchasing staff applies state purchasing laws in an effort to ensure abuse and waste are not committed. In addition to these efforts, management is responsible for maintaining a system of internal controls to deter and detect fraudulent or dishonest conduct. The Internal Audit division is responsible for investigating any suspected fraudulent acts at the GLO. Finally, the agency's Office of Compliance and Ethics conducts conflict and other checks on purchases in an effort to prevent fraud, abuse, and waste.

Enhanced Monitoring of Contracts

The GLO has designated an internal committee of executive level staff to determine which contracts require enhanced monitoring. In making the determination, the committee will use factors such as:

- The contract amount;
- Risk:
- Special circumstances of the project; and
- Scope of goods or services provided.

Enhanced contract monitoring reports will be provided to the commissioner, chief clerk, and, when applicable, the School Land Board or the Veterans Land Board.

Purchasing Accountability and Responsibilities

The following are a list of the responsibilities of staff across the agency regarding purchases.

Purchasing Staff

- Establish standard General Land Office procedures for procurement of products and services in accordance with state statutes, Comptroller rules, and GLO policies.
- Within the agency purchasing process, there are built-in separation of duties and additional authorizations.
- Perform all departmental purchases, or authorize the delegation thereof.
- The Purchaser works independently to procure routine agency needs and consults with other agency personnel with relevant expertise for more complex purchases.
- The Purchaser plans, organizes, coordinates, and prepares specifications for procurement documents.
- Assist GLO employees with the various types of purchases.

All GLO Employees

- Anticipate needs well in advance to allow time for purchase requests to be processed and products to be delivered.
- Make all contacts with TPASS through the Procurement Division.
- Ensure that products and services are requisitioned according to these procedures.

In addition to the staff responsibilities, each vendor has the responsibility to indicate purchase order numbers on all invoices and comply with the terms, conditions, and requirements of the Purchase Order and/or Contract.

Unauthorized Purchases

Employees who make purchases without proper authorization will be responsible for paying the vendor, personally.

Budget Consideration

Submission of a BuySpeed Requisition by a program or division constitutes certification that funds are available.

The GLO Commitment to Historically Underutilized Businesses (HUBS)

The GLO is committed to increasing contracting and business opportunities for Historically Underutilized Businesses (HUBs). TPASS maintains an updated HUB database (Centralized Masters Bidders List (CMBL)) that the Procurement Division uses in selecting its vendors. The Procurement Division makes every attempt to purchase from HUBs whenever possible. See the GLO HUB Policy.

The Electronic Requisition

Purpose

The BuySpeed Requisition is used to authorize purchases. The electronic requisition ensures:

- Supervisor's approval of purchases;
- Allocation of funds from the various programs; and
- All of the necessary information is in place and approvals are received for the preparation of a Purchase Order/Contract.

Incomplete Information

BuySpeed requisitions will be returned to the originator to complete if they are incomplete or inaccurate.

Assistance

Contact the Procurement Division for assistance or additional information about completing the electronic BuySpeed Requisition.

How to Complete the BuySpeed Requisition

Each program area has a designated person(s) with a license that allows them to complete a requisition in BuySpeed. Only those employees can enter a requisition in BuySpeed.

Go to Requisitions; New

- General Tab a short description of the purchase is entered.
- Item Tab A detailed description can be entered per each item(s) along with the cost (or estimated cost). At each Item level you will also need to determine the National Institute of Governmental Purchasing (NIGP) Class and Item Codes. (This coding helps to identify the item/service being purchased.)
- Address Click on the eyeglasses and select the address where the products is to be delivered.
- Vendor name can be left blank or completed with the vendor.
- Accounting Click on the eyeglasses and in the top left-hand corner enter the fiscal year-PCA- and GLA code and click on search.
 - o Pick the account string that matches the purchase
- Notes This is the location where you can write us a note if you need to tell us something extra about the purchase.
- Reminder An email can be sent to you or someone else in the agency as a reminder note, etc.
- Summary This is an overview of the requisition. Once you determine that everything needed is listed, you submit the requisition.
- The Requisition is then routed for approvals as per the approval path set-up per the program area.

Signatures and Approvals

Below is information regarding the required signatures or approvals prior to a purchase:

- Director approval is ALWAYS required;
- Deputy approval is required for ALL PURCHASES \$1,000 and over;
- Budget approval is required for ALL PURCHASES;
- Director of Information Systems approval is required for ALL COMPUTER RELATED PURCHASES;
- Director of Communications or designee approval is required for ALL PUBLICATIONS RELATED PURCHASES;
- Director of Human Resources or designee approval is required for ALL NOTARY COMMISSIONS;
- Chief Clerk approval is required for ALL MEMBERSHIPS; and
- Chief Clerk approval is required for ALL PURCHASES \$5,000 AND OVER.

With regards to memberships, currently memberships receive blanket approval during the annual budget process. Requisitions for memberships that are not approved by the Chief Clerk during the budget process must be routed to the Chief Clerk for approval. State funds WILL NOT be used to purchase food, beverages or plants used for decorative purposes.

The Procurement Division's Timeline

| If Purchase Is | Bid Required | Additional Documentation Required | Total Work Days |
|--|---|--|--------------------|
| Commodities and services \$5,000 or less | One bid or quote Note: It is not a requirement for the vendor to be listed on the Centralized Masters Bidders List (CMBL) | Purchase Order (PO), Excluded Parties List System (EPLS) report printout | 3 days |
| Commodities and services \$5,000 - \$25,000 | Minimum three informal bids from vendors listed on the CMBL. (two of the vendors solicited for bids must be HUBs). | Bid responses Purchase Order Bid Tabulation Form EPLS report printout Emergency justification letter, signed by Chief Clerk, if applicable Proprietary justification letter, signed by Chief Clerk, if applicable | 5 – 10 Days |
| Commodities \$25,001 and greater (Open Market) | This is not a delegated purchase for state agencies. TXMAS must solicit the bid(s) and issue the Purchase Order. | Open Market Requisition with specifications. TPASS posts to Electronic State Business Daily (ESBD) and advertises specifications. TPASS receives bid responses and tabulates bid. TPASS sends bid tabulation with recommended vendor to GLO. GLO issues vendor Purchase Order. Proprietary justification letter, signed by the Chief Clerk, if applicable. | 12 to 15 Days |

| If Purchase Is | Bid Required | Additional Documentation Required | Total Work Days |
|--|---|--|--------------------|
| Services \$25,000.01 - \$100,000 | Must solicit bids from ALL CMBL and HUB Directory Vendors located in the agency's geographic region for the class and item. The Invitation for Bids (IFB) or other applicable solicitation document must be posted on the ESBD for a minimum of 14 days if posting the entire solicitation or 21 days if only a notice is posted. | Specifications written by Procurement or Legal Division in conjunction with the requestor. Bid Tabulation Form Bid List (printed from the CMBL showing date bids were solicited. Purchase Order and/or Contract Emergency justification letter, signed by Chief Clerk, if applicable Proprietary justification letter, signed by Chief Clerk, if applicable EPLS report printout ESBD solicitation posting printout ESBD award posting printout Memo for bid list supplements, if applicable Evaluation matrices and summary sheet, if applicable Non-Disclosure forms, if applicable Solicitation Announcement Bid Specifications Bid Responses | 19 – 26 Days |
| Services \$100,001 - \$1,000,000 (Open Market) | This is not a delegated purchase for the state agencies. TPASS (CATRAD) must solicit the bids. However, after review of the specifications, TPASS may determine that a competitive advantage will not be gained if they solicit the bids and may delegate the purchase back to the agency to solicit bids. If delegated back to the agency, the agency must solicit bids from all vendors on the CMBL for the class and item. Invitation for Bids (IFB) or other applicable solicitation document must be | IF TPASS SOLICIT THE BIDS: Solicitation document, i.e. RFP, IFB, etc. containing the specifications Printout of proof of entry into the CPA Web Portal Proprietary justification letter, signed by the Chief Clerk, if applicable Historically Underutilized Business Subcontracting Plan (HSP) documentation from TPASS IF THE GLO SOLICITS THE BIDS, SAME AS FOR SERVICES \$25,000.01 - \$100,000, EXCEPT ADD: Printout of proof of entry into CPA Web Portal | 30 – 37 Days |
| Services \$100,001 - \$1,000,000 (Open Market) continued | posted on the ESBD for a minimum of 14 days if posting the entire solicitation or 21 days if only a notice is posted. | Delegation letter from TPASS containing any recommended changes Memo to the file explaining why any of the recommended changes w4ere not incorporated into the solicitation document. HSP | |
| Services over \$10,000,000 | Any agency major contract solicitation over \$10 million in value must be submitted to the CATRAD Team for review. | Same as for services \$10,000,000 except if the agency solicits bids add:: • Disclosure Form (State Auditor's Office Nepotism Disclosure Form) | 30 -37 Days |
| Services of at least \$5,000,000 (Major Contract) | Same as for purchases over \$1,000,000. Additionally, contract information must be submitted through a portal for reporting of the major contract to the CPA. | Same as above, except add: • Printout of report entered through the portal to CPA as proof of reporting. | 30 -37 Days |

| If Purchase Is | Bid Required | Additional Documentation Required | Total Work Days |
|---|---|--|--------------------|
| Term Contracts (State Contracts) | None (these contracts are established by TPASS for routine items) | On-Line Purchase Order through Texas SmartBuy, | 3 Days |
| Managed and Council of Competitive Government (CCG) | None (these contracts are established by TPASS, the CCG, or the Strategic Sourcing Division for unique items for specific entities for distinct ordering processes) | Internal Purchase Order that references the CCG Contract Number | 4 Days |
| Texas Multiple Award Schedule (TXMAS) Less than \$25,000 | Quote from TXMAS Vendor(s), Minimum of 3 of there a multiple TXMAS vendors selling like product/services. | On-line Purchase Order through Texas SmartBuy (must reference the TXMAS Contract Number on the Purchase Order) Quote Sheets Memo to file indicating how awarded vendor was picked. | 3 Days |
| TXMAS Purchase – Greater than \$25,000.01 | Same as above | Same As above Texas Marketplace Award Posting printout. | 5 Days |
| Emergency Purchases \$5,000 or less | One bid or quote. Note: Vendor is not required to be listed on the CMBL | Purchase Order EPLS Report print out | 3 Days |
| Emergency Purchase \$5,000.01 – unlimited | At least three informal bids are encouraged whenever possible. | Purchase Order and/or Contract EPLS report printout Bid tabulation form, if applicable Copy of any signed quotes, estimates, bids, or statement of work Emergency justification letter signed by the Chief Clerk ESBD Award and/or solicitation posting HSP, if total is \$100,000 or greater. | 5 – 10 Days |
| AIS Purchases (not ordered through a DIR contract - \$5,000 or less) | One bid or quote Check to determine if there is a blanket exemption. If there is a blanket exemption, state that exemption on the Purchase Requisition. If there is not a blanket exemption, request a one-time exemption from DIR for the purchase. | Purchase Order EPLS report printout Approved Exemption Request from DIR if blanket exemption does not exist or if vendors are listed for the class and item, but the agency wants to procure an item available on the DIR IT Commodity List through an avenue other than a DIR contract. | 5 – 35 Days |
| AIS Purchases (not ordered through a DIR contract - \$5,000.01 up to \$25,000) | Minimum three informal bids from vendors listed on the CMBL (two of the vendors solicited for bids must be HUBs) | Same as above, except add: | 5 – 35 Days |

| If Purchase Is | Bid Required | Additional Documentation Required | Total Work Days |
|---|---|--|--------------------|
| AIS Purchases (not ordered through a DIR contract – Greater than \$25,000) | State agencies have delegated authority to procure AIS / telecommunications commodities and services. The Request for Offer (RFO) is the designated primary purchase method for procuring AIS / telecommunication commodities and services other than those under the DIR IT Commodity Purchasing Program; however, any purchase method: Request for Proposals (RFP), Invitation for Bids (IFB), spot purchase method (depending on the dollar value) may be used that will provide the best value. | Same as above, except add: Bids or Offers HSP, if the total is \$100,000 or greater ESBD Solicitation Posting ESBD Award Posting CATRAD delegation documentation, if greater than \$1,000,000 Disclosure forms if greater than \$1,000,000 Printout of the report entered through the portal for a major purchase of at lease \$5,000,000 | 5 – 35 Days |
| Department of Information Resources (DIR) Purchases \$50,000 | Order directly from contracts established by the Department of Information Resources (DIR) | Purchase Order must contain the DIR Contract Number ESBD award posting if greater than \$25,000 | 3 Days |
| Department of Information Resources (DIR) Purchases \$50 to \$150 Thousand | Purchases between \$50 and \$150 thousand, the agency must request pricing from at least three DIR contract vendors. | Purchase Order must contain the DIR Contract Number ESBD award posting. Bid Responses Bid Tabulation | 5 Days |
| Department of Information Resources (DIR) Purchases \$150 to \$1 Million | Purchases between \$150 Thousand and \$1 Million, the agency must request pricing from at least six DIR contract vendors. | Purchase Order must contain DIR Contract Number ESBD award posting Bid Responses Bid Tabulation | 5 Days |
| Department of Information Resources (DIR) Purchases Over \$1 Million | The GLO must prepare its own solicitation. | Solicitation HSP ESBD Solicitation Posting ESBD Award Posting CATRAD delegation documentation, if greater than \$1,000,000 Disclosure forms | 30 Days |

| If Purchase Is | Bid Required | Additional Documentation Required | Total Work Days |
|--|--|---|--------------------|
| AIS Purchase (DIR Contract Deliverables-Based IT Services (DBITS) | DBITS Contracts should NOT be used for services estimated to be over \$10 million dollars these must go through the DIR solicitation process and be sent to the Contract Advisory Team Review and Delegation (CAT- RAD) for solicitation review. If under \$10 million dollars: Complete a Statement of Work (SOW) as outlined in DIR DBITS Ordering Process. Send SOW to at least three (3) vendors on DBITS DIR Contract. Vendors provide a written response. Negotiate pricing of deliverables directly with vendor. Justify why vendor was chosen. Issue PO to vendor chosen. | Bids or Offers Justification for vendor chosen Must be sent to legal for review and contract drafting Purchase Order to mirror contract | 5 – 35 Days |
| AIS Purchases (DIR Contract IT Staffing Services) | IT Staffing Services (ITSAC) can be handled either as a Competitive Solicitation Process handled through DIR or Best Value Process. State Agencies are required to solicit resumes from the TIBH Staffing Services Contract (DIR-SDD-2316) no matter which process is chosen. If TIBH submits a qualified resume and they are not chosen justification must be given and it must be reported on the agency's State Use Report. Competitive Solicitation Process: DIR generates an IT Staffing Services Solicitation and assigns the response due date per customer. DIR distributes the IT Staffing Services Solicitation to the appropriate vendors and sends a copy to the customer. DIR responds to vendor inquiries/questions. DIR receives vendor responses and conducts compliance review. DIR forwards compliant resumes and response tabulation to customer for review/selection of worker(s). Once worker(s) are chosen a PO is issued directly to the IT Staffing Services vendor. | Bids or Offers Justification for vendor chosen Must be sent to legal for review and contract drafting Purchase Order to mirror contract | 5 – 35 Days |

copy of the finalized IT Staffing Services Solicitation response tabulation as outlined in the DIR IT Staffing Services Competitive Solicitation Process procedures. **Best Value Process:** Customer identifies ITSAC labor category to be procured. Solicit a response from the TIBH ITSAC contract (DIR-SDD-2316) If the TIBH candidate is selected customer generates a purchase order directly to TIBH. If TIBH candidate is **not** chosen justification must be given and reported on the agency's State Use Report. Solicit responses from other DIR ITSAC vendors. Once worker(s) are chosen a PO is issued directly to the IT Staffing Services vendor. Customer provides DIR with a Best Value Letter of Justification as outlined in the DIR IT Staffing Services Best value

Emergency or Proprietary Purchases

procedures.

Emergency or proprietary purchases may be applicable to all types of delegated purchases.

Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. An emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or avoid undue additional costs to the state.

A proprietary product or service has a distinctive characteristic that is not shared by competing products or services. A proprietary purchase is warranted when the specification limits consideration to one manufacturer, one product, or one service provider.

All emergency and proprietary purchases that exceed \$5,000 require a letter of justification signed by the Chief Clerk.

Procurement Methods

Definitions

Below are some definitions that are common to state term contracts:

Term Contract Sources -

- Texas SmartBuy Term Contracts
- Texas SmartBuy TXMAS Contracts
- Managed CCG Term Contracts
- Travel Contracts
- Emergency Management Contracts

Other Contract Sources:

- DIR Contracts
- Texas SmartBuy TXMAS DIR Contracts

Examples

Paper, filing supplies, desk supplies (tape, staplers, rulers, tablets, etc.) desk calculators, shelf hardware and tools, tires and tubes, office furniture and equipment, photocopiers, postage meters, generators, clocks, clothing, payment card services, delivery services, mail services, records storage services, printing services, vehicle rental services, travel agency services, hotel accommodations, DIR products and services, etc.

Criteria

An approved BuySpeed Requisition is required. The procurement staff will enter a contract purchase order through TXSmartBuy (TPASS/Comptroller of Public Accounts Online Ordering System):

- A copy of the TXSmartBuy purchase order will be e-mailed to the purchaser.
- A copy of the TXSMartBuy purchase order will be scanned and attached to the BuySpeed Purchase Order.
- The receiving division in Administration and Information Systems shall complete a receipt in BuySpeed and deliver the products to the requesting employee.

Definition

OPEN MARKET PURCHASES THROUGH TPASS:

- Items not covered by a state contract
- Commodities in excess of \$25,000 and services in excess of \$100,000

Vendors must be listed on the Centralized Masters Bidder List (CMBL) with TPASS in order to be notified of a bid posting. Otherwise, in order to have an opportunity to bid, a vendor must download the bid from the ESBD or request a copy of the "Invitation to Bid" from TPASS or GLO.

\$25,000.01 and greater (Commodities):

Unless exempt through statute, state agencies do not have delegated authority to make these types of purchases. The Procurement division in conjunction with the requester and/or Legal personnel will write specifications and submit the specifications along with an Open Market Purchase Requisition to TPASS who will issue an Invitation for Bid to all bidders on the CMBL for the class and item. Minimum posting times on the ESBD are required. TPASS will hold a formal bid opening, tabulate the bids and send the bids to the GLO Purchaser to issue the Purchase Order.

\$100,000.01 and greater (Services):

Unless exempt through statute, state agencies do not have delegated authority to make these types of purchases. The Procurement division in conjunction with the requester and/or Legal personnel will write specifications and submit the specifications through the CPA Web Application Portal for review and solicitation of bids or proposals. TPASS will issue an Invitation for Bids, Request for Proposals or other applicable solicitation document to all bidders on the CMBL for the class and item. Minimum posting times on the ESBD are required. TPASS will hold a formal bid opening, tabulate the bids and send the bids to the GLO Purchaser to issue the Purchase Order.

However, after review of the specifications, TPASS may delegate the purchase back to the agency to solicit bids/proposals. If delegated back to the agency, any suggested changes that TPASS makes must be considered and incorporated into the solicitation documents. If not incorporated, the reasons must be documented in the procurement file. The Procurement Division will issue an IFB, RFP, or other applicable solicitation document to all bidders on the CMBL for the class and item. Minimum posting times on the ESBD is required. Procurement will issue the Purchase Order to the vendor.

Purchases of at least \$10,000,000 require review by TPASS's Contract Advisory Team (CATRAD).

Printing

The Texas Department of Criminal Justice (TDCJ) provides printing services to tax-supported entities through two Texas Correctional Industries (TCI) print shops: Hobby Print Shop located in Marlin, Texas (focuses on digital printing services, traditional offset printing and bindery services) and Wynne Graphics located in Huntsville, Texas (focuses on adhesive backed products such as stickers and decals).

Print and print related services may be purchased directly from a TCI print shop without using a competitive solicitation process. You must obtain a quote from TCI for the purchase; submit a BuySpeed Requisition and a Purchase Order will be issued to TCI.

The Council on Competitive Government (CCG) has approved the following full service print shops to provide print and print-related services to state agencies.

- Texas Department of Criminal Justice/Texas Correctional Industries
- Texas Department of Transportation
- Texas Workforce Commission
- Department of State Health Services
- Texas Department of Public Safety
- University of Texas at Austin

A waiver must be obtained from TCI before utilizing any of the following procedures.

Procedures for Procuring Print and Print Related Services (Except print and print related services \$1,000 or less):

Print jobs \$1,000 or less follow agency-established procedures for procuring print and print-related requests.

Print Jobs exceeding \$1,000:

- Complete a Publication Request with the Communications Program
- Complete a BuySpeed Requisition
- Procurement will work with Communications to develop the specifications
- Submit specifications to the State Print Shop Job Request
- Analyze bid responses and if best value can be achieved through a State Print Shop, proceed in procuring the services through the State Print Shop;
- If no bid responses are received from the State Print Shop, then the file can be documented to reflect that No Bids were received. The GLO can go to the Specialty Print Shops contracted with the CCG and obtain bids
- If bid responses are received and the agency makes a determination not to award to the State Print Shop or one of the Specialty print shops, the agency must submit the bid tabulation and documentation of no bid responses and/or waivers and evidence that best value can be obtained through a competitive solicitation process to CPA TPASS Procurement Manager for review and approval prior to the agency conducting the solicitation process or posting to the ESBD;
- IF TCI submitted a bid, the agency must provide TCI a final opportunity to negotiate on price prior to seeking approval to conduct a competitive solicitation. State statute requires state agencies to utilize TCI if they can provide the service requested and if they submit the lowest price in a best and final request;
- If CPA TPASS approves the request, the agency may proceed with the competitive solicitation process for print and print related procurements valued at \$100,000 or less;
- If CPA TPASS does not approve the request, the agency will be directed to make the award to the State Print Shop determined to be best value by CPA TPASS division;
- All printing competitively solicited above \$25,000 must be posted to the ESBD. No exceptions;
- Printing procurements exceeding \$100,000 in estimated cost must be submitted to TPASS CATRAD for review and possible delegation.

Payment Policy and Procedure (3/15)

Cash Disbursements

Cash Disbursements (CD) should be the first point of contact for all vendor invoices. CD will distribute invoices to related program areas for them to enter Receipts in BSO or submit a paper OK to Pay for invoices outside of BSO. If a program area receives an invoice and it did not come from CD, they should immediately forward a copy of the invoice to CD to begin aging the invoice and tracking its due date.

Program areas should ensure that CD receives approved Receipt in BSO or paper Ok to Pay no later than three business days prior to the invoice due date to ensure invoices are paid on time without accruing late payment interest. If either is received after the three day time frame, CD will still attempt to make the payment on time, but if other priorities prevent the payment from being paid on time, any late payment interest that accrues will be charged to the program area's PCA.

For payments that are not initiated from a vendor invoice, such as subscriptions, membership dues, registration fees, etc., the three business day rule also applies for submission of an approved BSO Receipt or approved non-BSO request for payment. If CD does not receive such documentation within this time frame, CD cannot guarantee payment will be made as needed.