



**State of Georgia
Department of Administrative Services
State Purchasing**

FROM: Tim Gibney, Assistant Commissioner

DATE: November 2, 2009

ATTENTION: APOs, CUPOs, Purchasing Card Coordinators, Facility Managers and other Purchasing Officials

TOPIC: **Official Announcement # 01-10 Clarification Documents**

DESCRIPTION:

- 1) Construction / Public Works Clarification
- 2) ARRA Solicitations
- 3) Potential Conflict of Interest Clarifications
- 4) Use Policies for Team Georgia Marketplace™
- 5) Credit Card Processing Fee Clarification
- 6) Updated State Use Procurement List (Toner Cartridges)
- 7) Entity Organizational Information

RESOURCES:

- Official Announcement # 01-10
- DOAS State Purchasing website
- Georgia Procurement Manual (GPM) will be updated in January 2010

QUESTIONS: DOAS State Purchasing Helpdesk
procurementhelp@doas.ga.gov
404-657-6000

1) Construction / Public Works Clarification for:

Board of Regents/University System of Georgia and the Georgia Department of Transportation

OCGA 50-5-72 authorizes the Board of Regents (BOR) and the Georgia Department of Transportation (DOT) to contract for public works without going through the Department of Administrative Services (DOAS), and some public works contracts may involve the installation of goods, equipment or materials for which mandatory statewide contracts exist; the purpose of this message is to clarify those mandatory statewide contracts still must be used by BOR and DOT when the BOR entity or DOT purchases materials and installs it with their own staff.

By letter dated April 28, 2009, the Attorney General's Office provided informal advice outlining what constitutes public works contracts. Among other things, that letter provided that public works contracts include contracts for design, engineering, construction, alteration, modification,

demolition, cleaning of construction sites, maintenance or repair, as well as consultant contracts relative to such activities. That letter further provided that public works contracts include well drilling for hazardous materials monitoring, service contracts for inspections, contracts for meeting certifications, landscape maintenance, utilities; and to the extent not already named above, public works contracts include all public contracts that are covered by the requirements for a payment bond or performance bond.

However, when the BOR entity or DOT seek to contract with a vendor where the vendor is responsible for 1) providing materials and 2) installing the materials, OCGA 50-5-72 applies and the BOR entity or DOT are not required to go through DOAS. In such a case, however, the BOR entity or DOT may want to consider soliciting alternate bids 1) a conventional approach where the vendor provides the materials, installs the materials and quotes a single price; vs. 2) a hybrid approach where the BOR entity or DOT purchases the materials from the SWC and contracts with the vendor only for the labor to only install the materials. In the hybrid approach, the vendor may not warrant the materials but there may be a cost savings to the BOR entity or DOT due to the lower cost of materials.

Construction / Public Works Clarification for Other State Entities

Buying materials only is not a Construction Contract or Public Works.

Use of e-Quote for Construction Projects

Use of the e-Quote system is now allowable for purchases of construction projects. However, the minimum posting period must comply with the Georgia Procurement Manual requirements of thirty (30) calendar days for construction bids.

2) ARRA Purchasing Coordination

As Georgia continues to solicit for projects using ARRA (American Recovery & Reinvestment Act) funds it is important that agencies comply with the Georgia Procurement Act and administrative rules found in the Georgia Procurement Manual. Each agency, in order to be in compliance, should consult their Agency Purchasing Official (APO) or College/University Purchasing Official (CUPO) for guidance. They in turn should consult Tim Gibney at tim.gibney@doas.ga.gov or via telephone at 404-656-0934, should there be any questions regarding State purchasing practices. This will avert the possibility of having a solicitation not in compliance and better insure the timely award and expenditure of those funds. It is recommended to reference the current ARRA Purchasing Directives found at:

<http://www.opb.state.ga.us/media/11679/arra%20implementation%20guidance%20update%2010-2009.pdf> (pages 115 – 129).

3) Potential Conflict of Interest Clarification

The Office of the Inspector General has provided State Purchasing with guidance regarding further clarification of the “no contact or direct contact” language in the RFX templates (SPD-SP018, SPD-SP020, and SPD-SP022) and in the “Evaluation Committee Member Participation Form” (SPD-SP004). Please utilize the updated form and RFX templates found on the State Purchasing website at: <http://doas.ga.gov/StateLocal/SPD/Seven/Pages/Home.aspx> .

4) Use Policies for Team Georgia Marketplace™

The document below provides detailed policies that should be put in place by your agency immediately for your procurement processes when utilizing Team Georgia Marketplace™.

eProcurement	
IF	THEN
Paper requisition is currently required	ePro Requisition Required
Request requires approvals	ePro Requisition Required
Requesting anything in Team Georgia Marketplace™ Catalog (All Statewide Contract items)	ePro Requisition Required
Change Order for existing Purchase Order	ePro Requisition Required
Paid w/ Recurring Voucher (i.e. rent, utilities...etc)	No ePro Requisition Required
Change Order for existing Contract	Optional, follow state entity guidelines
Point Of Sale PCard Purchases	Optional, follow state entity guidelines
Strategic Sourcing	
IF	THEN
State entity is live with Team Georgia Marketplace™	All Sourcing Events (RFQs, RFPs & RFIs) are required to be electronically sourced using Strategic Sourcing. The resulting award must be to a Purchase Order or a Contract.
PCard	
IF	THEN
Purchasing from Statewide Contracts	PCard should be used as payment method
Purchasing from State Contract	PCard should be used as payment method
Purchasing exempt items	PCard should be used as payment method
Point Of Sale	PCard should be used for payment method, follow state PCard Policy
Supplier Contracts	
IF	THEN
State entity is live with Team Georgia Marketplace™	Contract required to be entered in lieu of the State Entity (Agency) Contract Index by either creating new contracts or importing existing contracts which are one year or longer in duration before subsequent renewals.
Non-SAO PeopleSoft State entity or State Entity that has not gone live on Team Georgia Marketplace™.	Contract not required to be entered in Supplier Contracts Module. State entities are responsible for maintaining all contracts (which are one year or longer in duration) in the State Entity Contract Index.
SPD creates or renews a contract on behalf of Non- SAO PeopleSoft State Entity	Contract must be entered in Supplier Contracts Module. All header level information must be entered on the contract entry page for non sourced events and events completed before go live that are not on State Entity (Agency) Contract Index. The contract must be scanned and uploaded with signature page for Public Record purposes.
Purchase Orders	
Any Purchase Order for Agency Contract items, Statewide Contract items or Mandatory Source items must have the "Contract ID" field populated on the appropriate Purchase Order lines.	

5) Credit Card Processing Fee Clarification

Many vendors charge a “credit card processing fee” or “convenience fee” for accepting credit cards including the State Purchasing Card or P-Card. These types of fees are strictly regulated by Visa and MasterCard (also called the “Associations”). Many P-Card cardholders and administrators have asked if these fees are allowed on the P-Card. This communication serves to address those fees.

Details:

After review, DOAS has determined that “convenience fees” for certain transactions can be paid if they are charged in compliance with Visa rules. (The State of Georgia P-Card is a Bank of America Visa card, so Visa regulations apply.) Other fees, such as “credit card fees”, “processing fees” or “surcharges” for example, *are not allowed by Visa regulations* and are therefore not permitted on the P-Card.

According to Visa's Card Acceptance and Chargeback Management Guidelines for Merchants (Merchants is synonymous with Vendors) available on Visa's website, credit card surcharges are not allowed. Merchants “may not impose any surcharge on a Visa transaction.” Convenience fees, however, are allowed under certain circumstances.

According to the website:

For merchants who offer an alternate payment channel (i.e., mail, telephone, or e-commerce) for customers to pay for goods or services, a convenience fee may be added to the transaction amount. If the merchant chooses to assess a convenience fee to its customers, the merchant must adhere to the following rules:

- The fee is being charged for a bona fide convenience of using an alternative payment channel outside the merchant's normal business practice.
- The fee:
 - must be disclosed to the customer as a charge for the alternative payment channel convenience
 - is applied only to non face-to-face transactions
 - must be a flat or fixed amount, regardless of the amount of the payment due
 - is applied to all forms of payment products accepted in the alternative payment channel
 - is included as part of the total transaction amount
 - cannot be added to a recurring transaction
 - is assessed by the merchant that provides the goods or services to the cardholder and not a third party
- The customer must be given the opportunity to cancel prior to the completion of the transaction

Visa is very clear about what a convenience fee is and how and when they can be charged. As a result, many vendors that charge fees do so incorrectly and are therefore out of compliance with Visa regulations.

Examples of common violations of Visa's convenience fee policy include, but are not limited to, the following:

- Charging a tiered or percentage based fee. Only a flat fee regardless of the transaction amount is allowed.
- Charging a fee for transaction below or above a certain dollar amount. Convenience fees must be charged on all transaction regardless of amount.

- Charging the fee in person, for face-to-face or point of sale transactions. The fees can only be applied to transactions via the mail, telephone or internet.
- Charging only for Visa or credit card transactions. Convenience fees must be applied to all payment methods accepted via that channel.
- Calling the fee a “processing fee”, “credit card fee”, “surcharge” or anything other than a “convenience fee”. The fee is designed to offset the cost of the convenience, not the cost of accepting credit cards.
- Charging higher prices for credit card purchases versus checks or cash. **Note:** Vendors may offer a “cash discount” to customers paying cash, in person.
- Charging a convenience fee via the internet when that is the vendor’s only “normal business practice”. If the vendor only sells on the internet, there is no convenience versus coming in to a retail location, so no convenience fee can be charged.

As you can see, there are many ways a vendor’s actions can fall outside Visa’s guidelines. As such, DOAS has determined that only vendors in compliance with the guidelines shall be allowed to receive convenience fees via the P-Card.

One example of an allowable convenience fee is a utility that charges a convenience fee for paying a bill via the phone or internet versus having to come to an office and drop off a payment. As long as the convenience fee is a flat fee and is charged to all transactions accepted via the phone or internet (such as all card types, electronic checks, etc.), it is acceptable on a P-Card transactions.

Summary:

Convenience fees charged in accordance with the Visa guidelines quoted above are permitted on the P-Card. All other charges, surcharges or fees are prohibited and should not be paid with a P-Card. For clarifications, please consult your entity’s P-Card Administrator or contact the State Cards Program Manager at the phone number or e-mail address below. Violations of the Visa guidelines should be reported to the State Cards Program Manager as merchants can be reported to Visa through Bank of America.

For More Information:

Visa:

To access Visa’s [Card Acceptance and Chargeback Management Guidelines for Merchants](http://usa.visa.com/download/merchants/card_acceptance_guide.pdf) go to http://usa.visa.com/download/merchants/card_acceptance_guide.pdf
(Note: this is a protected pdf file that cannot be edited, copied or printed.)

State P-Card Policy:

http://doas.ga.gov/StateLocal/SPD/Docs_SPD_Cards/PCard_Policy.pdf

Contact the State Cards Program Manager:

Paul Kurtz, CPCP
 DOAS, State Purchasing Division
 E-mail: pcard@doas.ga.gov
 Phone: (404) 656-5344

6) Updated State Use Procurement List (Toner Cartridges)

As noted in the Memorandum dated November 2, 2009 from DOAS Commissioner Brad Douglas, the State Use Procurement List has been updated to include forty-two (42) remanufactured toner cartridges. The updated [State Use Procurement List](http://www.statepurchasing.doas.ga.gov) is available from the State Purchasing website: www.statepurchasing.doas.ga.gov

7) Entity Organization Information

State Purchasing requested and received organizational information from all state entity APOs/CUPOs at the end of Fiscal Year 2009 of all procurement related staff. The information that was provided at that time will need to be updated on an ongoing basis to State Purchasing when staffing changes occur.

APOs/CUPOs should utilize SPD Official Form SPD-OP010, Entity Organizational Information, to report any procurement staffing changes as soon as possible by emailing the completed form to processimprovement@doas.ga.gov. Changes in the APO/CUPO Manager and/or purchasing staff should be reported on this form to include the name, email address, and phone number. SPD Official Form SPD-OP001, Designation of State Entity Procurement Officer, should always be used when reporting a change in this position (APO/CUPO). Each of these forms can be found on the State Purchasing web site under the SPD Official Forms at <http://doas.ga.gov/StateLocal/SPD/Seven/Pages/Home.aspx>.

State Purchasing will also be contacting state entities over the next few weeks to perform an update of the Purchasing Card organizational information. If you have any questions or concerns, please contact Donna File at Donna.File@doas.ga.gov or phone 404-651-9289.

Note: The Georgia Procurement Manual (GPM) will be updated in January 2010 and will include all changes contained in Official Announcement # 01-10