

BUSINESS AFFAIRS SUB-COUNCIL

April 25, 2003

MINUTES

The meeting began at 9:00 a.m. in the TBR Board Room. Present were Mr. Mitch Robinson, Chairperson (APSU); Ms. Debra Bauer (NSCC); Mr. Horace Chase (JSCC); Dr. David Collins (ETSU); Mr. John Cothorn, (MTSU); Mr. Bill Fuqua (RSCC); Mr. Danny Gibbs (VSCC); Mr. Mike Gower (MTSU); Mr. Clay Harkleroad, Jr. (TSU); Ms. Sharon Hayes (UOM); Mr. Ken Horner (COSCC); Dr. Charles Hurley (CLSCC); Mr. Al Irby (APSU); Ms. Rosemary Jackson (WSCC); Mr. Ron Kesterson (PSTCC); Mr. Charles Lee (UOM); Mr. David Lolles (DSCC); Ms. Linda Maxwell (TTU); Mr. Mike Posey (MSCC); Ms. Susan Rains (STCC); Mr. Terry Rector (TTU); Ms. Claire Stinson (NSTCC); Ms. Tammy Swenson (CSTCC); Mr. David Zettergren (UOM); Dr. Bob Adams, Ms. Kathy Crisp, Ms. Deanna Hall, Ms. Lisa Hall, Ms. Ann Rutland, Mr. Ron Simmons, and Mr. Bob Wallace (TBR).

Mr. Robinson was delayed. Dr. Adams called the meeting to order.

BUSINESS

1. Chancellor Manning's Remarks

Chancellor Manning expressed appreciation for all the hard work done to accommodate the 5% impoundment and the 9% base reduction. He stated that the prospects for future years are not good. A state such as Tennessee with a low tax burden will necessarily equate to higher tuition. TBR will need a double-digit fee increase to fund most increasing fixed costs. Consideration is being given to differentiated fees for certain programs and tuition assessed on a per hour basis. It appears that Governor Bredesen will not speak in opposition to fee increases; however, the THEC board members may not be supportive.

Chancellor Manning briefly discussed the TBR capital outlay needs and the prospects for securing a bond issue to fund these items. While the current low interest rates make a bond issue attractive, a source of revenue to retire the debt must be identified.

2. Report of the Finance Committee

Dr. Collins highlighted the following issues from the April 10, 2003, Finance Committee meeting.

A. Guideline B-042 Allocation of Maintenance Fees for University Athletics

Dr. Adams stated that adopting the proposed guideline may not go as smoothly as originally thought (Attachment A). Some THEC board members and staff would prefer stronger restraints on athletic expenditures than those included in the proposed guideline. Board staff will continue to work with THEC to resolve these issues.

B. Policy 4:02:10:00 Purchasing Policy and Procedures

The Finance Committee recommended the revisions proposed to the purchasing policy (Attachment B). These revisions will incorporate the applicable Rules and Regulations of the Department of Finance and Administration.

C. Deferred Benefits for Faculty

The Finance Committee recommended no revisions to the current reporting procedures for deferred benefits for faculty.

D. Guideline B-060 Fees, Charges, and Refunds

The Finance Committee recommended revising Guideline B-060 to include refund provisions for students called to active military or National Guard duty (Attachment C).

E. Administrative Software and TAF Guidelines

The Finance Committee discussed using technology access fees to fund new administrative software since students are direct beneficiaries. This proposal will require a revision of the technology access fee guidelines and will need to include a limit on the percentage of fees used. Board staff will survey institutions for their suggestions on a percentage limit.

F. Full-time Fees

The Finance Committee recommended establishing an ad hoc group to develop a proposal for charging tuition and fees on a per hour basis and eliminating the full-time fee cap. Members of the ad hoc group will include David Collins (ETSU), Lois Sams (ETSU), Libby Moore (UOM), Dottie McCallie (MTSU), Ann Everett (STCC), Linda Langiotti (NSCC), Ken Horner (COSCC), and Ken Brooks (SCT).

G. RODP Fees and PC 191

Vice Chancellor Paula Short received an email that suggested that some institutions are waiving the RODP fee for certain fee waiver programs. The RODP fee (40% of maintenance fee/out-of-state tuition) is considered a miscellaneous course fee and should not be waived. Campus-based scholarship programs can be structured to include the RODP fee, but the revenue and expense must be recognized in the accounting records.

H. Ad hoc Committee on Advancing Our Mission

Dr. Adams discussed the February 28, 2003, meeting of the Ad Hoc Committee on Advancing Our Mission. The ad hoc committee agreed upon a list of 15 items for Board staff to pursue. The following items fall under the Business and Finance area:

- 1) Redistribute state money to community colleges and technology centers; allow universities to move in stages to higher fee levels; research retirement incentives; limit enrollment of first-time freshmen at universities; develop an approach for tuition increases for FY 04 and future
- 2) Reduce state expenditures for intercollegiate athletics
- 3) Decentralize the personnel process
- 4) Increase final approval authority at the campus level for personnel, facilities, and financial issues
- 5) Increase flexibility in the use of technology access fees
- 6) Regionalize administrative functions across institutional boundaries
- 7) Better inform employees of the full compensation they receive
- 8) Determine enrollment capacity at community colleges

For items three and four above, Dr. Adams requested that campuses submit specific actions that should be considered, the costs associated with the current procedures, and the cost-savings that could be generated if procedures are revised.

I. Credit Card Fees

Dr. Collins discussed a proposal by First Horizon Merchant Services (a subsidiary of First Tennessee Bank) for contracting out credit card processing. Under the proposal, First Horizon (or other successful bidder) will be responsible for processing all registration charges paid by credit card. Credit card payments will only be accepted through web registration, but the institution will provide an alternative electronic payment method, such as e-check. First Horizon will charge students a fee of 2.5% for this service. The student will be informed of the fee and given the opportunity to terminate the registration, similar to the process used at ATMs.

This proposal shifts the credit card processing fees from the institutions to the students. Currently, ETSU's credit card fees are approximately \$268,000 and are growing about \$30,000-\$40,000 annually. Potential disadvantages include increasing the number of students registering at the cashier windows and incurring the expense of e-check software.

UT is negotiating with First Horizon to provide this service at the UT Knoxville campus for one year. At the end of the first year, UT will evaluate the results and determine if a longer agreement is in their best interests.

All TBR universities and several community colleges expressed an interest in reviewing the idea further for a possible Fall 2004 implementation.

The Finance Committee minutes were approved.

3. Report of the Human Resources Officers Committee

Debbie Johnson highlighted the following issues from the April 8, 2003, Human Resource Officers meeting.

A. Guideline P-030 Modified Fiscal Year Appointments

The HR Officers recommended revisions to the guideline for modified fiscal year appointments. The Office of General Counsel proposed the revisions that primarily emphasize that redesignation of filled fiscal year positions may be made at the discretion of the president/director and do not require voluntary agreement by the incumbent.

B. Guideline P-160 Post Retirement Service Program for Tenured Faculty

This draft guideline includes three revisions since the January meeting:

1. At their February 2003 meeting, the presidents approved language allowing extension of agreements for unusual circumstances. The extension will require the Chancellor's approval.
2. A change in the order of appendices.
3. Reverting to the original language regarding the medical insurance premium supplement and removing the proposal for a flat amount.

C. Guideline P-140 Guideline for Charitable Organization Deductions

Based upon General Counsel's recommendation, the guideline was revised to reflect the expectations and responsibilities of the Central Office, institutions, and various federations/agencies during the charitable giving campaigns. These revisions include:

1. A systemwide solicitation policy pertaining only to charitable giving
2. An annual systemwide calendar
3. The responsibilities of the institution/center/Central Office
4. The responsibilities for each participating federation/agency
5. Clarification of the agency application process
6. Removal of the minimum participants requirement
7. Guidance for remittance of payroll deductions to federation/agencies
8. Reporting requirements for the Central Office and federation/agencies

D. Long-term Care Insurance

Ms. Johnson discussed the workshops conducted for all state and higher education insurance preparers for long-term care insurance. The open enrollment period is April 15 to June 15, 2003.

E. Critical Care RFP

Ms. Johnson stated that the Critical Care RFP will be sent to vendors once the issue regarding tax sheltering premiums is resolved.

F. Graduate Assistants and Adjunct Insurance

Based upon cost estimates reviewed by Central Office staff, it was determined that TBR institutions will not provide insurance coverage for graduate assistants at this time. Additionally, presidents rejected procurement of medical insurance coverage for adjunct faculty and other temporary employees at the February 2003 meeting.

The Human Resource Officers Committee minutes were approved.

5. Group Purchasing Legislation

Dr. Adams discussed the bill regarding the group purchasing program. The bill will allow higher education institutions to enter into agreements with purchasing organizations. The purchasing organization must provide audit documentation that the price at which they can provide goods is the lowest. The institution does not pay a fee to the purchasing organization; instead, the purchasing organization charges a fee to each vendor participating in the program.

6. Other

- Tammy Swenson was elected BASC chairperson for FY 04. Claire Stinson was elected to the Finance Committee. Ms. Stinson will replace Mitch Robinson, whose term expires June 30, 2003.
- Horace Chase discussed a survey of how institutions handle mid-year salary increases for employees on modified contracts. The survey revealed that while monthly salaries differ from institution to institution, they all resulted in the same annual pay except MTSU. (It should be noted that not all institutions responded to the survey and some of the non-respondents may also have differing annual salaries.) Dr. Adams stated that the matter will be referred to the HR Officers for resolution.
- Dr. Adams discussed a Senate bill regarding foundations that would require foundations to follow state regulations, including purchasing. The Attorney General has opined that the State has the legal right to exercise control over the foundations. The bill may be amended to delegate audit authority of the foundations to the Comptroller of the Treasury.
- Dr. Adams updated the BASC on the THEC review of the funding formula. THEC is considering removing out-of-state students from the formula under three options. The first option is to remove the out-of-state students from the formula

altogether. The second option is to remove the out-of-state students from the formula, but adjust the graduate assistant calculation in the instruction component of the formula to same rate as faculty. The third option is to remove only the undergraduate out-of-state students from the formula.

- Dr. Adams distributed a resolution adopted by THEC regarding intercollegiate athletics. The resolution includes a long-term objective of intercollegiate athletics achieving self-sufficiency. While we will present to our Board in June the proposed Guideline B-042, it appears that THEC does not feel the proposed guideline reduces expenditures sufficiently.
- BASC members inquired about the status of future years' funding. It appears that another base reduction could occur for FY 04-05. The retirement fund will need a cash infusion in the near future and the State must address the small-school's teacher pay requirement.
- Dr. Adams discussed the enrollment cap provisions THEC has adopted. The cap will limit the growth in first-time freshmen at universities to 5% over last Fall's actual first-time freshmen FTE. Any overage will not be included in the formula calculation, but institutions will not be required to forfeit the fees collected. THEC did state that they will review the TBR right-sizing proposal for future years.
- BASC members inquired about potential fee increase rates for Fall 2003. UT is considering a 10% fee increase. Our Board has discussed 8%, 11%, and 14% increase scenarios.
- BASC members inquired if the TAF guidelines will be revised if the Board approves increasing the community college TAF fee to the university level. Currently, TAF guidelines limit using TAF fees for lab assistants to 12% at the universities and 25% at the community colleges. Dr. Adams stated that Board staff will review this issue.
- BASC members inquired how the review of the ERP was progressing. Dr. Adams stated that the proposals are being evaluated, but to comment further would violate attorney-client privilege.
- BASC members inquired about the Board CIO position. Dr. Adams stated that 60 applications had been received and were being reviewed by the committee. A committee meeting is scheduled for Wednesday, April 30, 2003. The committee's goal is to have the CIO on-site by July 1, 2003.

There being no further business, the BASC adjourned.

Attachment A

Guideline No. B-042

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SUBJECT: ALLOCATION OF MAINTENANCE FEES FOR UNIVERSITY ATHLETICS

I. General Statement

Intercollegiate athletics is a major university activity that is supported by various sources which include student maintenance fees. The following represents the methodology as well as guidelines for the allocation of maintenance fees for Athletics at Tennessee Board of Regents universities.

II. Allocation of Maintenance Fees

- A. Effective July 1, 2004, each university may allocate the greater of \$3,750,000 or \$150 per student (cumulative headcount) per fiscal year for Athletics from maintenance fees, subject to a maximum of \$5,750,000. This initial limit will be reviewed annually by Board staff and may be adjusted based on such factors as student fee increases, inflation, and mandated salary and benefit increases.
- B. Each university must evaluate the amount of maintenance fee revenues available for Athletics, subject to the limits established by this guideline, relative to other campus priorities.

III. State Appropriations

No state appropriated funds from General State of Tennessee Revenue may be used for Athletics.

IV. Exceptions

Exceptions to this guideline must be approved by the Chancellor.

Source:

Attachment B

Policy No.: 4:02:10:00

DRAFT 4/23/03

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), and Exhibit I are adopted as minimum standards for the exercise by the TBR Central Office, 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, data processing equipment over \$100,000, the purchase of

insurance, or purchases for capital outlay projects from any fund source whatsoever. 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, 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. Requests for Quotation

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; or

~~D.~~ Specifications based on catalogs, price lists, or price schedules;

~~B.~~ — Requests for Proposals

~~(1) Request for Proposal – sealed bid with cost and technical proposal submitted as one document;~~

~~(2) Request for Proposal – sealed bid with separate sealed technical and cost proposals which must be submitted at the same time. Acceptability of technical offers shall be determined by an evaluation team selected by the president or his/her designee. All technical offers shall be evaluated based on the criteria of the invitation to bid RFP and other information learned during the technical evaluation process. Technical offers not deemed acceptable will not proceed to the pricing phase. Cost proposals shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the institution. Technical offers shall not be made public until the inspection period following the evaluation of the cost proposals; or~~

~~(3) 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).~~

C. Procurement Under the Authority of Another Entity's Bid Process:

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~~ **may** be made without adherence to Section IV, Minimum Notice and Number of Bids, provided the vendor meets the bid specifications. **Note: the competitive bidding process of another entity (except the state Purchasing Division) must have specified that other institutions would be permitted to purchase under the bid.** This section does not preclude institutions from utilizing the SWC as a bid in accordance with the competitive bidding process outlined in Section IV, Minimum Notice and Number of Bids, if so desired. **(F&A Rule 0690-3-1-.01 (5) and Section XVII of this policy.)**

D. Procurement of State Manufactured Articles and Services:

All institutions and technology centers are required to purchase items (goods) 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. (General Services Rule 0690-3-1-.01 (7) (d).)

In addition, for personal, professional and consultant service contracts only, no competitive process is required when the contractor is a state agency (as provided in the immediately preceding paragraph), a political subdivision of the state, any other public entity in Tennessee, or an entity of the federal government. The non-competitive negotiation process in Section XV B. of this Policy may be used for such contracts. (F&A Rule 0620-3-3-.03.)

E. Gifts do not require a ~~contacting~~ procurement process subject to this policy. See TBR Policy 4:01:04:00 Solicitation and Acceptance of Gifts and TBR G-030 Section 3.

For purposes of this policy, a gift to the institution shall be defined as a voluntary transfer of goods or services to the institution made gratuitously and without consideration. Essential elements of a gift are:

- (1) Capacity of the donor of the gift,**
- (2) Intention of donor to make a gift,**
- (3) Completed delivery of the gift to or for the institution, and**
- (4) Acceptance of the gift by the institution.**

Nothing in this policy shall be construed to mean that the institution must accept any gift.

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~~ **Request for Quotation** 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 **not** 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~~ **Request for Quotation** rather than a Request for Proposal, if the end product is more important than the service that goes toward its production or when the vendor has little discretion in determining its actual content or form.

~~(1) Examples of this type of service **may** 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~~ **RFQ/RFP**, as appropriate, which approximately describes the services heretofore

provided by the TBR/institution.

- (3) The ~~ITB~~ **RFQ/RFP** may require that if the proposer's/bidder's price exceeds the state's confidential cost, the proposal/bid may be rejected.

III. ~~INVITATIONS TO BID~~ **REQUESTS FOR QUOTATION** AND REQUESTS FOR PROPOSAL

A. ~~Invitations to bidders/proposers shall specify:~~ **Requests for Quotation and Requests for Proposal shall specify:**

- (1) The time and place that bids will be received and opened,
- ~~(2) Information describing the purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired,~~ 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/**proposal**,

(6) the amount, if any, of any performance bond which will be required if the vendor is the

(7) a declaration of the contract terms and conditions which shall be required by the institution,

(8) a description of the factors to be considered in evaluating bids/proposals, if applicable,

(9) date bid/**proposals** evaluations will be available for viewing,

(10) if applicable, whether other TBR institutions and/or UT may purchase from the contract and any other requirements, conditions, or information in reference to the purchase deemed necessary. , and

(11) the period of time during which each bidder/proposer will hold its bid open and the period during which the contract awarded will be available to other institutions, if applicable.

B. ~~Invitations to bidders/proposers~~ **RFQs/RFPs** may specify 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 **and to all that request the specific RFQ/RFP.** (The Chief Purchasing officer must approve the solicitation of less than 15 bids). The ~~invitation to bid~~ **RFQ/RFP** must be mailed at least fourteen (14) days (ten (10) days when all vendors are local vendors) before the date that the bids are scheduled to be opened. **A vendor's general or standing request for notice for all RFQs/RFPs or all RFQs/RFPs of a given type shall not suffice as a request for a specific RFQ/RFP and shall create no obligation on the institution.**

B. If the estimated amount of the purchase (or revenue) is at least \$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 when 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.

Incorrect proposal information – If the institution determines that a proposer has provided, for consideration in a contractor selection process or in negotiations, information which the proposer knew or should have known was materially incorrect, the subject proposal may be determined non-responsive, and the proposal may be rejected and the vendor may be removed from the vendor list.

A bid may not be revised after bid opening.

However, after evaluation is complete and the successful bidder/proposer selected, **the institution may initiate** 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.

Any proposal that restricts the rights of the institution or otherwise qualifies or limits the proposal may be considered to be non-responsive, and the proposal may be rejected.

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~~ **RFQ/RFP**, cessation of need, unavailability of funds, 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 **Chancellor (for the TBR Central Office)**, 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 **Chancellor (for the TBR Central Office)**, 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~~ **RFQ/RFQ**.

A bond for the faithful performance of any contract may be required ~~in~~ **at** 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~~ **RFQ/RFP**. All bids conforming to the ~~invitation~~ **RFQ/RFP specifications** together with the name of the bidder shall be recorded, become a matter of public record, and shall be open to public inspection after award. ~~When~~ 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; **if the vendor is a corporation, the name shall be stated as it is in the corporate charter**. 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 typewritten or in ink; otherwise they may not be considered. **However, institutions may conduct procurement electronically, and if the institution requests or permits electronic bidding, no bidder's signature shall be required. TCA § 12-3-704.** A purchase order, **if applicable**, will be issued to the firm name appearing on the bid.

When more than one item is specified in the **RFQ/RFP**, ~~invitation to bid~~, the institution shall **may** provide in the **RFQ/RFP** ~~invitation to bid~~ that **the institution shall have** ~~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 **RFQ/RFP** ~~invitation to bid~~ specifically permits offers of used or reconditioned items. **RFQs/RFPs** ~~invitation to bid~~ which specifically permit offers of used or reconditioned items shall require a warranty; **however, except that** the Director, President, or Chancellor, shall have the authority to waive this requirement.

VII. PROTESTED BIDS

A. Right to Protest

- (i) 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 seven (7) calendar days after he or she knows or should have known the facts giving rise to the protest.

All proposers should know and shall be deemed responsible for knowing the facts documented in the institution's procurement files on the day the institution opens the bid files for public inspection.

Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of 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 (**See Appendix I**). The protesting party shall post, with the ~~purchasing agent~~ **Chief Purchasing Officer** 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 VII 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 (vii), ~~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 VII.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 **Chief Purchasing Officer** ~~purchasing agent~~ of the institution as required in subsection VII.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

- (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 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.

(E.) Appendix I

A protest bond may be presented to the institution in form and substance compliant with the Protest Bond format attached in Appendix I. Any protest bond presented to the institution that represents a deviation from the Appendix I format shall be considered for acceptability by the institution on a case by case basis.

VIII. TIE BIDS

A. Goods - 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:

- (1) In-state business will be given preference.
- (2) Small and minority business will be given preference.
- (3) Award item(s) to vendor who was low bidder on other item(s) being bid per the same requisition.
- (4) Best delivery.
- (5) By lot or coin toss (properly witnessed and documented).

B. Personal, professional and consultant services - **In the event that a proposal evaluation process results in two or more proposals receiving evaluation scores that tie for the rank of highest score, the institution shall request best and final cost proposals from only those proposers with scores that tie. The institution may calculate new evaluation scores for the tying proposals by adding the original technical scores to the recalculated cost scores. Should another tie result, the contract shall be awarded by coin toss.**

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~~ (Moved to Section I D.)

~~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, Director, **or Chancellor (for the TBR Central Office)** 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. 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. In addition, competitive negotiation may be appropriate for personal, professional and consultant service contracts when one of the following is true:

1. public need will not permit the delay incident to the RFP process;
2. no acceptable proposals have been received after an RFP process;
3. rates payable for the services are regulated by law; or
4. as provided in IV B. of this Policy. (F&A Rule 0620-3-3-.03)

The President, Director, or Chancellor (for the TBR Central Office) 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; procedures shall mandate communication of the requirements of the institution, clarify best interests of the institution, and solicit bids from at least three (3) potential providers (including minority, disadvantaged and small business providers as otherwise required by TBR policy and guidelines), and require documentation of the solicitation process. In the event it appears the competitive negotiation process is to be implemented, such an action must be approved by the President, Director, or Chancellor. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the President, Director, or Chancellor, and he or she shall approve the results prior to entering into a contract.

B. Non-competitive negotiation for sole source procurement – the negotiation of the terms of a contract with only one provider.

Personal, professional and consultant service contracts may be obtained by non-competitive negotiation when the contractor is a state agency, a political subdivision of the state, and any other public entity in Tennessee, or an entity of the federal government. (See Section I. D. of this policy and F&A Rule 0620-3-3-.03.)

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. When it is found that bids may be obtained from different franchises, bid invitations must be issued unless the estimated purchase is less than \$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. For personal, professional and consultant services, whether the use of non-competitive negotiation is in the best interests of the institution. (F&A Rule 0620-3-3-03)**
- 9. Other justifications as approved by the President or Chancellor (for the TBR Central Office) or his or her designee.**

All **Only** 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, Director, **or Chancellor (for the TBR Central Office)**, or his or her designee. **A non-competitive, sole source procurement request shall specify in writing:**

- (i) Identified vendor;**
- (ii) The goods or services to be procured;**
- (iii) The specific requirement of this policy believed to be satisfied by the subject procurement;**
- (iv) The justification for non-competitive negotiation detailing sound, business reasoning why a competitive procurement is not appropriate and why non-competitive negotiation is in the best interests of the institution;**
- (v) The maximum cost of the non-competitive procurement; and**
- (vi) The contract duration.**

B.C. 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, 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, Minimum Notice and Number of Bids. Appropriate documentation shall be maintained which supports the action taken.

~~C.D.~~ 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.E.~~ 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.F.~~ **Federal Guidelines**

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.

~~G.~~ **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 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 XV. B., Non-competitive negotiation Sole Source and Proprietary Purchases, of this TBR Purchasing Policy.

~~XVI.~~ ~~MULTI-STEP SEALED BIDS~~ **(Covered in I. B.)**

~~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 (Moved to XV A.)

~~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, Director, or Chancellor 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; **procedures shall mandate communication of the requirements of the institution, clarify best interests of the institution, and solicit bids from at least three (3) potential providers (including minority, disadvantaged and small business providers as otherwise required by TBR policy and guidelines), and require documentation of the solicitation process.** In the event it appears the competitive negotiation process is to be implemented, such an action must be approved by the President, Director, or Chancellor. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the President, Director, or Chancellor, 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 **Policy 1:03:02:10 Approval of Agreements and 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.~~

~~A. 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.~~

~~B. All agreements, contracts and subcontracts shall contain all necessary nondiscrimination requirements provided by Federal or State laws and regulations.~~

~~C. 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.~~

~~D. Contracts containing no financial consideration may be negotiated.~~

- E.** **A revenue contract shall be used to formalize an agreement in which a TBR institution provides specific deliverable goods or services for monetary compensation. Revenue contracts shall conform to the requirements of this policy, TBR Policy 1-03-02-10 and G-030.**

XVIII. ~~UTILITY CONTRACTS (Moved to XV. G.)~~

~~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 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., **Non-competitive negotiation** Sole Source and Proprietary Purchases, of the TBR Purchasing Policy.~~

XVII. 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.

XVIII. 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.

XIX. 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.

XX. PROHIBITED TRANSACTIONS

No personal items shall be purchased through the institution or technology center or from funds of the institution or technology center from 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.

XXI. 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.~~

XXII. 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.

XXIII. EXCEPTIONS

Any exceptions to the policies and procedures established herein shall be subject to the approval of the Chancellor. **An institution may devise and document procedures for an Alternate Competitive Procurement Method and use the methodology in a specific contractor selection process, provided that prior, written approval of the Chancellor is obtained for the proposed method to be used it the specified instance .**

XXIV. 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. **Uniform procedures, forms and general conditions governing purchasing developed by the Council of Buyers shall be posted at the TBR web site.**
- 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. **Standard specifications for purchase of specific materials, supplies, and equipment developed by the Council of Buyers shall be posted at the TBR web site.**
- 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.

APPENDIX I

Protest Bond

The Surety Company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. The bond shall have certified and current Power-of Attorney for the Surety's Attorney-in-Fact attached.

KNOW ALL BY THESE PRESENTS:

That we,

(Name of Protestor)

(Address of Protestor)

as the Party filing a protest of the State of Tennessee's determination(s) regarding a Request for Proposals (RFP) process, hereinafter called the Protestor, and

(Name of Surety)

(Address of Surety)

as Surety, hereinafter call the Surety, do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee as Obligee, hereinafter called the Obligee, and in the penal sum of

(Dollar Amount of Bond)

good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Obligee has issued a Request for Proposals bearing the RFP Number:

(RFP Number)

AND, the Protestor, as an actual proposer to the RFP, claims to be aggrieved in connection with said RFP process;

AND, the signature of an attorney or the Protestor 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;

AND, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protestor posts a protest bond, the Protestor does file this protest bond payable to the Obligee with a notice of protest regarding the subject RFP process;

AND, the Obligee shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination on the protest by the head of the affected agency;

AND, if the Protestor appeals the affected agency head's determination on the protest to the Chancellor, in accordance with subsection Tennessee Code Annotated, § 12-4-109(a)(1)(E)(vii), the head of the agency shall hold said protest bond until instructed by the Chancellor as to its disposition.

NOW, THEREFORE, this obligation or bond shall remain in full force and effect conditioned upon a decision by the Review Committee that:

A request for consideration, protest, pleading, motion, or other document is signed by an attorney or the Protestor, before or after appeal to the Chancellor, in violation of Tennessee Code Annotated, § 12-4-109(a)(1)(E)(ii);

the Protestor has brought or pursued the protest in bad faith; or

the Protestor's notice of protest does not state on its face a valid basis for protest.

In which case, this obligation or bond shall be immediately payable to the Obligee. Otherwise, this obligation or bond shall be null and void.

IN WITNESS WHEREOF, the Protestor has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers,

On this _____ day of _____ in the year _____

WITNESS:

(Name of Protestor)

(Authorized Signature of Protestor)

(Name and Title of Signatory)

(Name of Surety)

(Signature of Attorney-in-Fact)

(Name of Attorney-in-Fact)

(Tennessee License Number of Surety)

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; June 28, 2002

Attachment C

Guideline B-060 Fees, Charges, and Refunds

XII. Refunds

Refunds of all fees and charges must be in accordance with the following provisions except where previously stated, or where required by federal law or regulation to be otherwise.

Pursuant to TCA 49-7-2301 and 49-7-2302, students called to active military or National Guard service during the semester are entitled to a 100% refund or credit of mandatory fees. Housing and meal ticket charges may be prorated based upon usage.

A. Maintenance Fee Refunds

1. Refunds are 100% for courses canceled by the institution.
2. Changes in courses involving the adding and dropping of equal numbers of SCH's for the same term at the same time require no refund or assessment of additional maintenance fees. The change of course fee would be applicable.
3. The basic refund for withdrawals or drops during regular terms (fall and spring) is 75% from the first day of classes through the fourteenth calendar day of classes and then reduced to 25% for a period of time which extended 25% of the length of the term. There is no refund after the 25% period ends.
4. For summer sessions and other short terms, the 75% refund period and the 25% refund period will extend a length of time which is the same

proportion of the term as the 75% and 25% periods are of the regular terms.

5. All refund periods will be rounded to whole days and the date on which each refund period ends will be included in publications. In calculating the 75% period for other than the fall and spring and in calculating the 25% length of term in all cases, the number of calendar days during the term will be considered. When the calculation produces a fractional day, rounding will be up or down to the nearest whole day.
6. A full refund (100%) is provided on behalf of a student whose death occurs during the term. Any indebtedness should be offset against the refund.
7. A 100% refund will be provided for students who enroll under an advance registration system but who drop a course or courses prior to the beginning of the first day of class.
8. A 100% refund will be provided to students who are compelled by the institution to withdraw when it is determined that through institutional error they were academically ineligible for enrollment or were not properly admitted to enroll for the course(s) being dropped. An appropriate official must certify in writing that this provision is applicable in each case.
9. When courses are included in a regular term's registration process for administrative convenience, but the course does not begin until later in the term, the 75%/25% refunds will be based on the particular course's beginning and ending dates. This provision does not apply to classes during the fall or spring terms which may meet only once per week. Those courses will follow the same refund dates as other regular courses for the term.
10. The refund percentage is applied to the difference between the per hour rate (or maximum) for the number of credit hours immediately before the drop or withdrawal and the number immediately afterward.

B. Out-of-State Tuition Refunds

The refund provision for out-of-state tuition is the same as that for maintenance fees. A 75% refund is made for the same period and a 25%

refund is made for the same time period. When 100% of maintenance fees are refunded, 100% of out-of-state tuition also is refunded. Calculation procedures are the same as those specified for maintenance fees.

C. Debt Service Fee Refunds

Debt service fees will be subject to the same refund policy as maintenance fees.

D. Student Residence Hall/Apartment Rent and Deposit Refunds

1. Refund of residence hall rent after registration will be prorated on a weekly calendar basis when the student is forced to withdraw from the residence hall: (1) because of personal medical reasons confirmed in writing by a licensed physician, or (2) at the request of the institution for other than disciplinary reasons. Full refund will be made in the case of the death of the student. Withdrawals for other reasons will be subject to the same 75%/25% amounts and time periods as maintenance fees. No refund will be made other than under the above conditions.
2. Residence hall reservations and breakage deposits will be refunded in full if: (1) the institution is notified by a specific date which it establishes, but which may not be later than 14 calendar days prior to the first official day of registration, (2) the student is prevented from entering the university because of medical reasons confirmed in writing by a licensed physician, or (3) residence hall space is not available. Full refund also will be made in the case of the death of the student.

E. Meal Plan Refunds

Each institution with meal plans should develop appropriate refund procedures.