

## **BUSINESS AFFAIRS SUB-COUNCIL**

**April 25, 2002**

### **MINUTES**

The meeting began at 9:00 a.m. in the TBR Board Room. Present were Mr. Dwight Johnson, Chairperson (STCC); Dr. Bob Adams (APSU); Ms. Debra Bauer (NSTI); Mr. Horace Chase (JSCC); Dr. David Collins (ETSU); Mr. Bill Fuqua (RSCC); Mr. Mike Gower (MTSU); Mr. Clay Harkleroad, Jr. (TSU); Mr. James Hodges (VSCC); Mr. Ken Horner (CoSCC); Dr. Charles Hurley (CLSCC); Mr. Al Irby (APSU); Dr. Julian Jordan (WSCC); Mr. Ron Kesterson (PSTCC); Mr. Charles Lee (UOM); Ms. Linda Maxwell (TTU); Mr. Mike Posey (MSCC); Mr. Mitch Robinson (DSCC); Ms. Claire Stinson (NSTCC); Ms. Tammy Swenson (CSTCC); Dr. Greg Wilgocki (ETSU); Dr. John Rudley, Ms. Kathy Crisp, Ms. Deanna Hall, Ms. Lisa Hall, Ms. Ann Rutland, Mr. Ron Simmons, Ms. Renee Stewart, and Mr. Keith Williams (TBR).

Mr. Johnson called the meeting to order.

### **BUSINESS**

#### **1. Regents On-Line Degree Update**

Ms. Lisa Hall provided the committee with worksheets summarizing RODP revenues and expenses for the Fall 2001 and Spring 2002 semesters. Ms. Hall noted that the expenses included instructional costs only. The worksheets support the concept that institutions that teach numerous courses reap a greater benefit.

Committee members questioned what costs are funded by the RODP system charge. The system charge is used to fund personnel costs, the EDUPRISE contract, travel, and training costs.

The RODP committee has proposed replacing the system charge with the on-line course fee. Instead of computing a system charge based on E&G revenues, home institutions would remit the on-line course fees collected to the TBR. It was noted that the 25% on-line course fee would require an increase to generate the same revenue as the system charge.

Ms. Hall discussed the new programs that will be added to the RODP in future semesters. These programs include a master's degree, two new TTC programs, and 32 new course offerings.

The committee inquired as to how the TTC program will work and who will collect fees.

Dr. Rudley informed the committee that Bob Wallace was the contact person for TTC issues. The committee expressed concern regarding some TTC's not currently accepting credit cards for registration fees.

#### **2. Report of the Finance Committee**

Dr. Collins highlighted the following issues from the April 11, 2002 Finance Committee

meeting.

**A. Guideline B-060 Fees, Charges, and Refunds**

The Finance Committee recommended revisions to Guideline B-060 removing the requirement to recognize summer term activity in the fiscal year in which the majority of the term occurs and replacing it with a requirement to accrue summer term activity at fiscal year-end (see Attachment A).

**B. Guideline B-050 Internal Auditing**

The Finance Committee recommended revisions to Guideline B-050 proposed by the Internal Audit committee, after some deletion/revisions (see Attachment B). It was noted that Guideline B-050 was last revised in 1989 and extensive revisions are being recommended.

**C. Guideline B-080 Reporting Fiscal Misconduct and/or Institutional Losses**

The Finance Committee reviewed a draft of the proposed guideline documenting current reporting procedures for fiscal misconduct and/or institutional losses. Legal counsel has reviewed the draft and recommended additional language and revisions. This guideline will go through the Fiscal Committee and BASC again in the July cycle for adoption.

**D. Policy 4:02:10:00 Purchasing Policy and Procedures**

The Finance Committee recommended the proposed revisions to the purchasing policy (see Attachment C). Major revisions include:

1<sup>st</sup> paragraph: Added language clarifying how time periods included in the policy will be calculated.

Section I (A): Added language from the State's rules regarding how vendors will notify the institutions when specifications are not open or procedures are not desirable.

Section II: Added section discussing the different requirements when purchasing services as compared to purchasing goods, and which requirements to follow if purchasing goods and services together. Section also includes reporting requirements for consulting services contracts exceeding \$10,000 and steps to follow when outsourcing institutionally delivered services.

Section IV (b): Revised the threshold for bidding from \$1,500 to \$2,000. The \$2,000 threshold is consistent with UT. State agencies obtain three telephone bids for purchases exceeding \$400.

Section V: Clarifying language was added regarding negotiating with the selected vendor. Negotiations can only alter the bid/proposal in ways favorable to the institution. The last paragraph was revised to add statutory requirements regarding decision and documentation procedures when all bids are rejected.

Section VI: The first paragraph was added to clarify that submitting a bid does not create property rights for the bidder.

Section VI: The sixth paragraph was modified to include the statutory provision that a vendor's financial information does not have to be disclosed until an intent to award is issued.

Section VI: The eighth paragraph was modified to incorporate language in the State's rules that if more than one item is bid, the institution will state in the invitation to bid that the institution has the right to determine the low bidder for individual items, a group of items, or the total of all items.

Section VI: The last paragraph was added to incorporate the State's rules regarding the purchase of used or reconditioned items.

Section VII: The majority of this section was rewritten to incorporate statutory requirements on protested bids. Major revisions include 1) that protests must be received in writing within 7 days, 2) protesting parties must post a protest bond (exception procedures are available for small and minority businesses), 3) only the Chancellor can determine if the protest bond is forfeited to the institution, 4) the authority to resolve protests includes the Chief Purchasing Officer, the Chief Business Officer, the President, and the Chancellor, and 5) the protesting bidder can request a stay of award. Ms. Crisp cautioned institutions against using the protest procedures if appropriate notice is not given in the RFP. The sample RFP includes all the appropriate provisions.

Section XIII: A paragraph was added defining for reporting purposes a "minority owned business" and a "small business".

Section XV: Section E prohibiting the use of vendors from the List of Parties Excluded from Federal Procurement and Nonprocurement Programs was added.

BASC members inquired if the amount in Section II related to consulting contracts (\$10,000) could be raised to \$50,000. Dr. Rudley responded that \$10,000 was an appropriate starting level for this requirement at this time. A larger amount may be considered in the future.

BASC members requested that Section I.F. include language that permits institutions to purchase from other institutional contracts without bidding,

similar to purchasing from statewide contracts. Section I.F. has been revised to reflect this request, see Attachment C.

The remaining revisions were minor and considered housekeeping. The committee recommended approval of the proposed revisions.

Ms. Crisp discussed a sample RFP that has been approved by the Council of Buyers and posted on the TBR website. While institutions are not required to use the sample RFP for all items bid, RFPs developed by individual institutions should be compared to the sample RFP to ensure that all necessary items are included. Using appropriate language in the RFP will minimize unnecessary delays in awarding the contract, such as frivolous bid protests.

#### **E. TTC Scholarships and Agency Funds**

The Finance Committee concurred with the GASB 34/35 subcommittee recommendation of not requiring the use of the alternative method for calculating scholarship allowances for the TTCs. Instead, the actual scholarship allowance can be obtained from the FRS reports and the reports the TTCs submit when requesting financial aid checks written to students. The amount reported as scholarship expense on the financial statements represents the amount of financial assistance in excess of tuition and fees, bookstore charges, and/or meal plan charges. These amounts are sometimes referred to as settlement checks. The amount reported as scholarship allowances and discounts represents the amount of financial assistance applied to tuition and fees, bookstore charges, and/or meal plans. All of these figures should be available on the supporting documentation submitted by TTCs when requesting student's settlement checks.

The Finance Committee was unaware of any policies or guidelines prohibiting TTCs from having agency accounts. Any TTC agency accounts can be carried in the general ledger using the following account structure 0 – 919XX, where:

0 = general ledger

9 = TTC

1 = identifies which TTC, if lead institution is responsible for multiple TTCs

9 = agency fund

This will allow up to 99 agency accounts per TTC.

#### **F. Object Code Listing**

During the GASB 34/35 training session, Dr. Collins noted that some institutions had used an object code within the 4820 to 4829 range (Grants/subsidies – individuals) when recording Pell awards. To ensure

that all appropriate expenses are reported on the SRECNA as scholarship expenses, it was recommended that institutions use an object code within the 4710 to 4719 range (scholarships) for student financial assistance.

**G. Spouse and Dependent Discount Fee Exchange**

Guideline B-060 requires that institutions with employees using the spouse and dependent discount exchange fees if the spouse/dependent attends an institution other than the employer institution. GASB 34/35 will require the elimination of the exchanged fees at the system level. The GASB 34/35 subcommittee recommended that campuses review the revenues and expenses related to this exchange and determine if the exchange of fees should continue or be eliminated. BASC members recommended the continuation of exchanging fees for the spouse/dependent discounts.

**H. Grants and Subcontracting with Other TBR Institutions**

The Finance Committee discussed GASB 34/35's required elimination of subcontracted expenses when the grant holder and the subcontractor are both TBR institutions. This elimination will need to occur at the system level. All institutions will need to report to the central office the revenues and expenses reported on their financial statements for these situations.

The minutes of the Finance Committee were approved.

**3. Report of the Human Resource Officers Committee**

Ms. Stewart highlighted the following issues from the April 10, 2002 Human Resource Officers meeting.

**A. Guideline P-130 Educational Assistance**

The Human Resource Officers discussed whether the spouse/dependent fee discount could be used at more than institution in the same term. The guideline does not expressly provide guidance on this issue. The HR officers did not recommend any revisions to the current guideline.

**B. TSU Request for New Title Codes**

The HR Officers recommended approval of the following additional title codes Assistant Bursar, Cooperative Extension Program Administrator, Police Officer II and Police Officer III. The new title codes will be added to the HRS Job Class Master.

**C. Optional Retirement Program Investment Options**

The HR Officers recommended approval of a list of additional investment options in the ORP. This list was forwarded to all CBOs in an April 12<sup>th</sup> memo from Debbie Johnson.

#### **D. PeopleAdmin Software**

Ms. Johnson discussed a software presentation UOM had requested for the HR Officers. The software, PeopleAdmin, could simplify the application process, reduce subjectivity in the hiring process, reduce recruitment advertising, and centralize reporting and tracking. The cost is estimated at between \$2,000 and \$12,000 per campus per year. Ms. Johnson only brought the topic to the CBO to determine if any were interested. A systemwide proposal was not presented.

Mr. Posey inquired as to the status of the proposed Post Retirement Incentive guideline. Ms. Johnson responded that the proposed guideline is still in draft form and the HR Officers are only soliciting feedback, not approval, at this time.

Mr. Posey inquired why changes to the military leave policy were approved at the March Board meeting without going through the committee cycle first. Ms. Johnson responded that Chris Modisher, General Counsel, had requested the Attorney General's office to issue an opinion on the legality of our military leave policy. The AG's opinion was received subsequent to the January cycle of committee meetings, but prior to the March Board meeting. Ms. Modisher felt that in this instance it was more appropriate to take the necessary revisions directly to the Board meeting.

The minutes of the HR Officers meeting were approved.

#### **4. GASB 34/35 Update**

Dr. Collins informed the BASC that the GASB 34/35 subcommittee had concluded the majority of its work and would not be meeting again. There are a few open issues that will be resolved through email and phone conferences.

A meeting with the statewide GASB group revealed that changes may be required to the Statement of Activities reporting. The Department of Finance and Administration will review our proposed reporting and inform us of any needed changes.

ETSU has identified a few adjustments that will need to be made to their recast financial statements. The revised recast statements will be posted on the website and CBOs will be alerted to the adjustments.

The GASB 34/35 group informed the statewide group that our bound financial statements will only include the required items: Managements Discussion and Analysis, the three required statements, and the Notes to the Financial Statements. The supporting supplemental schedules will still be prepared and available for audit, but will not be bound in the financial report. TBR staff requested that one bound copy including the supporting schedules be forwarded to the TBR Central Office.

Dr. Rudley recognized the members of the GASB 34/35 group and thanked them for all their hard work.

## 5. Other Business

Ms. Rutland informed the BASC that the lawsuit against Unger and Associates has been settled. TBR received a settlement check on April 24<sup>th</sup> and will forward the funds to the institutions involved. Ms. Rutland also informed the BASC that a new collection vendor has been selected to replace Van Ru. The new vendor is Williams and Fudge.

Mr. Robinson discussed the recent meeting on migrating to a relational database system. Due to the uncertainty of the costs involved and the varying degrees of need within the TBR system, no final decision has been made as to when the migration will occur. A five to eight year timeline was discussed.

Dr. Rudley discussed the called Board meeting scheduled for May 13, 2002. The meeting will include discussions on the DOG budget cuts and FY 2003 fee increases.

Mr. Adams was installed as the BASC chairperson for FY 03. Dr. Rudley expressed his appreciation of Mr. Johnson's work as BASC chair for FY 02.

There being no further business, the BASC adjourned.

## ATTACHMENT A

### GUIDELINE B-060

#### C. Accounting Treatment

1. A revenue account for Maintenance Fees is used to record both the revenue assessed and refunds made.
2. ~~As provided in NACUBO College and University Business Administration: "Revenues from tuition and student fees of an academic term that encompasses two fiscal years—for example, a summer session—should be reported totally within the fiscal year in which the program is predominantly conducted. "If fees collected for an intersession during the summer are not included with the regular summer session in calculating the maximum fees a student must pay, the intersession should be reported in the year in which the majority of the instruction takes place. As provided in GASB Statements 34 and 35, summer school revenues and expenditures must be accrued at fiscal year-end. Summer school activity will not be allocated to only one fiscal year.~~
3. In some cases full fees are not assessed to students. These occur when statutes establish separate rates for such groups as the disabled, elderly, and military dependents. The difference between normal fees and special fees is not assessed. Fees not assessed in these cases do not represent revenue. For

administrative purposes the fees may be calculated and credited to revenue, then written off against a contra revenue account.

4. Agreements/contracts may be executed with a third party (federal agency, corporation, institution, etc.), but not with the individual student, to deliver routine courses at a fixed rate or for the cost of delivering the course and may provide for fees not to be charged to individual students. Individual student fees will be assessed as usual and charged to the functional category Scholarships and Fellowships. The amount charged to or paid by the third party is credited to the appropriate Grants and Contracts revenue account.



**GUIDELINE B-050**

**SUBJECT: INTERNAL AUDITING**

**General Statement**

The internal audit function contributes to the effectiveness of controls that management is responsible for establishing and maintaining. While particular responsibilities and activities vary among institutions, the fundamental purpose of internal auditing is to provide an independent, objective assurance and consulting activity designed to add value and improve the institution's operations. Each internal audit function shall adhere to The Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing* and *Code of Ethics*. This guideline addresses staffing, responsibilities of the internal audit function, and audit planning and reporting on internal audit activities.

**Internal Audit Personnel**

1. Each university shall employ at least two individuals with full-time responsibility as internal auditors. Additional internal audit staff shall depend upon institutional size and structure. Two-year institutions will employ a full-time internal auditor. Titles of internal audit staff shall be consistent within the overall institutional structure.
2. Internal audit staff shall possess professional credentials and experience requisite to position responsibilities. The director must be licensed as a Certified Public Accountant or a Certified Internal Auditor.
3. The appointment, change of status, termination, and compensation of the chief or lead internal auditor is subject to approval by the Chancellor or designee.

**Internal Auditing Role and Scope**

1. Internal Audit reports directly to the President. In addition, TBR has an oversight role. TBR hosts periodic meetings and communicates with the audit directors on matters of mutual interests. The TBR maintains an internal audit manual to guide the internal audit activity in a consistent and professional manner at each institution. This reporting structure assures the independence of the internal audit function.
2. The internal auditors' responsibilities should include:
  - Working with management to assess institutional risks and developing an audit plan that considers the results of the risk assessment.
  - Evaluating institutional controls to determine their effectiveness and efficiency.
  - Coordinating work with external auditors, program reviewers, and consultants.
  - Determining the level of compliance with internal policies and procedures, state and federal laws, and government regulations.
  - Testing the timeliness, reliability, and usefulness of institutional records and reports.

- Recommending improvements to controls, operations, and risk mitigation resolutions.
  - Assisting the institution with its strategic planning process to include a complete cycle review of goals and values.
  - Evaluating program performance.
3. The scope of internal auditing extends to all aspects of institutional operations and beyond fiscal boundaries. The internal auditor shall have access to all records, personnel, and physical properties relative to the performance of duties and responsibilities.
  4. The scope of a particular internal audit activity may be as broad or as restricted as required to meet management needs.
  5. Objectivity is essential to the internal audit function. Therefore, internal audit personnel should not be involved in the development and installation of systems and procedures, preparation of records, or any other activities that the internal audit staff may review or appraise. However, internal audit personnel may be consulted on the adequacy of controls incorporated into new systems and procedures or on revisions to existing systems.
  6. An independent quality assurance review of the internal audit function is required by the *IIA Standards* every five years.
  7. Management is responsible for identifying, evaluating, and responding to potential risks that may impact the achievement of the institution's objectives. The auditors continually evaluate the risk management processes and internal control structures. Internal Audit will receive copies of external audit reviews, program reviews, fiscally related consulting reports, notices of cash shortages, physical property losses, and employee misconduct. These will be considered in the evaluation of risks.

#### Audit Plans

1. Internal Audit shall develop an annual audit plan using an approved risk assessment methodology.
2. Audit areas and respective audit programs are available in the TBR Audit Manual for guidance in these areas.
3. At the beginning of each fiscal year, the Internal Audit director will prepare an annual plan listing proposed areas to be audited. The audit work plan must be flexible to respond to immediate requests. The status of the past year's plan will also be prepared in an annual activity report that may include other significant audit services. The President will submit two copies of the institution's Audit Plan for review by the Chancellor. The Chancellor will forward one copy to the State Comptroller's Office.

#### Audit Reports

1. Each routine internal audit should result in a written report that documents the objectives, scope, and conclusion of the audit. Management will include corrective action for each

reported finding. Reports on special studies, consulting services, and other non-routine items should be prepared as appropriate, given the nature of the assignment.

2. The institution's president will be notified at the conclusion of a follow-up audit if management has not corrected the reported finding.
3. All internal audit reports will be signed by the director and transmitted directly to the President in a timely manner.
4. The President will transmit two copies of the internal audit report to the Chancellor. The Chancellor will forward one copy to the State Comptroller's Office.

### **Exceptions**

Any exceptions to the guideline established herein shall be subject to the approval of the Chancellor.

Source: June 3, 1981 TBR Presidents' Meeting; July 1, 1984; May 20, 1986; February 14, 1989; November 14, 1989; May \_\_\_\_\_.

Policy No.: 4:02:10:00

DRAFT 4/25/02

TENNESSEE BOARD OF REGENTS

SUBJECT: Purchasing Policy and Procedures

The following policy and procedures, Minimum General Bid Conditions (Attachment A), and code of Ethics in Procurement and Contracting (Attachment B) are adopted as minimum standards for the exercise by the Presidents of the institutions and Directors of the technology centers, governed by the Tennessee Board of Regents, of their delegated authority to purchase materials, supplies, equipment and services. **Except as specifically provided in this policy or other TBR policies or guidelines**, the authority of the Presidents and Technology Center Directors pursuant to these policies and procedures shall not include the purchase or lease of real property, ~~or~~ data processing equipment **over \$100,000**, the purchase of insurance, ~~or professional or consultant services~~, or purchases for capital outlay projects from any fund source whatsoever. ~~, unless approved by the Chancellor, President or Director in accordance with TBR policies and guidelines.~~ Goods and services may be procured without competitive bidding only if such purchases are justified in writing and approved by the President, Director or Chancellor as required by TBR policies and guidelines. In cases where the TBR policies and procedures do not address a specific procedure for purchase of a particular item, the Department of General Services' rules and regulations will govern, if applicable. The Chancellor, President, ~~or~~ Director, **Chief Business Officer, or Chief Purchasing Officer** may delegate approval authority as specified in this policy to their designees. **Time periods specified in this policy shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded.**

I. COMPETITIVE BIDDING AND SPECIFICATIONS

All purchases shall be based upon the principle of competitive bidding except as herein provided. Whenever possible, all specifications for materials, supplies, equipment and services shall be worded or designed so as to permit open and competitive bidding for the supplying of the article, commodities or services to which they apply. ~~It~~ will be considered open and competitive bidding by utilizing one of the following purchasing techniques:

- A. Specifications based on brand names and product numbers-reference to brand names, trade names, model numbers or other descriptions peculiar to specific brand products is made to establish a required level of quality and functional capabilities; it is not intended to exclude other products of that level. Comparable products of other manufacturers will be considered if proof of comparability is contained in the bid. **Vendors are required to notify the Chief Purchasing Officer whenever specifications are not open and/or procedures are not desirable. All suggestions or objections shall be made in writing and received by the Chief Purchasing Officer at least three (3) working days**

**prior to the bid opening.** It shall be the responsibility of the vendors, including vendors whose product is referenced, to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of a bid;

- B. Specifications based on standard specifications;
- C. Specifications based on qualified products list;
- D. Specifications based on catalogs, price lists, or price schedules;
- E. Multi-step sealed bidding - the use of a multi-step sealed bidding process is required in the acquisition of institutional computer systems involving the purchase of hardware and the development of application software. The multi-step bidding process may also be used for the procurement of other products or services, when it is not practical to prepare initially definitive specifications which will be suitable to permit an award based on price. (See Guideline B-035, Procedures for Multi-Step Sealed Bidding).
- F. Purchase of materials or services, for which **any TBR or UT institution or the State of Tennessee Department of General Services, Purchasing Division**, has awarded a contract (SWC) to a vendor through the competitive bidding process will be made without adherence to Section **III IV**, Minimum Notice and Number of Bids, provided the vendor meets the bid specifications. This section does not preclude institutions from utilizing the SWC as a bid in accordance with the competitive bidding process outlined in Section **III IV**, Minimum Notice and Number of Bids, if so desired.

## **II. PROCUREMENT OF GOODS, MATERIALS AND SUPPLIES / SERVICES**

- A. **Goods.** Goods, materials, and supplies (cumulatively called "goods") should be awarded to the lowest responsive and responsible\* bidder pursuant to a Request for Quotation, sometimes called an Invitation to Bid. (A sample Request for Quotation is available at the TBR web site.)

**\*"Responsive" means that the bid meets the requirements and criteria set forth in the Invitation to Bid or Request for Proposal. "Responsible" means that the bidder is capable of performing or is not otherwise disqualified. In the event a bidder is not either responsive or responsible, then the bid is to be disqualified.**

- B. **Goods and Services.** Certain services or a combination of goods and services may be procured as a "good", based on an Invitation to Bid rather than a Request for Proposal, if the end product is more important than the service that goes toward its production or where the vendor has little discretion in determining its actual content or form.

**(1) Examples of this type of service include, but are not limited to: (a)**

pest control; (b) security services; (c) moving and hauling; (d) refuse collections; (e) charter services; (f) printing services, and (g) maintenance services.

- (2) Mischaracterization of an item to be procured as a good or service shall not constitute an error in the procurement if the requirements of this policy are met, but it may be grounds for the Institution to terminate the procurement process. For competitive procurement of goods, an Invitation to Bid (or Request for Quotation) is appropriate, and in general, a purchase order may be used to finalize the purchase. For competitive procurement of services, a Request for Proposal is more appropriate, and a purchase order is generally not sufficient to serve as the written contract for the services.

- C. **Services.** A contract for personal service, professional service, or consulting service shall be used when the vendor's discretion or the form of the end product or service is critical to the performance. All purchases of personal, professional, and consultant services should be based, to the maximum extent practicable, on evaluation and consideration of vendor qualifications and cost. Detailed information regarding service contracts is provided in Guideline G-030. A sample Request for Proposal for service contracts is available at the TBR web site.

A contract for consulting services hereunder which exceeds \$10,000 shall not be allowed unless it is determined by the President for colleges and universities, Director for TTCs or Chancellor for TBR, in writing that the services are in fact needed and that they cannot be satisfactorily or economically performed by a state agency. Each President and Director shall report, in writing to the Chancellor regarding all consulting contracts exceeding \$10,000 executed during the preceding quarter.

- D. **Outsourcing.** Institutions are encouraged to determine whether some services can be delivered more economically by the private rather than the public sector. The following process is hereby permitted and encouraged:
- (1) The State's cost of the service may be ascertained and kept confidential as part of the evaluation process. This cost must be finally determined and provided to the President, Director or Chancellor, or designee, as appropriate, in a sealed envelope prior to bid/proposal due date.
  - (2) The service may be the subject of an ITB/RFP, as appropriate, which approximately describes the services heretofore provided by the TBR/Institution.
  - (3) The ITB/RFP may require that if the proposer's/bidder's price exceeds the State's confidential cost, the proposal/bid may be rejected.

Invitations to bidders/**proposers** shall specify:

- (1) the time and place that bids will be received and opened,
- (2) the articles or services for which such bids are to be submitted and the specifications for such articles or services,
- (3) the amount or number of articles or services required,
- (4) the time of delivery,
- (5) the amount, if any, of any bid bond or certified checks to accompany the bid,
- (6) the amount, if any, of any performance bond which will be required if the vendor is the successful bidder,
- (7) date bid evaluations **will be** available for viewing,
- (8) **if applicable, whether other TBR institutions and/or UT may purchase from the contract,**
- (9) and any other requirements, conditions, or information in reference to the purchase deemed necessary.

#### IV. MINIMUM NOTICE AND NUMBER OF BIDS

The number of bids required and the notice to bidders for solicitation of bids **for purchases and revenue contracts** shall be as follows:

- A. If the estimated amount of the purchase (**or revenue**) is \$10,000 or more, written sealed bids must be solicited from fifteen (15) vendors or the number of vendors on the Vendors List--whichever is less. (The Chief Purchasing officer must approve the solicitation of less than 15 bids). The invitation to bid must be mailed at least fourteen (14) days (ten (**10**) days where all vendors are local vendors) before the date that the bids are scheduled to be opened.
- B. If the estimated amount of the purchase (**or revenue**) is at least ~~\$1,500~~ **\$2,000** but less than \$10,000, written or telephone bids must be solicited from at least three (3) qualified vendors. When telephone bids are solicited, a written record of the bidders and amounts bid shall be maintained.

#### V. BID WITHDRAWAL, BID REVISION, AND BID REJECTION

Before bid opening, a vendor may be permitted to withdraw a bid entirely and/or submit a substitute bid. The vendor making such a request must submit suitable identification.

After bid opening, a vendor will be permitted to withdraw a bid only where there is obvious clerical error in the bid such as a misplaced decimal point, or where enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Withdrawal will be considered only upon written request from the vendor.

In cases of errors in the extension of prices in the bid, the unit price will govern.

**A bid may not be revised after bid opening.**

**After evaluation is complete and the successful bidder/proposer selected,**

**negotiations may occur which serve to alter the bid/proposal in a way favorable to the Institution. For example, prices may be reduced, time requirements may be revised, the bid/proposal may be revised to supply omitted terms etc. In no event shall negotiations increase the cost or amend the proposal such that the apparent successful proposer no longer offers the best proposal.**

When it becomes necessary to reject all bids, the reason for such rejection must be set out in complete detail and made available to all bidders who submitted a bid.

Action to reject all bids shall be taken only for unreasonably high prices, errors in the invitation to bid, cessation of need, unavailability of funds, ~~or any other reason approved by the president or director or his or her designee.~~ **failure of all proposals to meet technical specifications, a determination that the goods/services can be more economically delivered pursuant to an agreement with another TBR institution of other state agency, or a determination that proceeding with the procurement would be detrimental to the best interests of the institution, the reason for which must be documented and approved by the President or Director or his or her designee.**

## VI. ACCEPTANCE OF BIDS / NO RIGHTS CREATED

**Notwithstanding any provision contained herein or in any solicitation document, submission of a bid or a proposal shall not create rights, interests or claims of entitlement in any bidder or proposer, including the successful bidder or proposer. Notwithstanding any action or agreement to the contrary, no such right, interest, or claim shall exist unless and until a purchase order has been issued or a contract is fully executed.**

All bids shall be subject to rejection by the President or Director of the institution or technology center or his or her designee. If awarded, the contract for purchase shall be awarded to the lowest qualified and responsible bidder, taking into consideration quantifiable factors including but not limited to the apparent ability of the bidder to perform the proposed contract, the conformity of the articles or services to the specifications, any discount allowed for prompt-payment or for any other reason, transportation charges, and the date of delivery specified in the invitation to bidders.

A bond for the faithful performance of any contract may be required in the discretion of the institution or technology center.

A complete written record on all procedures and justifications shall be maintained on each purchasing transaction in order to provide a clear audit trail on the purchase.

Bids must be received in the specified location on or before the date and hour designated for bid opening. Late bids will not be considered in contract award.

All bids received shall be publicly opened and examined by a designated institutional representative at the time and place specified in the invitation to bidders. All bids conforming to the invitation together with the name ~~of~~ of the bidder shall be recorded, become a matter of public record, and ~~remain~~ **shall be** open to public inspection after award. **Where protected by the Public Records statutes, a vendor's financial**



**information disclosed in his bidder's qualifications shall not be disclosed to the public.**

Each bid should give the full name and business address of the bidder. **Each bid must be signed in ink by the vendor's authorized agent.** Unsigned bids will be rejected. The person signing the bid must show his title, and if requested by the institution or technology center, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bids must be ~~written with typewriter, ink, or indelible pencil~~ **typewritten or in ink**; otherwise they may not be considered. A purchase order will be issued to the firm name appearing on the bid.

**Where more than one item is specified in the invitation to bid, the institution shall provide in the invitation to bid that it has the right to determine the low vendor(s) either on the basis of each individual item, a group of items, or the total of all items.**

Alternate bids will not be considered unless specifically called for in the bid.

**All material, supplies, and equipment offered and furnished must be new unless the invitation to bid specifically permits offers of used or reconditioned items. Invitations to bid which specifically permit offers of used or reconditioned items shall require a warranty, except that the Director, President, or Chancellor, shall have the authority to waive this requirement.**

## VII. PROTESTED BIDS

### A. Right to Protest

(i) ~~An aggrieved bidder~~ **Any actual proposer who claims to be aggrieved in connection with a specific solicitation process** may submit a protest in writing to the Chief Purchasing Officer within ~~ten (10)~~ **seven (7) calendar** days after he or she knows or should have known the facts giving rise to the protest.

(ii) *Signature on Protest Constitutes Certificate.* **The signature of an attorney or protesting party on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay, or needless increase in the cost of the procurement or of the litigation. If a request for consideration, protest, pleading, motion, or other document is signed in violation of this subsection before or after appeal to the Chancellor, the Chancellor upon motion or upon his/her own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties, including the affected institution, the amount of the reasonable expenses incurred because of the filing of the protest, a petition for a stay of**

award, pleading, motion, or other paper, including reasonable attorneys' fees.

(iii) Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond. The protesting party shall post, with the purchasing agent of the institution, at the time of filing a notice of protest, a bond payable to the institution in the amount of five percent (5%) of the lowest cost proposal evaluated or five percent (5%) of the highest revenue proposal evaluated. Such protest bond shall be in form and substance acceptable to the institution and shall be immediately payable to the institution conditioned upon a decision by the Chancellor that:

1. A request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the Chancellor, in violation of subsection VI.A. (ii);
2. The protest has been brought or pursued in bad faith; or
3. The protest does not state on its face a valid basis for protest.

(iv) The institution shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by the Chief Business Officer of the institution. If the protesting party appeals the determination in accordance with subdivision VI.B., the Chief Business Officer of the institution shall hold such protest bond until instructed by the Chancellor to either keep the bond or return it to the protesting party.

(v) At the time of filing notice of a protest of a procurement in which the lowest evaluated cost proposal is less than one million dollars (\$1,000,000), or in which the highest evaluated revenue proposal is less than one hundred thousand dollars (\$100,000), a minority or small business protesting party may submit a written petition to the Chief Purchasing Officer for exemption from the protest bond requirement of subsection VI.A.(iii). Such a petition must include clear evidence of minority or small business status. On the day of receipt, the petition shall be given (may be faxed) to the Chancellor or his or her designee. The Chancellor has five (5) business days in which to make a determination. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted. Should the Chancellor deny an exemption from the requirement, the protesting party shall post the bond with the purchasing agent of the institution as required in subsection VI.A.(iii) within three (3) business days of the determination. For the purposes of this section, "minority business" is defined as solely owned or at least fifty-one percent (51%) owned by a person or persons who control the daily operation of such business and who is disabled (a person having a physical or mental impairment that in the written opinion of the person's licensed physician, substantially limits one (1) or more of

the major life activities of such person, including caring for oneself, and performing manual tasks, which include writing, walking, seeing, hearing, speaking, and breathing); African American (persons having origins in any of the Black racial groups of Africa); Asian American (persons having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the subcontinent, or the Pacific Islands); Hispanic American (persons of Cuban, Mexican, Puerto Rican, Central or South American, or other Spanish or Portuguese origin, culture, or descent, regardless of race,); or Native American (persons having origins in any of the original peoples of North America). For purposes of this section, “small business” is defined as one which is independently owned and operated, has total gross receipts of no more than two million dollars (\$2,000,000) for the most recently ended federal tax year, and employs no more than thirty (30) persons on a full-time basis.

B. Authority to Resolve Protest

~~The purchasing officer shall review all bid protests and communicate his or her decision in writing to the chief business officer. If a protest is not resolved to the satisfaction of the aggrieved bidder, the aggrieved bidder may request an opportunity to meet with the chief business officer to present his or her grievance. Protests shall be submitted to the chief business officer within ten (10) days of a written decision of the chief purchasing officer. The chief business officer, in consultation with the President or his or her designee, shall review the appeal. If the chief business officer's decision does not resolve the issue, the aggrieved bidder may appeal to the Chancellor or his or her designee. A request for this action must be made in writing within ten (10) days of the date of the decision of the chief business officer. The determination of the Chancellor or his or her designee is final and shall be given in writing and submitted to the protestor.~~

- (i) **The Chief Purchasing Officer of the institution has the authority to resolve the protest. If deemed necessary, the Chief Purchasing Officer may request a meeting with the protesting party to seek clarification of the protest issues.**
- (ii) **The final determination of the Chief Purchasing Officer shall be given in writing and submitted to the protesting party.**
- (iii) **The protesting party may request that the final determination of the Chief Purchasing Officer be considered by the Chief Business Officer of the Institution. The request for consideration shall be made in writing to the Chief Business Officer within seven (7) calendar days from the date of the final determination by the Chief Purchasing Officer.**
- (iv) **The Chief Business Officer has the authority to review and resolve the protest. If deemed necessary, the Chief Business Officer may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the Chief Business**

**Officer shall be given in writing and submitted to the protesting party.**

- (v) The protesting party may request that the final determination of the Chief Business Officer be considered by the President or Director of the institution. The request for consideration shall be made in writing to the President or Director within seven (7) calendar days from the date of the final determination by the Chief Business Officer.**
- (vi) The institution shall have no longer than sixty (60) calendar days from receipt of the protest to resolve the protest.**
- (vii) The protesting party may request that the final determination of the President/Director be considered by the Chancellor. The request for consideration shall be made in writing to the Chancellor within seven (7) calendar days from the date of the final determination by the President/Director. The determination of the Chancellor or his or her designee is final and shall be given in writing and submitted to the protestor.**
- (viii) In the event that the institution fails to acknowledge receipt of a protest within fifteen (15) days of receipt of a protest or fails to resolve the protest within sixty (60) calendar days, the protesting party may request that the Chancellor consider the protest at a meeting.**

**~~C. Stay of Procurement During Protest~~**

~~An aggrieved bidder may request a stay of award prior to award of the contract. Upon notification of a request for a stay to the chief purchasing officer, the proposed acquisition shall not proceed until the protest has been resolved, unless the Chancellor or his or her designee makes a written determination that continuation of the bid process or the award of the contract without delay is necessary to protect substantial interests of the institution, technology center or Board office based upon the recommendation from the chief business officer.~~

**C. Stay of Award**

**Prior to the award of a contract, a proposer who has protested may submit to the Chief Business Officer a written petition for stay of award. Such stay shall become effective upon receipt by the Chief Business Officer. The Chief Purchasing Officer shall not proceed further with the solicitation process or the award of the contract until the protest has been resolved in accordance with this section, unless the Chancellor makes a written determination that continuation of the solicitation process or the award of the contract without delay is necessary to protect substantial interests of the institution. It shall be**

**the responsibility of the Chief Business Officer to seek such determination by the Chancellor.**

D. Protest Subsequent to Award

The Tennessee Claims Commission has exclusive jurisdiction to determine all monetary claims against the state for the negligent deprivation of statutory or constitutional rights.

VIII. TIE BIDS

A tie bid exists when two or more bidders offer products that meet all specifications, terms and conditions at identical prices, including cash discount offered. In such case, a tie bid will be broken by the following methods, in descending order of preference:

- a. In-state business will be given preference.
- b. Small and minority business will be given preference.
- c. Award item(s) to vendor who was low bidder on other item(s) being bid per the same requisition.
- d. Best delivery.**
- e. By lot or coin toss (properly witnessed and documented).

IX. RECEIVING REPORTS

When any supplies, equipment, or materials are received by an institution or technology center, the receiving agent thereof shall make a written certification that the supplies, equipment, or materials received were equal in quality and quantity to those requisitioned. Complete records on all receiving reports shall be maintained in order to provide for a clear audit trail on the receipt of all purchases.

X. VENDORS LIST

Each institution and technology center shall maintain a list of vendors which shows the types or classes of materials, supplies, equipment or services which the person, firm or corporation is willing and able to furnish to the institution or technology center. The institution or technology center may require the person, firm or corporation to submit sufficient information to demonstrate ability to perform any future commitment prior to inclusion on the list of bidders.

XI. REMOVAL FROM VENDORS LIST

Vendors who fail to respond to a reasonable number of bids or fail to provide adequate goods or services shall be removed from the vendors list. Reported failure to comply with bids, awards, and/or orders becomes a part of the bidder's application file. If a

qualified bidder repeatedly fails to respond to Invitations to Bid, the bidder will be removed from all commodity groups. Examples of failure to comply include but are not limited to:

- Overshipments
- Undershipments
- Early Shipments
- Late Shipments
- Damaged Products
- Defective Products
- Shipments not in Conformance with Specifications
- Unauthorized Substitutions
- Billing Errors
- Service Deficiencies
- Failure to Ship

Other principal causes for temporary or permanent removal from the bid list are:

- Unethical Practices
- Misrepresentation of Merchandise

Failure of a vendor to perform satisfactorily in any of the above areas may result in a vendor's liability for damages to the institution.

## XII. STATE MANUFACTURED ARTICLES AND SERVICES

All institutions and technology centers are required to purchase items and services from other State agencies, e.g., Department of Correction, Blind Services, whenever such items or services are available therefrom and meet the desired conditions and standards.

## XIII. PURCHASES FROM SMALL AND MINORITY OWNED BUSINESSES

All institutions shall actively solicit bids from small and minority owned businesses in order to obtain a fair proportion of goods and services from such businesses, whenever possible. In accordance with TCA 12-3-808, on an annual basis information regarding small and minority-owned business purchasing will be filed with the Department of General Services which will consolidate this information into the report to the Legislature.

**For reporting purposes under this section, a “minority owned business” means a business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of: (a) past practices of discrimination based on race, religion, ethnic background, or sex; (b) a disability as defined in TCA 4-26-102; or (c) past practices of racial discrimination against African-Americans. A “small business” means a business which is independently owned and operated and is not dominant in its field of operation. The State of Tennessee shall design and implement procedures to identify small businesses and to monitor purchases from**

**those businesses. The State shall establish criteria for consideration as a small business, which shall include, but not be limited to, number of employees and annual gross sales.**

XIV. EMERGENCY PURCHASES

Purchases of specific materials, supplies, equipment or services may be made in the open market for immediate delivery only to meet bona fide emergencies arising from any unforeseen cause. All bona fide emergency purchases must be approved by the president or director or his or her designee, and a written report on the circumstances of any such emergency justifying the purchase shall be prepared and maintained by the institution or technology center. All emergency purchases shall, if practicable, be made on the basis of competitive bids.

XV. SPECIAL PURCHASE CATEGORIES

A. Sole source or proprietary purchases may be allowed pursuant to the following:

Sole Source Procurement - Sole source purchases are made only when items are unique and possess specific characteristics that can be filled by only one source.

Proprietary Purchase - A proprietary product is one that is manufactured and marketed by a person or persons having the exclusive right to manufacture and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. ~~w~~When it is found that bids may be obtained from different franchises, bid invitations must be issued unless the estimated purchase is less than ~~\$1,500~~ **\$2,000**.

Factors to be considered in sole source and proprietary purchases include the following:

1. Whether the vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products.
2. Whether the product or service is unique and easily established as one of a kind.
3. Whether the program requirements can be modified so that competitive products or services may be used.
4. Whether the product is available from only one source and not merchandised through wholesalers, jobbers, and retailers.
5. Whether items must be interchangeable or compatible with in-place items.
6. Whether the cost of conversion, including but not limited to disruption, re-training, and replacement precludes bidding competitively.
7. Whether the product is to be used in an instructional setting and the intent is to provide instruction on the specific product or diversity of products.

8. Other justifications as approved by the Chancellor or his or her designee.

All authorized sole source may be procured utilizing non-competitive negotiation.

Whenever specifications are not so worded or designed to provide competitive bidding, or specify a single brand, the person responsible for the recommendation shall be required to justify the necessity for the specification in writing, and the request shall be approved by the President or Director, or his or her designee.

**B. Purchases for Resale in Auxiliary Enterprises**

Purchases of items for resale shall be made as follows:

1. Textbooks and other course related materials may be purchased without adherence to Section **IV** of this Policy, ~~m~~**Minimum** Notice and Number of Bids. All textbook ordering lists and authorization forms must be maintained for audit purposes.
2. Certain items for resale for which customers have expressed a preference, and/or promotional items procured under accepted retail merchandising practices, may be purchased without adherence to Section **IV** of this Policy, ~~m~~**Minimum** Notice and Number of Bids. Appropriate documentation shall be maintained which supports the action taken.

**C. Purchases for Libraries, Excluding Materials and Supplies Identified for Consumption by the Library**

Purchases of materials for additions to a library collection include cost of books, catalogs, periodicals, binding, audio-visual media, and other general publications. These items are capital expenditures. Each institution and technology center shall be responsible for developing purchasing policies and procedures for the library. These purchases may be made without formal bids or quotations, and appropriate documentation shall be maintained on these purchases to support sole source procurement.

**D. Acquisition of Computer Systems**

Acquisition of computer systems involving the purchase of hardware with the development of application software shall be made in accordance with TBR Guideline B-030, Acquisition of Data Processing Equipment/Software/Services, and Guideline B-035, Procedures for Multi-Step Sealed Bidding.

**E. Purchases utilizing federal funding are to follow federal guidelines regarding such purchases. Purchases for goods or services shall not be made from vendors on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.**

**XVI. MULTI-STEP SEALED BIDS**



- A. In the invitation to bid, the Purchasing Department shall provide the bidder with information describing the functional requirements of the system, purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired.
- B. The bidder shall submit a technical offer sufficient in detail so as to constitute the technical specifications of the purchase.
- C. As specified in the invitation to bid, all technical offers must be received by the institution or technology center at the designated time and will be opened in the same manner as a competitive sealed bid. Technical offers shall not be made public until the inspection period following evaluation of the bids submitted with prices.
- D. Acceptability of technical offers shall be determined by an evaluation team appointed by the President, or his/her designee. All technical offers will be evaluated based on the criteria of the invitation to bid and other information learned during the technical evaluation process. All vendors whose technical offers are deemed acceptable will be invited to participate in a confidential discussion of unpriced technical offers. Offers not deemed acceptable will not proceed to the pricing phase.
- E. Bid Price. At the conclusion of the evaluation phase of the multi-step sealed bidding process, bidders will be required to submit a bid price clearly defining the cost of their technical offer in accordance with the invitation to bid.
- F. Award. Each contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid.

## XVII. COMPETITIVE NEGOTIATION

A contract may be entered into by competitive negotiation only in cases when the institution or technology center is unable to obtain needed goods and/or services by the competitive bid process. The President or Director shall prescribe the procedures under which negotiation is to be conducted. These procedures shall provide for the safeguarding of the information and provide fairness to the vendors in the negotiation process. In the event it appears the competitive negotiation process is to be implemented, such an action must be approved by the president or director. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the President or Director, and he or she shall approve the results prior to entering into a contract.

## XVIII. CONTRACTS AND AGREEMENTS

All contracts and agreements will be in conformance with TBR Guideline G-030, Contracts and Agreements.

- A. All agreements and contracts involving or related to the purchase or lease of real property exceeding \$15,000 per year or for more than five (5) years, the purchase

or lease of data processing equipment exceeding **\$100,000**, the purchases related to capital outlay projects, shall be expressly subject to the approval of the Chancellor.

- B. No agreement of any nature which requires the expenditure of funds shall extend beyond the end of fiscal year in which it is entered into unless expressly subject to the condition that the institution or technology center shall have the right to terminate the agreement at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the agreement.
- C. All agreements, contracts and subcontracts shall contain all necessary nondiscrimination requirements provided by Federal or State laws and regulations.
- D. Contract Limitations

No contract for purchase of materials, supplies, equipment or services shall be awarded pursuant to these procedures unless funds have been appropriated and are available for the purchase. No contract shall be entered into in addition to the contract resulting from acceptance of a bid and issuance of a purchase order except pursuant to TBR Policy No. 1:03:02:10, Approval of Agreements.

- E. **Contracts containing no financial consideration may be negotiated.**

#### XIX. UTILITY CONTRACTS

The institution or technology center shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal and other services for which a rate for the use thereof has been established by a public authority in such manner as the ~~Commissioner~~ **institution** deems to be in the best interest of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, whenever possible, in accordance with the TBR Purchasing Policy, unless it has been determined that such purchase is single source. If such purchase has been determined to be single source, the purchase shall then be made pursuant to Section XIV. Sole Source and Proprietary Purchases, of the TBR Purchasing Policy.

#### XX. COORDINATION OF PURCHASING FUNCTIONS AMONG SYSTEM INSTITUTIONS AND TECHNOLOGY CENTERS AND WITH THE UNIVERSITY OF TENNESSEE SYSTEM

In all contracts and other bid processes consideration should be given to such wording that would allow member institutions and technology centers to purchase under the terms and conditions of the bid of the individual institution or technology center. In all appropriate circumstances, consideration should also be given to wording that would allow UT institutions to purchase under the terms and conditions of the bid of a TBR institution. TBR institutions shall also be permitted to purchase under the terms and conditions of a bid of the UT System if the bid authorizes TBR institutions to do so.

## XXI. LIFE-CYCLE COSTS

An institution or technology center shall, in a case where the State Board of Standards has adopted a rule requiring life-cycle costs to be used by the Commissioner of the Department of General Services in contracting for major energy-consuming products, and may, in a case where a life-cycle cost and/or energy efficiency standard has been developed for a product by the federal government, apply such life-cycle cost and/or energy efficiency standard in the determination of the lowest qualified and responsible bidder under Section V of this policy.

## XXII. DISPOSAL OF SURPLUS PERSONAL PROPERTY

Surplus property is personal property which has been determined obsolete, outmoded, unusable or no longer usable by the institution or technology center, or property for which future needs do not justify the cost of maintenance and/or storage. Disposal of such property must be in accordance with TBR Policy No. 4:02:20:00, Disposal of Surplus Personal Property.

## XXIII. PROHIBITED TRANSACTIONS

No personal items shall be purchased through the institution or technology center or from funds of the institution or technology center for any employee of the institution or technology center or any relative of any employee. No employee of an institution or technology center responsible for initiating or approving requisitions shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future awards or compensation. Whenever any contract is awarded contrary to the provisions of these policies and procedures, the contract shall be void and of no effect, and if the violation was intentional, the employee responsible for the purchase shall be liable for any state funds paid contrary to these policies and procedures.

## XXIV. PURCHASING MANUAL

Each institution and technology center shall maintain a written purchasing manual which sets forth the policies and procedures of the institution or technology center on purchasing materials, supplies, equipment and services. The purchasing manual will contain, but not be limited to, provisions on procedures or forms to be listed on or removed from the qualified vendors lists, procedures for appealing decisions related to purchasing transactions, procedures for maintaining a record of performance by firms selling to the institution or technology center, procedures for assuring that funds are available to meet obligations that are incurred, the procedures for use of state contracts and purchases from State agencies, the policy and procedures for inspecting items purchased to assure quality and quantity, policy on bid and performance bonds, and procedures for processing payment of invoices. A copy of the manual and all subsequent revisions shall be provided to and approved by the Chancellor or his or her designee.

## XXV. REPORTS

The report of **transactions with** Minority-owned, Women-owned, Disabled-owned and Small Businesses required by Tennessee Code Annotated 12-3-808 shall be transmitted to the Vice Chancellor for Business and Finance on a quarterly basis (January-March, April-June, July-September, and October-December). Other reports will be provided upon request.

#### XXVI. EXCEPTIONS

Any exceptions to the policies and procedures established herein shall be subject to the approval of the Chancellor.

#### XXVII. COUNCIL OF BUYERS

The Chancellor shall establish a Council of Buyers, which Council shall be composed of a representative from each institution recommended by the president and approved by the Chancellor, and a representative from the Board staff appointed by the Chancellor. The Council should meet at least semi-annually, or upon request of the Chancellor or his designee, and shall have the responsibilities including but not limited to the following:

- A. Development of uniform procedures, forms and general conditions governing purchasing which may be feasible and practicable for use by all institutions and technology centers in the System, including affirmative action and equal opportunity provisions, for review and approval by the Chancellor.
- B. Formulation of standard specifications for purchase of specific materials, supplies, and equipment which may be feasible and practicable for use by the institutions and technology centers for review and approval by the Chancellor.
- C. Consideration of the feasibility and advantages of possible term contracts for the System, of designation of certain institutions or technology centers as responsible purchasing agents for specific materials, supplies or equipment for the System, and of the possibility of coordinating purchasing functions among institutions and technology centers within geographic areas, with recommendations to be submitted to the Chancellor.
- D. Formulation of a uniform code of ethics for governing the professional conduct of employees responsible for purchasing. (Attachment B)
- E. Any other matters referred to the Council by the Chancellor.

Source: TBR Meetings, March 5, 1976; June 30, 1978; December 12, 1980; September 18, 1981; June 25, 1982; September 30, 1983; September 20, 1985 ; December 4, 1987; June 24, 1988; June 30, 1989; September 22, 1989; September 21, 1990; June 28, 1991; June 25, 1993; September 23, 1994; September 20, 1996, March 7, 1997, December 5, 1997; March 27, 1998, December 4, 1998.