

## BUSINESS AFFAIRS SUB-COUNCIL

July 22, 2009

### MINUTES

The meeting began at 9:00 a.m. in the TBR Board Room. Present were Ms. Cynthia Brooks (TSU); Ms. Melanie Buchanan (NaSCC); Mr. Steve Campbell (NeSCC); Dr. David Collins (ETSU); Ms. Beth Cooksey (VSCC); Mr. John Cothorn (MTSU); Mr. Danny Gibbs (RSCC); Mr. Mike Gower (MTSU); Mr. Ken Horner (CoSCC); Dr. Charles Hurley (CISCC); Mr. Tim Hurst (APSU); Dr. Rosemary Jackson (WSCC); Mr. Ron Kesterson (PSCC); Mr. Ron Parr (STCC); Mr. Mike Posey (MSCC); Mr. Mitch Robinson (APSU); Dr. Claire Stinson (TTU); Ms. Tammy Swenson (ChSCC); Ms. Velma Travis (DSCC); Ms. Hilda Tunstill (MSCC); Mr. Greg Wilgocki (ETSU); Mr. Jeff Young (TTU); Mr. David Zettergren (UOM); Mr. Blayne Clements, Ms. Kathy Crisp, Mr. Tom Danford, Ms. Alicia Gillespie, Ms. Angela Gregory, Ms. Deanna Hall; Ms. Lisa Hall, Mr. Christopher Lewis, Dr. Charles Manning, Ms. Pat Massey, Mr. Ron Ostenfeld, Ms. Brooke Shelton, Mr. Dale Sims, Mr. Ron Simmons, and Ms. Renee Stewart (TBR).

#### 1. Chancellor's Remarks

Dr. Manning thanked everyone for their work during a tough year.

Dr. Manning informed the committee that Robbie Melton has taken an assignment away from the operations of RODP. She will now be focusing on long-range planning for the program. North Highland Company has been contracted to evaluate the program and determine what the next stage of the program should be.

Dr. Manning also informed the committee that the formula is under review again. There is no new money to distribute, so they are looking at differences in the way things are funded. THEC is also looking at base redistributions based on performance.

Dr. Manning also discussed THEC's Strategic Plan. He is urging them to broaden this to the state's plan where elements are encoded in state statute. He stated that everyone should talk to their local legislators and make this issue known.

#### 2. Report of the Committees

##### A. **Finance Committee**

Dr. Collins highlighted the following issues from the July 8, 2009 Finance Committee meeting.

- Mixed Career Students

The committee discussed how the discounted tuition for hours exceeding 12 will impact mixed career students. The committee suggested that we charge tuition based on the student level rather than the course level. (Attachment A)

The committee also discussed students taking both undergraduate and

developmental courses. Developmental courses are charged at the community college rate. Subsequent to the Finance Committee meeting, the following procedures were recommended: If a student enrolls in both regular and developmental courses, the rates will be assessed at the hourly rate for each, up to the current amount for 12 undergraduate hours. Once the student hits this rate, the university discounted rate applies.

- Guideline B-060

The committee discussed revisions to the out-of-state section of Guideline B-060. The new language states that a separate hourly rate for out-of-state tuition will be set for graduate and undergraduate students. These rates will be set so that a full-time graduate student and a full-time undergraduate student will pay approximately the same amount for out-of-state tuition. A full time student is defined as enrolled in 12 hours undergraduate or 10 hours graduate.

The committee recommended the changes to Guideline B-060. (Attachment A)

- Policy 1:02:03:10 Conflict of Interest

The committee discussed the conflict of interest policy regarding the appeals process. One institution was concerned that the President is only involved when the appeal is in process and that the President might not agree with the review committee. The committee determined that the President should address his concerns to the committee before a final decision is rendered. There is nothing in the policy to preclude the President from overriding a decision.

The committee recommended that no changes be made to the policy.

- Policy 3:04:01:00 Student Scholarships, Grants, Loans and Financial Aid Programs

The committee discussed changes to the student scholarship policy to allow scholarships when outside funding is available but no service to the institution is required. Language was added to the policy that states that students receiving privately-funded or publicly-funded scholarships which require an institutional match are allowable. (Attachment B)

The committee also discussed whether this policy covers all institutional scholarships. It was determined that the policy be reviewed by the Student Affairs Sub-council and the Business Affairs Sub-council.

- Findings and Weaknesses

The committee was given all findings and weaknesses published since the last quarterly Finance Committee meeting. There were five audit reports released in the last quarter with a total of eight findings which are described below.

There were two findings that dealt with financial statement reporting. These findings included reporting misclassifications and reporting errors on the financial statements. There were two findings concerning the timeliness, controls and risks associated with the reconciliation process for bank accounts. There was one finding regarding inadequate segregation of duties in the Banner system. There was one finding regarding misstatements on the NCAA Statement of Revenues and Expenses. There was one finding regarding the segregation of duties when preparing, approving, and posting journal vouchers. There was one finding in which all necessary approvals were not obtained prior to entering into a contract with a private CPA firm to audit the foundation statements.

The committee was reminded that the TBR Audit Committee carefully reviews all findings and continues to express concerns on those related to the financial statements.

- **ARRA Funds**

The committee discussed ARRA issues. At the TRAM meeting on July 20, 2009, it seemed that there was the potential to ease the reporting burden. They have agreed to capture the information from the monthly reports and roll it into the quarterly report.

There was also discussion regarding the ARRA contract language. Large value contracts will be required to include ARRA language, but we still do not know about de minimus level contracts. Vendor level reporting will be required on contracts over \$25,000. A question was raised regarding who was monitoring STARS facilities contracts over \$25,000. We will need to work out a process with David Gregory in order to make sure that this is being monitored.

- **Court Ordered Wage Assignments**

The committee discussed employee wage assignments. One institution recently had an employee ask to have their wages garnished in order to obtain a loan. The committee discussed whether it was appropriate for an institution to garnish wages unless it was a court ordered wage assignment. The committee agreed that wages should only be garnished by a court order and not from an employee request.

The Finance Committee minutes, with the guideline revisions, were approved.

## **B. Council of Buyers**

Ms. Gregory highlighted the following issues from the July 15, 2009 Council of Buyers meeting.

- FedBid Presentation

The University of Tennessee and the Tennessee Board of Regents partnered on a request for proposal for reverse auctions and FedBid was the successful proposal. FedBid is an online marketplace for acquisition of commodities, including products and simple services, using a dynamic reverse auction method. The presentation included all benefits and functional aspects of the FedBid product. All interested institutions may utilize FedBid for reverse auction services and individual institution training is free.

- Electronic Signatures

Lou Svendsen from Legal Counsel updated the Council regarding the completion of examples of step-by-step processes for the procedures developed in accordance with TBR Guideline B-095, Use of Electronic Signatures and Records. Three examples were developed by this sub-committee:

- E-mail Transactions – Personal/Professional Service Contract Process
- Electronic Sci-Quest Transactions
- Web Time Entry Transactions

This was the final task needed for completion of the Guideline and its respective procedures.

- Cost Recovery Vendor - Specialty Underwriters

The TBR Central Office and the University of Tennessee will be meeting with Specialty Underwriters, a cost recovery vendor for maintenance agreements, on October 2<sup>nd</sup> to discuss the specifics of this vendor's process of potential savings. Specialty Underwriters has a contract with E&I Cooperative that all TBR institutions who are NAEP/E&I members could utilize without conducting a competitive bid process. Specialty Underwriters indicates a minimum savings of 20% on maintenance agreements.

- Policy 4:01:05:60 and Contract Language Regarding the Red Flags Rule

This amendment should be executed by institutions for all contracts that fall within the instructions provided at the top of the amendment. The original date of the deadline for compliance for the Red Flags Rule has passed, and a new deadline of August 1, 2009 has been established.

- Statute Regarding Limitation of Liability and Warranties (Public Chapter 295/House Bill 951)

Ms. Gregory indicated that this bill now allows institutions to acquire goods and services that are free or at a nominal cost which may limit the contractor's liability or warranties. Proposed language regarding the approval process for

agreements which contain limitations of liability and warranties has been added to the Purchasing Policy and Contracts Guideline.

- Purchasing Policy Revisions/Contract Guideline Revisions

Ms. Gregory reviewed the policy and guideline proposed revisions:

1. Purchasing Policy – a summary of the changes is as follows:
  - a. General cleanup for spelling, spacing, clarifying language, etc.
  - b. Strengthening language regarding “no cost in technical” language
  - c. Strengthening language regarding institutions including other TBR and UT institutions’ ability to utilize the bid/RFP and resulting purchase order/contract
  - d. Addition of the approval process for House Bill 951
2. Contracts Guideline – a summary of the changes is as follows:
  - a. General cleanup for spelling, spacing, clarifying language, etc.
  - b. Addition of the approval process for House Bill 951
  - c. Addition of the Red Flags Rule language and amendment
  - d. Addition of language that revenue contracts may have a term of ten years
  - e. Clarifying language regarding grants that conform to G-030 do not require approval of the Central Office
  - f. Amending language to state that all banking agreements must come to the Central Office for review and approval
  - g. Addition of collection cost language for the non-credit instruction agreements

These proposed policy and guideline changes will not go into effect until approved by the business officers, presidents, and the Board. (Attachments C, D & E)

- Standard RFP Format Revisions

Based on a recent protest at the Central Office and the Central Office’s rejection of several proposers that did not meet mandatory specifications, the following revisions shall be made to the standard RFP format that is to be used by all institutions:

1. Review of Mandatory Requirements
  - a. Ms. Gregory distributed a new Section 5.2.1.1. The current procedure was for the RFP Coordinator to review each proposal received and if the RFP Coordinator determined that a proposal may have failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the proposal and document its determination of whether: (1) the proposal meets requirements for further evaluation; (2) the institution will request clarifications or corrections; or, (3) the

institution will determine the proposal non-responsive to the RFP and reject it. Due to the fact that mandatory requirements must be met and would not warrant discussion with the evaluation committee, the new proposed language allows the RFP Coordinator to make this determination and present to the Chief Business Officer for approval.

- b. RFP Attachment 6.5 – Section A is being edited to reflect the changes mentioned above and will be distributed to the Council upon completion.

2. Vendor Checklist of Common RFP Mistakes that Lead to Proposal Rejection/Bid Protest Discussion

- a. Ms. Gregory distributed this checklist to the Council. This checklist is now an integral part of the standard RFP format and should be included as one of the attachments to the RFP. The checklist is designed with the intent to assist proposers in preparing a technical response that meets the mandatory requirements of an RFP, to avoid a proposal from being deemed as non-responsive. This form will need to be tailored to the specific mandatory requirements of each RFP.

- Office Supply RFP

TBR and UT will be partnering on the new RFP for office supplies and the new RFP will be issued by the Central Office. It is anticipated that the RFP will be issued early Fall and a successful proposer will be selected by February 1, 2010 in order for any needed training to be conducted during the month of February before a contract effective date of March 1, 2010.

The Council of Buyers minutes, with the policy and guideline revisions, were approved.

### C. Human Resources

Mr. Ostenfeld highlighted the following issues from the July 14, 2009 Human Resource Officers Committee meeting.

- General Counsel Updates

Ms. Zimmerman presented information on the policy for Reasonable Suspicion Drug Testing of Child Care Workers. This had to be in place prior to July 1, 2009. Campuses are to use the current State TDOT vendor, National Toxicology Specialists, for testing. Ms. Zimmerman stated that campuses could use their discretion as to whether or not to pay for the tests, but there must be a consistent campus policy to pay for all or none.

Ms. Zimmerman also presented information on the retention of Pay Plan materials. Ms. Johnson provided a listing of compensation records that the Compensation Committee complied which may need to be retained and asked for

further suggestions to be e-mailed to her. Ms. Zimmerman and Ms. Johnson will work on language for a revision of G-070 and P-043 due to the Lilly Ledbetter Act.

- National Association of College and University Attorneys (NACUA) Americans with Disabilities Act (ADA) Memorandum

Ms. Johnson reviewed information from NACUA regarding the Americans with Disabilities Act Amendments of 2008. A new subgroup of major life activities has been added. A question was asked about granting more accommodations due to the new subgroup. Ms. Zimmerman stated that this will be per individual case and it will depend on the person's job and the essential functions of the job.

- Policy Revisions and Discussions

Ms. Johnson and Mr. Ostenfeld discussed the following policies and revisions:

- Policy 5-01-01-14 – Family and Medical Leave – There were proposed revisions to reflect new regulations. Mr. Ostenfeld had sent out a draft of the FMLA policy for review prior to the meeting. The proposed changes are still under review by the Office of General Counsel. Formal changes to the policy will be proposed in the next cycle.
- Policy 5-01-01-07 Sick Leave – Mr. Ostenfeld stated that a request had been made to remove the word “serious” from the policy in regard to the illness of a family member. After much discussion, the committee approved removing the word “serious” from the policy.
- Policy 5-01-01-09 Bereavement Leave – There was discussion in regard to clarifying the use of this leave by Faculty and Staff. Mr. Ostenfeld stated that a campus had asked about adding specific criteria on the use of bereavement leave to the policy. After much discussion, it was determined that the existing “reasonable and customary” language was sufficient.
- Policy 5-02-04-10 Faculty Compensation During Summer Session and Inter-Sessions – There was discussion to determine how institutions are applying this policy to non-credit teaching. Ms. Johnson stated that the TBR Office of Academic Affairs will be reviewing this further at their meeting. Campus policies differ on how the summer compensation is calculated. Some include non-credit in the 25% cap. The Office of Academic Affairs has asked for any questions from the HR group on this topic.
- Holidays and Days of Administrative Closing for Faculty and Staff Working a Compressed Workweek – Mr. Ostenfeld asked what campuses are doing regarding this issue. It was determined that institutions should revert employees to a regular schedule of five 7 ½ hour days for any week

containing a holiday or day of administrative closing. If this is not a viable option, employees should be credited with 7 ½ hours of holiday pay and given the option of making up the difference or using annual leave.

- Policy 5-01-01-01 Annual Leave – A question was raised regarding the campus practice for an exempt staff member using annual leave, sick leave, or flex scheduling to cover time missed of less than a day. Concern was voiced by several institutions about problems with FSLA regulations. Ms. Zimmerman mentioned the Public Accountability exemption for employees of public agencies that allows for the deductions of less than a day. More information on this exemption is on file at the Office of Human Resources at the Central Office.
- Possible Addition of a Fitness for Duty Policy to the TBR Personnel Policies – Mr. Ostenfeld asked if we need to consider adding something similar to TBR policies. Discussion was held on whether or not this would be useful. Any questions and/or concerns should be sent to Mr. Ostenfeld. It would be up to each individual institution to adopt the policy if they wish. It was also mentioned that institutions that do adopt the proposed policy must have a strong communication plan in place.
- Guideline Revisions and Discussions

Ms. Johnson and Mr. Ostenfeld discussed the following guidelines:

- Guideline P-130 Educational Assistance – Discussion was held regarding summer session restrictions. The Clerical and Support Staff Tuition or Maintenance Fee Reimbursement Program and the Faculty or Administrative/Professional Staff Tuition or Maintenance Fee Reimbursement Program states that reimbursement cannot exceed 6 credit hours per term, with a maximum of 4 terms per year. It also states that a participant can enroll in more than one course during the summer as long as the summer terms do not overlap. The committee agreed that for summer terms, the guiding principle was no more than one class if the schedules for classes overlap. Administration of this was not considered to be a problem. The Benefits Committee suggested that no administrative changes needed to be made at this time.
- Guideline P-010 Personnel Transactions & Recommended Forms – The committee discussed the board approved changes to the processing of P-010 appointments. Ms. Johnson stated that the Business Officers had recommended that campus appointments requiring central office approval be set at \$100,000 for both universities and community colleges, and the Board approved those changes. The required review and approval for designated senior level appointments named in the guideline and the interview pools, regardless of salary, did not change and require review and approval by the Central Office. William Arnold, TBR Director for Diversity and Assessment will now be reviewing all non-academic



appointments, instead of Ms. Johnson. Academic appointments will continue to be reviewed through Dr. Paula Short, Vice Chancellor for Academic Affairs. Reclassifications and degree changes did not change, and should be sent to the TBR Office of Human Resources.

- Legislative Policy Changes

The Office of Human Resources at the Central Office will be following up on the Longevity Pay Bill and its impact on TBR institutions.

- Non-Credit Instruction – Independent Contractors or Temporary Employees

Ms. Johnson led a discussion on the use of independent contractors or temporary employees for non-credit instruction. Campuses have been asking how to pay for non-credit instruction. Ms. Johnson distributed a draft summary of how non-credit needs may be met on campus along with the IRS guidelines and suggested ways to review for any misclassifications. An IRS 20 point checklist is available and should be used to address this issue. The checklist may be found at:

<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>.

- Long-Term Disability

Mr. Ostefeld and the committee reviewed a proposal for a modified open enrollment for the Long-Term Disability Plan during this year's Annual Transfer period. The Hartford is willing to open up a modified open enrollment for LTD. Discussion was held and Mr. Ostefeld will send a memo to Cowan and Hartford for further information.

- Voluntary Benefits (Including Cancer and Hospital Intensive Care RFP)

The committee continued the discussion from the April 2009 HR Officers meeting on the possible addition of some Voluntary Benefits to the TBR Benefits Package. The Benefits Committee suggested a platform of benefits to have a presentation on at the next cycle meeting. These include vision, short-term disability, cancer and hospital intensive care, critical illness, auto and homeowners, pet insurance, legal assistance and personal liability.

The HR Officers minutes, with the policy revisions, were approved.

#### **D. Internal Audit**

Mr. Clements highlighted the following issues from the July 21, 2009 Internal Auditors meeting.

- 2009 Public Chapter 368

The group discussed the change in TCA that provides for internal audit working papers to be considered confidential and not subject to the open records law.

- President's Expense Audits

The group discussed the upcoming annual audits of the president's expenses for FY 2009. The group was asked to submit any questions that arise during the audits for resolution. Two recurring issues were discussed.

The first item was how to report expenses for championship jewelry or similar items within the expense report. When this issue has come up in past audits, these expenses have been reported on the Schedule of Other Expenses and should continue to be reported on that schedule.

The second item brought up was that the system does not have guidance or a policy on expenses related to the spouses of presidents. A group of auditors agreed to perform some research of policies at other institutions and provide some input to the TBR staff for assistance in considering whether or not TBR should develop a policy on such expenses.

- Update on First Tennessee Bank Audit Requests

Several of the TBR campuses banking with First Tennessee have been requested to provide internal audits of certain security features related to web-initiated ACH transactions in accordance with National Automated Clearing House Association (NACHA) Rules. The group discussed the ACH banking agreements entered into by the schools which reference the NACHA Rules and that if required by contract, an audit may need to be performed. The system Director is also checking with the CIO to determine if any IT security audits have been performed or planned for the future and will advise if any such audits may eliminate the need for additional internal audits.

- Audit Charters for Institutional Audit Offices

The group discussed the IIA standards related to audit charters for individual audit offices. The Audit Committee has an audit charter as do some of the campus offices. A group of auditors agreed to develop a template for all of the individual offices to consider when developing an audit charter.

The Internal Auditors minutes were approved.

### **3. Teacher Quality Initiative – Undergraduate Teaching Residency Program (UTR)**

Mr. Sims presented the committee with information regarding TQI. This program places teacher candidates in a year-long teaching residency during their senior year. The Board adopted a resolution of support at the June Board meeting. The budget of \$1.2 million will be funded through mandatory contributions from the institutions. It is proposed that universities will support 90% of the UTR budget and community colleges will support 10% of the UTR budget for three years. Although the majority of the UTR program will benefit universities, community colleges will be able to participate in professional development activities such as training conferences and workshops.

The committee also discussed the draft of the funding proposal which would be a chargeback to the institutions. It was noted that any unused money would be credited against the following year UTR chargeback. (Attachment F)

**4. Red Flags Rule**

Ms. Zimmerman informed the committee that the enforcement deadline has been delayed until August 1, 2009. Each institution is to send the name of their program administrator to Ms. Shelton at the Central Office, so that the TBR Legal Office can set up training sessions. Ms. Zimmerman also directed the committee to utilize the Federal Trade Commission website, which has a number of resources available. She will send a link to the institutions so that you may access this information.

**5. Credit Card Solicitations Memo**

Ms. Modisher reviewed a memo regarding a summary of recent state and federal laws regulating credit card solicitations of college students. The requirements applicable to TBR colleges and universities are as follows:

1. No credit card solicitation at all is permitted on campus or at school facilities or through student organizations except at athletic events in accordance with school policies. (State Law)
2. No credit card issuer may offer a 'tangible item' to induce a student to apply for a credit card at athletic events or near the campus or at off campus events "sponsored by or related to an institution of higher education". (Federal Law)
3. Schools must include as part of a student's directory information whether a student wishes to receive solicitations, offers, or other advertisements by mail or otherwise based on their directory information. (State Law)
4. Institutions must 'publicly disclose' any contract or other agreement made with a credit card issuer or creditor for the purpose of marketing a credit card. (Federal Law)
5. Institutions that receive funds from distribution of credit cards to students or any percentage from the use of cards bearing the institution's name or logo must report the amount of funds received and how the funds were spent to the Tennessee legislative oversight committee on education. (State Law) (Attachment G)

**6. Banner/Sungard Issues**

Mr. Danford discussed the Banner 8.2 upgrade implementation and said that it would be a lockstep approach. The shared costs and timeline were discussed as well as modifications. A vendor has been hired by UOM to evaluate the mods. It will be determined if each mod is still required from a functional perspective and if the functionality is available in Banner 8.2. If a mod is still required and the functionality is not available in 8.2 then the best practice with the least expensive maintenance will be used.

The council discussed the implementation costs of Banner 8.2. It appears that shared

costs will be at least \$600,000 in FY09-10. This will be allocated by the Banner formula used during the original implementation.

7. **RODP**

Mr. Sims informed the committee that Dr. Manning is committed to reviewing RODP operations. Robbie Melton has been moved to a more strategic role, and Raylean Henry is now in charge of operations. North Highland is now on site reviewing the operations structure, etc. of the program. We will keep the campuses informed of the progress.

7. **Other Items**

- Introduction of New MSCC Vice President

Mr. Sims introduced Ms. Hilda Tunstill as the new Vice President of Business Affairs at Motlow State Community College.

- TBR Central Office Update

Mr. Sims informed the committee that the TBR Central Office had to implement the Tier II reductions this year, and may have to restructure some of our efforts. We will keep the campuses informed as to how this will affect them.

B. Rates

1. Rates are established by the Board and incorporated in a fee schedule that groups specific fees; by type of institution (two-year institutions; APSU, ETSU, MTSU, TSU, and TTU; and UOM); and by ~~course/program~~ **student level** (undergraduate and graduate). ~~Developmental courses are charged at the two-year institution hourly rate.~~ **The hourly rate will be discounted when students enroll in greater than 12 hours.**

2. **Developmental courses are charged at the two-year institution hourly rate.** ~~Rates are applied based on the level of credit for the course (regular or developmental) regardless of student level.~~ **If a student enrolls in both regular and developmental courses, the rates shall be assessed at the hourly rate for each up to a maximum of 12 hours at the undergraduate hourly rate. The discounted tuition rate will then apply to any additional courses.** ~~In an instance where a course may be taken for undergraduate or graduate credit, the student shall pay the rate of the level of credit sought. If a student enrolls in both undergraduate and graduate courses, the rates shall be assessed at the course/program level.~~

3. Maintenance fees may not be waived. However, specific exceptions are provided in the following instances:

a. Pursuant to TCA 49-7-113, exceptions exist for certain disabled and elderly students, as well as state service retirees. For audit courses, no fee is required for persons with a permanent, total disability, persons 60 years of age or older and domiciled in Tennessee, and persons who have retired from state service with 30 or more years of service, regardless of age. For credit, a fee of \$70 per semester or \$60 per trimester may be charged to persons with a permanent, total disability, and persons who will become 65 years of age or older during the academic semester in which they begin classes and who are domiciled in Tennessee. (Note: This fee includes maintenance fees, student activity fees, technology access fees, and registration fees; it does not preclude an application fee, late fee, change-of-course fee, parking fee, special course fee, etc.). This only applies to enrollment on a space available basis, which permits registration no earlier than four (4) weeks prior to the first day of classes.

b. Pursuant to TCA 49-7-102, certain statutory fee exceptions exist for dependents and spouses of military personnel killed, missing in action, or officially declared a prisoner of war while serving honorably as a member of the armed forces during a period of armed conflict. If these provisions are invoked by a student, the correct applicable law should be determined.

Military reserve and national guard personnel who are mobilized to active military service within six months of attendance at a TBR institution and whose mobilization lasts more than six months shall be charged upon reenrollment at such institution the tuition, maintenance fees, student activity fees and required registration or matriculation fees that were in effect when such student was enrolled prior to mobilization. After reenrollment, no increase in tuition, maintenance fees, student activity fees or required registration or matriculation fees shall be assessed to such student until a period of time equal to one year plus the combined length of all military mobilizations

has elapsed. In no event, however, shall a student's tuition and fees be frozen after reenrollment for more than four years.

To be eligible for the tuition and fee freeze, the student shall have completed military service under honorable conditions and shall reenroll in a TBR institution within six months of release from active duty.

A student eligible for the tuition and fee freeze may transfer from one state institution of higher education to another state institution of higher education one time with such student's tuition and fees calculated at the institution to which the student transfers as if the student had been in attendance at that institution before the mobilization that resulted in the student's tuition and fee freeze at the initial institution.

### 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 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.

5. In some cases a non-credit course provides an option to grant regular credit. If a separate (or additional) fee is collected because of the credit, that amount is reported as Maintenance Fee revenue.

6. Full-time employees of the Tennessee Board of Regents and the University of Tennessee systems may enroll in one course per term at any public postsecondary institution, with fees waived for the employee. No tuition paying student shall be denied enrollment in a course because of enrollment of TBR and UT employees. Spouses and dependents of employees of the Tennessee Board of Regents system may be eligible for a student fee discount for undergraduate courses at Tennessee Board of Regents institutions (including technology centers) and the University of Tennessee.

Tennessee Board of Regents institutions exchange funds for tuition fees of employees' spouses and dependents who participate in a Tennessee Board of Regents educational assistance program. Effective Fall term 1990, the charging and exchanging of funds for maintenance fee discounts between Tennessee Board of Regents institutions and the

University of Tennessee shall begin. To the extent they are not reimbursed by the State, fee waivers for full-time State employees and fee discounts to children of certified public school teachers shall be accounted for as a scholarship.

### III. Out-of-State Tuition

#### A. Description of Fee

1. This is an additional fee charged to students classified as non-residents who are enrolled for credit courses, including audit courses. This fee is in addition to the maintenance fee.

2. Out-of-state tuition fee rates are established by the Tennessee Board of Regents and are incorporated in the annual fee schedule.

3. ~~This fee is the same for graduates and undergraduates at all institutions and includes a rate per student credit hour.~~ **A separate hourly rate for out-of-state tuition will be set for undergraduate and graduate students. While the per hour rate for graduate students will be higher, the rates will be set so that a full-time graduate student and a full-time undergraduate student will pay approximately the same amount for out-of-state tuition. A full-time student is defined as enrolled in 12 hours undergraduate or 10 hours graduate.**

4. Applicability of out-of-state tuition is determined pursuant to Tennessee Board of Regents Policy on Regulations for Students In-State and Out-of-State for the Purpose of Paying College or University Fees and Tuition and for Admission Purposes (No. 3:05:01:00). The business office will collect fees based upon student classification as determined by the appropriate authority within the institution.

#### B. Accounting Treatment

1. A revenue account for out-of-state tuition is used for recording both credits for fees and debits for refunds.

2. Other accounting is the same for out-of-state tuition as that outlined under Maintenance Fees except that separate out-of-state accounts are used. In the case of fees not collected from students under grants and contracts, the same expense account under Scholarships and Fellowships may be used.

**Policy 3:04:01:00**

**Subject: Student Scholarships, Grants, Loans, and Financial Aid Programs**

This policy covers the establishment of and participation in student scholarship and financial aid programs by TBR universities, community colleges, and technical institutes. (TTCs are covered by separate policy.)

**I. Federal, State and Private Financial Aid, Loan, and Scholarship Programs**

A. All institutions are hereby authorized to participate in any private, federal, or state programs providing financial aid, loans, scholarships, grants, and other forms of educational assistance to students. Institutions must meet the eligibility requirements for participation and comply with all federal and state laws and regulations related to said programs.

B. In participating in educational assistance programs, institutions shall comply with all applicable laws. Institutions may participate in publicly or privately funded educational assistance programs which provide preference on the basis of race, color, creed, sex, handicap, age, religious preference, veteran's status, or national origin in the selection of students or awards to students, but only where the aggregate of all such participation is non-discriminatory and after consultation with legal counsel. Institutions may participate in any educational assistance programs provided by the federal government or the State of Tennessee for affirmative action or diversity purposes in furtherance of the institution's affirmative action and or diversity plan.

**II. Institutional Scholarships and Grant Programs**

**A. General Parameters**

1. State appropriations shall be expended or applied only to AD student financial assistant grants.
2. Each institution is authorized to employ students under local work programs, and each university is authorized to employ students and graduate assistants pursuant to Board Policy No. 5:02:05:00.
3. Institutions may award scholarships and grants, in any of the programs listed below in Sections II. C. and D., to students who are full-time, part-time, out-of state, or Tennessee residents.
4. The maximum amount of an individual academic service scholarship awarded for any one semester or summer session shall be the amount of the maintenance fees (and/or out-of-state tuition) for the semester or summer session plus an allowance for books and supplies. The maximum books and supplies allowance shall be commensurate with the book and supply allowance component of the standard student budget compiled by the institution's financial aid officer. The maximum amount that may be awarded to any individual during a single fiscal year shall not exceed the total amount of combined fees and book allowances defined herein. For the purposes of this policy, maintenance fees (and/or out-of-state tuition) shall be defined as all mandatory fees payable by a student for continued enrollment at the institution, including but not limited to debt service fees, student activity fees, and registration fees. The maximum



amount awarded to a part-time student shall be prorated based on the number of hours for which the student is enrolled. Refunds shall be handled in accordance with TBR refund policy outlined in TBR Guideline B-060. The provisions of this section do not apply to privately funded scholarships or grants.

5. Each institution shall establish specific criteria for the scholarship programs listed below in Sections II. C. and D. Such criteria must meet the minimum limitations set forth in this TBR policy; however, the institution may set criteria which is more restrictive than the TBR policy. The written procedures implementing this policy and all requirements for eligibility, maintenance, and renewal shall be clearly published in the official catalog of the institution.

#### B. Funding Sources for Scholarships and Grant Programs

1. Academic Scholarships and Institutional Grants may be funded by a maximum of 10% of total tuition and fees received by the institution in any one year. An exception to this limitation may be made upon approval of the Chancellor and subsequent approval of the budget by TBR.

2. Athletic and Performance Grants may be funded by private contributions, donations, endowment earnings designated for scholarships and grants, revenues derived from the activities in which the student participates, and student fees specifically programmed and approved for such assistance.

3. Access and Diversity Grants shall be funded by state funds and may be supplemented by other campus revenue sources.

4. Academic Work Scholarships in the College of Medicine (ETSU) may be funded by a maximum of 10% of total tuition and fees received by the College of Medicine in any one year.

#### C. Scholarship and Grant Programs Requiring Service to the Institution

##### 1. ATHLETIC GRANTS

(a) Each institution is authorized to award grants for students involved in athletics.

(b) Grants for athletes awarded by institutions shall be subject to applicable limitations imposed by any national, regional, or other conference or association of which the institution is a member.

(c) The requirement of service to the institution is satisfied by student performance of athletic endeavors.

##### 2. PERFORMANCE GRANTS

(a) The institution may award grants to students who perform a service to the institution, such as band members, cheerleaders, spirit squad members, staff of student newspapers and yearbooks, etc.

(b) The service requirement is fulfilled by the performance of the activity by the student.

### 3. OTHER INSTITUTIONAL GRANTS

(a) Institutional Grants may be provided for meeting affirmative action and minority recruitment goals.

(b) Institutional Grants may be provided for assisting handicapped, physically disadvantaged, and economically disadvantaged students.

### 4. ACADEMIC SERVICE SCHOLARSHIPS

(a) Awards to first-time freshmen shall be limited to students who had a minimum high school average of 2.9 or the equivalent. In addition, first-time university freshmen shall have a minimum enhanced ACT composite score of 19 to be eligible for consideration. Awards to GED students shall be based upon evidence of comparable scholastic ability. Institutions may make exception to the requirements of this paragraph when admitting freshmen who have not attended high school or another postsecondary institution for at least four years.

(b) Awards to transfer and other than first-time freshman students will require a minimum cumulative college GPA of 2.9 for universities and 2.5 for two year colleges earned on the basis of at least twelve (12) credit hours. Students who have completed less than twelve (12) credit hours shall, for the purposes of this policy, be considered first-time freshmen.

(c) Renewal of academic service scholarships after the initial academic year of the freshman shall require a minimum GPA of 2.5. All subsequent renewals shall require a minimum semester GPA of 2.5 for students of both universities and two year institutions.

(d) Awards of academic service scholarships shall be made on a semester basis. Failure to maintain the required grade-point average or a satisfactory standard of conduct will result in the automatic forfeiture of the scholarship. A student who forfeits his/her scholarship for any of the above reasons may be eligible for consideration after the lapse of at least one full semester. Exceptions to this provision may be made when approved by the institution's president or his/her designee.

(e) Economic status and need of the applicant will be considered a favorable factor only when all other conditions appear equal. Consideration may be given to the student's potential for the future as well as his or her area of specialization in relation to the needs of the state and the nation.

(f) An Academic Service Scholarship shall involve a service obligation to the institution of 75 hours per semester. The service obligation will be structured to primarily provide an educational benefit to the student, not a work benefit to the institution. The service requirement for part-time and summer session students shall be prorated based on the number of hours for which the student is enrolled.

## 5. ACADEMIC WORK SCHOLARSHIPS (in the College of Medicine - ETSU)

(a) Awards shall be made to incoming freshmen who are Tennessee residents, present an MCAT score of 9.0 or better and a "P" in writing skills, and have an undergraduate GPA of 3.3 or better.

(b) Students are ineligible for the Academic Work Scholarship if they are a recipient of a grant or award from the Armed Forces, NHSC, THEC, or under contractual obligation for practice after residency. Likewise, students who receive funding from CWSP or RSWP (work programs) or who hold a salaried position at ETSU are ineligible for a TBR scholarship.

(c) The award will be for tuition plus book stipend. No award will exceed total in-state fees, debt service, student activity, registration, and a book allowance commensurate with the educational cost allowance for all other students.

(d) Scholarship recipients must earn at least a 3.0 GPA to qualify for renewal awards. In addition, recipients must earn overall GPA and progress normally through the curriculum as defined by Title IV "satisfactory academic progress" regulations to maintain the scholarship or qualify for renewal awards.

(e) Recipients must work not less than 300 hours per calendar year. Activities will include but not be limited to participation in research projects, generation of publications, support of activities related to increased extramural findings, and other scholarly activities as deemed appropriate by the Special Research Project Review Committee. This Committee, made up of basic scientists, clinical practitioners/research and research project administrators, will oversee the selection of and assignments to work-study projects.

### D. Grants Which Do Not Require Service to the Institution

1. Access and Diversity student financial assistance grants may be provided to students in order to achieve diversity plan objectives.

2. Students receiving Access and Diversity student financial assistance grants are not required to provide service to the institution.

3. Students enrolled in institutional Honors programs which require significant enrichment activities by the student over and above normal course requirements are not by this policy required to provide service to the institution.

**4. Students receiving privately-funded or publicly funded scholarships which require an institutional match are not by this policy required to provide service to the institution.**

Source: SBR Meetings: December 8, 1978; March 18, 1983; September 30, 1983; June 29, 1984; June 29, 1990; December 11, 1992; March 30, 2001; April 2, 2004; June 30, 2006; June 19, 2009.

**[Sample Red Flags Amendment Format – Instructions - to be signed by contractors that obtain personally identifiable information (including but not limited to: name, address, telephone number, social security number, date of birth, driver’s license or government issued ID number, alien registration number, government passport number, employer or taxpayer ID number, student ID number, computer Internet Protocol address or routing code, credit card number or other credit card information) under an agreement with the Institution. If a student, employee or other person has or establishes an on-going relationship (an account) with Institution, and the account permits multiple transactions or payments in arrears (such as a loan) or poses a reasonably foreseeable risk of being used to promote an identity theft, then the contract involves a “covered account”, and the “service provider” ( the contractor) is required to enter this amendment. TBR Policy 4:01:05:60.]**

Amendment to \_\_\_\_\_ Agreement  
Dated \_\_\_\_\_  
Between \_\_\_\_\_ and  
(Name of TBR Institution)

This Amendment to the \_\_\_\_\_ Agreement (“Agreement”) dated \_\_\_\_\_ between \_\_\_\_\_ (“Institution”) and \_\_\_\_\_ (“Service Provider/Contractor”) shall be effective on the date this Amendment is fully executed by both parties. (Or insert a date.)

The Agreement shall be amended by adding a new Section as follows:

Red Flags and Identity Theft. The Service Provider shall have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Service’s Provider’s activities under the Agreement, or review the Institution’s Red Flags identity theft program and report any Red Flags to Institution.

If Service Provider maintains its own identity theft prevention program consistent with the guidance of the Red Flag Rules and validated by due diligence, the Service Provider shall have met the requirements of the first paragraph of this Section.

Except as specifically provided herein, the terms and conditions of the Agreement are hereby ratified and affirmed.

(Name of Contractor)

(Name of TBR Institution)

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

## **Guideline No. G-030**

### **Subject: General Instructions on Form and Execution of Contracts**

#### **I. Approval Required.**

In general, the Chancellor for the Central Office and for System-wide agreements, the President of an institution, or the Vice Chancellor for the Tennessee Technology Centers, or designee, is the final approving authority within the system for any contract which is prepared consistent with this guideline; except that the approval of the Chancellor or designee shall be required for i.) contracts, including grant agreements, which do not conform to this guideline, ii.) dual services agreements in which the Tennessee Board of Regents (“TBR”) Central Office is the vending or procuring party, iii.) certain real property agreements (as provided in other policies and guidelines), iv.) any agreement required to be approved by the Chancellor under TBR Policy 1:03:02:10 Section 6, v.) the primary operating agreement between an institution and its foundation and any other agreement between the institution and its foundation which does not conform to the requirements of this guideline, vi.) banking and other financial services agreements required by the vendor , and vii) any other agreement, including purchase orders, for more than \$249,999.99 in annual revenue or expense (Renewals of such agreements do not require approval at the Central Office if no substantive changes have been made; in addition, purchase orders issued pursuant to purchase orders and/or contracts which have already received approval by the Central office do not require additional submission to the Central Office); however, grants which conform to the requirements of this guideline do not have to be approved at the Central Office.

Agreements must be processed in compliance with applicable legislative fiscal review requirements, as they may be amended from time to time. Articulation agreements should be developed in compliance with instructions or guidance from the Central Office, Office of Academic Affairs. Generally, it is the responsibility of the institution to negotiate with the other party to bring an agreement into conformity with this guideline and determine that the terms are acceptable to the vendor before the agreement is sent to the Central Office for approval.

Each institution and technology center shall maintain a written contracts manual (may be in electronic format) which sets forth any procedures of the institution or technology center which are in addition to and necessary to comply with this guideline.

A. The purpose of a written contract is to embody the complete agreement in writing. Whether the document is called an agreement, contract, memorandum of agreement (or memorandum of understanding), or purchase order (see TBR Policy 4:02:10:00), it is subject to the requirements of this guideline. No relevant terms should be left to an unwritten "understanding" or verbal agreement; no oral representation of any official agent, or employee of either party, either before or after the execution of an agreement is binding on the parties. The document should be explicit and clearly state the rights and duties of each party and clearly identify all parties.

B. All relevant documents should be incorporated by reference, with the order of interpretation clearly set forth.

C. Amendments and addenda to existing contracts shall clearly state the additions, deletions and modifications to the contract, including a statement as to whether the new terms are in place of or in addition to terms expressed in the original contract. The Institution shall negotiate the terms, draft the amendments and/or addenda, execute them properly, then forward them to the Central Office for approval, if required, along with a copy of the original agreement and any prior amendment or addendum. If a signature from the Central Office is required before the other party and/or the institution have signed an agreement, the institution should include an explanation on the Contract Summary Sheet.

D. All necessary signature approval lines should be prepared by the institution, including that for the TBR.

1. If the other party or contractor is a corporation, its name must be stated in the contract exactly as it appears in its charter. The person signing on behalf of the corporation must have legal authority to do so, and his/her title/position should be shown on the signature page. If the other party is a state agency, signature approval lines are necessary for the Department Commissioner or official of equivalent rank.
2. The President/Director or designee must sign all institution contracts that do not require Central Office approval.

3. The President/Director or designee must sign all institution contracts required to be submitted to the Central Office. If the President/Director or designee's signature has been omitted from contracts prepared and delivered to the Central Office, such contracts may be returned to the Institution.
4. When approval by the Chancellor is not required, that signature blank should be marked "not applicable" or should be deleted.

#### E. Other Approvals Which May be Required

All inter-agency agreements with other Tennessee state agencies (except agreements with other TBR schools or UT), including dual service agreements for over \$1,500.00, must be approved by the Commissioner of the Department of Finance and Administration. Only Dual Service Agreements in which the Central Office is the vending or procuring party or which do not comply with the requirements of this guideline are required to be submitted to the Central Office.

F. Institutions should prepare a sufficient number of originals of all contracts as desired/required by the parties and an original for the Central Office if Central Office approval is required. Each of the originals of the contract shall bear the original signatures of the parties.

G. For contracts which do not require Central Office approval and for which the other party is agreeable to the use of electronic signatures, Institutions may use electronic signatures as permitted under Guideline B-095 and the Institution rules and procedures which have been adopted pursuant to B 095.

H. All contracts required to be submitted to the Central Office should be submitted prior to the beginning of the contract's original term or renewal.

All contracts from the technology centers which require Central Office approval shall be first submitted to the Office of the Vice Chancellor for Tennessee Technology Centers.

I. A contract cannot be extended or amended after the original term has expired.

J. A completed Contract Summary Sheet as well as all relevant attachments must accompany all agreements submitted to the Central Office for review. Contract Summary Sheets must be signed by an institution official verifying purchasing compliance, and a justification of non-competitive purchase form must be completed, if applicable.

K. Agreements containing blank spaces or omitting required contract provisions will be returned to the institution for correction and must be resubmitted to the Central Office for approval.

L. Food and Vending Services Contracts. Section III of this guideline and bidding requirements should be followed, as applicable, for food and vending services contracts. Note that State law prohibits an institution from establishing a vending contract for new or existing vending facilities, nor may the institution perform these services itself, without first notifying the Division of Blind Services for the State of Tennessee.

M. Telephone Systems. Section III of this guideline should be adapted and followed as applicable for telephone systems and services contracts.

N. Real property and lease agreements are covered by separate procedures found in Guidelines B-025 and B-026.

## **II. Required Contract Provisions.**

Whenever possible, one of the form contracts in the following sections of this guideline should be followed in order to assure that an agreement conforms to the requirements of TBR policy and this guideline.

### **A. Purpose/Duties/Scope**

Every contract must contain language regarding its purpose and the duties of the parties. For any contract that results from an RFQ or ITB, Institutions are not permitted to change the scope of the service(s) once a contract is awarded. (Department of General Services Purchasing Division, Agency Purchasing Procedures Manual, Revision Twelve, Approved by the Board of Standards, January 30, 2007).

### **B. Term of Agreement**



“Contract Term - A contract shall be entered into for a period or contract term sufficient to adequately accomplish the state’s procurement objectives, provided that the contract contains appropriate termination provisions for performance failures, funding changes, and state convenience. However, no contract term shall exceed sixty (60) months, except that for revenue contracts, no term shall exceed one hundred and twenty (120) months.”

Finance and Administration Regulations, Chapter 0620-3-3 and General Services Regulations, Chapter, 0690-3-1-03. Every agreement must provide a beginning and ending date or clear language as to how these dates will be determined. No contract may provide for automatic renewal unless the agreement is cancelable for convenience upon a specified period of days notice by the institution; in which case, the contract may renew automatically for up to five years total term if the agreement also contains annual legislative appropriation language or requires no expenditure of state funds. Institutions are encouraged to seek terms of longer than one year but not more than five years for clinical affiliation agreements (See Section 2 of this guideline). If a contract calls for payments or expenditures by the institution from funds appropriated for more than a single fiscal year, the following language (or equivalent language) must be added: “Continuation of this Agreement is subject to annual allotment of state and/or federal funds.”

### C. Payments

All agreements must provide that payments are to be made only upon submittal of invoices by the contractor, and after performance of the portion of the services which the invoiced amount represents, except that agreements with tax-exempt non-profit organizations may provide for periodic advance payments (see also III. D. of this Section for additional exceptions).

If the contractor is a non-resident alien, payment for any portion of the contract from any source will not be made by the institution until an Internal Revenue Service Individual Taxpayer Identification Number has been assigned to the contractor by the Internal Revenue Service and presented to the institution. Final payment shall not be made until the contractor has completed performance. Adequate documentation to support all payments must be maintained by the institution.

Sales/Ownership/Ethnicity Information. As part of the purchasing and contracting process, institutions shall attempt to collect: type of business, annual sales, business ownership and ethnicity information before payment is made to the vendor. Information shall be collected in accordance with TCA § 2-3-8 and Purchasing Policy No. 4:02:10:00.

#### D. Conflict of Interest

If the Contractor is an individual:

"The Contractor warrants that he/she is not and during the term of the contract will not become an employee of the State of Tennessee."

If the Contractor is an organization:

"The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this contract." (Note that this provision must be omitted if the personal, professional and consultant service contract form in Section III of this guideline is used between TBR institutions or between a TBR institution and another state entity.)

#### E. Civil Rights Clause

"The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion

or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.”

(The second paragraph may be omitted if the other party does not receive federal or state funds in excess of \$50,000.00 annually.)

#### F. Audit and Documentation Clause

"The Contractor shall maintain documentation for all charges against the state under this contract. The books, records and documentation of the Contractor insofar as they relate to work performed or money received under this contract, shall be maintained in conformity with generally accepted accounting principles for a period of three full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the Institution or the State Comptroller of the Treasury, or their duly appointed representatives, or a licensed independent public accountant."

(See Section III of this guideline for audit language for grants.)

No audit clause is required for a one time, fixed payment agreement.

#### G. Payment for Travel, Meals, Lodging

If a contractor is to be paid/reimbursed for travel, meals or lodging, such payment shall be in the amount of actual cost/per diem, and shall be expressly subject to the limits and rules set forth in TBR's General Travel Policies and Procedures, Policy No. 4:03:03:00.

#### H. Governing Law

Language shall be included which provides that the agreement is subject to the governing law of Tennessee, unless the other party will not accept this provision. In that case, the contract may be silent as to governing law.

#### I. Maximum payment clause

If the institution is required to make payments, the agreement must state the maximum dollar amount that may be paid under the agreement.

#### J. Illegal Immigrants

“Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance (“the Attestation”), which is attached and hereby incorporated by this reference.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.”

The required attestation form is attached to this guideline as Appendix I.

This Section is applicable to all sample agreements in this guideline with the exception of clinical affiliation agreements, dual service agreements, use of facilities agreements, and non-credit instruction agreements.

#### **III. Unacceptable Provisions.**

The Director of Purchasing and Contracts in the Central Office and the Office of General Counsel are available for assistance in negotiating modifications with the vendor when the institution has been unable to secure agreement of the vendor. The institution may consult with the Director of Purchasing and Contracts in the Central Office or the Office of General Counsel prior to contacting the vendor regarding modification.

The following provisions should not be included in any contracts:

- A. Provisions requiring the institution to pay taxes (TCA §§ 67-5-203 and 67-6-322), late penalties, cancellation fees, liquidated damages, incidental or consequential damages, or punitive or exemplary damages (Institution is liable for actual damages only TCA § 9-8-101 et seq.).
- B. Payment of travel/per diem expenses in excess of maximum limitations set forth in TBR Policy 4:03:03:00.
- C. Provisions designating the governing law of a state other than Tennessee.
- D. Provisions requiring the institution to make deposits or payments before goods are received or services are performed (TCA § 12-4-703), except that the institution may pay for computer software or computer software/hardware maintenance and other similar maintenance services upon the signing of an agreement. (Such maintenance services are considered fully delivered upon execution of a contract because they are available regardless of whether or not the service is ever used.) Institutions may also make payment for subscriptions upon execution of an agreement. See also Section II. C. above.
- E. Provisions requiring the institution to purchase or obtain liability, property or other insurance or a performance bond. If the institution is unable to negotiate for the deletion of such provisions, the Office of the General Counsel should be consulted as it may be possible to purchase insurance or a performance bond in appropriate circumstances.
- F. Provisions requiring the institution to insure, guarantee, or indemnify or hold harmless any party from claims which may arise out of the agreement or be brought by third parties. (Tenn. Const. Art. I, §17; Tenn. Const. Art. II, §31; and Tennessee Rules of Finance and Administration Chapter 0620-3-3-.07 (13)).
- G. Provisions requiring the institution to obtain or pay for outside labor of persons not employed by the institution (for example, union stage-hands, teamsters, etc.) are prohibited unless such cost is included as part of the total contract price.
- H. Provisions requiring the institution to consent to binding arbitration by a third party of claims arising out of or relating to the agreement. (TCA §§ 86-301 and 20-13-103.)

I. Disclaimer of vendor's liability for incidental, exemplary, or consequential damages. Certain liability disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

J. Disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose. Certain warranty disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

K. Limitation on dollar amount of damages recoverable by state from vendor, except that certain liability disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

L. Unless vendor or institution provides shipment protection in the institution's interest, passing of risk of loss or title to institution before delivery and/or installation of products.

M. Right of vendor to enter institution's premises without notice to remove equipment or product upon alleged default by institution.

N. Award of attorneys' fees or costs to vendor in the event of legal action against institution. (TCA § 9-8-307(d)).

O. Consent to jurisdiction in courts outside Tennessee.

P. Provisions requiring the institution to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act (TCA § 12-4-701 et seq.).

Q. Provisions permitting the vendor to take a secured interest in personal property under the agreement.

R. Limitation on time in which state may bring suit. (TCA § 28-3-109).

S. Provisions requiring confidentiality and nondisclosure that violate the Tennessee Open Records Act. (TCA § 10-7-101 et seq.).

#### **IV. Reporting Requirements**

Institutions shall report quarterly to the Office of Purchasing and Contracts at the Central Office the following information (in the format provided by the Central Office):

A. Small/Minority/Woman-Owned Business Report - in accordance with TCA § 12-3-8.

B. RFP Diversity Report – report of contracts issued from requests for proposal for goods and/or services pursuant to TCA § 12 -3-807(b).

C. Quarterly Contracts Report for Personal, Professional, and Consulting Contracts – in accordance with Fiscal Review Requirements, institutions shall submit the following two (2) reports\*:

1. Contracts Ranging from \$2,000.00 to \$50,000.00
2. Contracts Ranging from \$50,000.00 to \$249,999.99

D. Senate Finance, Ways, and Means Report – institutions shall submit an annual report of all existing service contracts.

\*dollar amounts reported for each contract shall be based on total term of contract, including all renewals.

**V. The Chancellor or designee may approve exceptions to the requirements of this guideline in appropriate cases.**

*Section 2*

**CLINICAL AFFILIATION CONTRACTS**

**I. SCOPE**

Clinical affiliation agreement - an agreement whereby an institution in the Tennessee Board of Regents System ("Institution") desires to enter into a mutually beneficial agreement with another party ("Affiliate") providing for the training/experience of students enrolled at the Institution at the other party's facility ("Facility").

**II. GENERAL RULES**

A. Generally, these agreements do not provide for monetary compensation to either the Institution, the other party or to any student; however, the form can be modified if any payment is to be made.

B. Health Records and Insurance. The Institution may provide health records of students (and faculty, if necessary) upon request by the Affiliate. Note: The Institution must give students/faculty prior written notice that they will be required by the Affiliate to obtain and provide health records in order to participate in clinical experience. The Affiliate may also require written evidence of professional liability insurance coverage from individual students (and faculty) participating in the experience. The Institution may give notice of the minimum amount of coverage that is required by the Affiliate of the students/faculty and that this coverage is required during the term of the student's/faculty's assignment at the clinical Facility.

C. Background Checks (faculty/staff and/or students). If criminal background checks of students are required by the Affiliate, the Institution shall notify students of this requirement prior to enrollment in the program or as soon as the requirement is known. Students will be informed by the Institution that the check must be completed within the 90 day period immediately prior to the student's initial clinical placement. It shall be the student's responsibility to make timely arrangements for the background check and to pay all costs associated with such checks.

If criminal background checks are required for Institutional faculty or staff, it shall be the Institution's responsibility to arrange for the background check, to pay all costs associated with such checks and to provide the results to the Affiliate.



It shall be the responsibility of Affiliate to set the eligibility standards for participation and to evaluate the results of the background checks. If Affiliate determines that a student or faculty /staff member shall not participate at its facility, Affiliate shall so notify that individual and the Institution. Institution shall take steps to ensure that this individual does not participate in the clinical program at the Affiliate.

If an Institutional faculty/staff member is also an employee of Affiliate or is an employee at another hospital, health care facility or health care organization, Affiliate will allow the faculty/staff member to provide on-site supervision and instruction for its clinical program without the necessity of undergoing an additional background check.

Recognizing that students enrolled in the \_\_\_\_\_program at Institution will potentially participate in multiple clinical placements at multiple facilities, Affiliate agrees to accept the results of the background check done prior to the student's initial clinical placement if the student maintains continuous enrollment in the health care program and if the results of the background check are archived by the background check agency.

Institution shall inform students or faculty/staff members excluded from clinical placement on the basis of a criminal background check of any review or appeal process available pursuant to the Fair Credit Reporting Act or any other law or policy, if any.

Institutions may agree to language in clinical agreements regarding background checks in accordance with the guidance set out in this Section II. C.

D. HIPAA Compliance. Institutions are not business associates of the clinical Affiliates to which students are assigned for clinical experience; nor, under HIPAA, is a member of the Affiliate's workforce a business associate. For purposes of HIPAA, students are trainees and are, by definition, considered to be the "workforce" of the Affiliate. Therefore, entering into business associate agreements is not appropriate (at the same time, it should be noted that students are employees of neither the Institution nor the Affiliate).

Note – although HIPAA language is included in the form contract as the second and third paragraph of II. E.1., this HIPAA language may be omitted upon the request of the Affiliate. However, no HIPAA language which differs in substance may be included in the agreement without prior review by the Office of the General Counsel.

E. Agreements which comply with this guideline and which do not deviate in substance from the attached standard agreement may be executed by the Institution and should not be submitted to the Central Office for approval. In addition, agreements previously approved by the Central Office may be renewed without Central Office approval if no substantive changes are made.

### **III. UNACCEPTABLE PROVISION(S)**

Any provision requiring students or faculty of the Institution to sign releases, waivers or hold harmless agreements relieving the Affiliate from legal liability for personal injury or property damage resulting from the negligence of the Affiliate or its employees.

Source and authority: TBR Policy 1:03:02:10

#### **Sample Clinical Affiliation Agreement**

##### *Section 3*

#### ***PERSONAL SERVICE, PROFESSIONAL SERVICE, AND CONSULTANT SERVICE CONTRACTS***

##### **I. SCOPE**

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. The following procedures shall not apply to:

A. Contracts for services required to be approved by the State Building Commission;

B. Contracts for legal services which are subject to T.C.A. Sections 8-6-106 and 8-6-301; all such contracts must originate in the Office of General Counsel prior to any action being taken to retain any legal or legally related services;

C. Contracts for utility services (see TBR Policy 4:02:10:00);

## **II. PROCEDURES FOR ENTERING INTO PERSONAL, PROFESSIONAL AND CONSULTANT SERVICE CONTRACTS**

A. 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, following the procedures and reporting requirements provided in TBR Purchasing Policy 4:02:10:00. Proposals for such services shall be analyzed on the basis of factors pertinent to the service in question. Contracts shall be awarded to the vendor who offers the best terms, and neither the price nor technical factors shall be the sole criterion, although price may be the criterion for determining which proposals to consider. (If more than five proposals are received, those quoting prices higher than the fifth lowest may be disregarded.)

Some factors which may be considered in evaluating proposals:

1. Prior experience;
2. Organization size and structure of vendor in relation to services to be performed;
3. Qualifications of staff to be assigned to perform the services;
4. Vendor's understanding of service to be performed;
5. Price by unit (or other measurement) of service. Cost must be weighed at least 25%.

## **III. RULES GOVERNING PERSONAL, PROFESSIONAL AND CONSULTANT CONTRACTS**

### **A. Outside Contractors**

A contract for services with a person or professional organization outside state government shall not be approved unless it is determined that the services are in fact needed, and they cannot be satisfactorily and economically performed by an agency of the state government. State policy prohibits personal, professional, or consulting contracts from creating an employer/employee relationship.

## B. Contracts with Former and Present State Employees

Contracts with former state employees within six months of termination are prohibited. Institutions will not be allowed to contract with an individual who is, or within the past six months has been, a state employee. An individual shall be deemed a state employee until such time as all compensation and terminal leave has been paid. Contracts with a company or corporation in which a controlling interest is held by any state employee or the employee's spouse shall be considered, for the purpose of applying this rule, to be a contract with the individual. See also TBR Policy 1:02:03:10

## C. Payments

All agreements must provide that payments are to be made only upon submittal of invoices by the contractor, after performance of the portion of the services which the invoiced amount represents, except that agreements with tax-exempt non-profit organizations may provide for periodic advance payments (see also Section I of this guideline). All agreements must require that periodic (monthly or quarterly) progress reports be submitted to the institution, which reports must be evaluated and the work found to be sufficient according to the terms of the contract prior to approval of the next payment; provided that in the case of agreements with individuals where the services to be provided are brief in nature, and adequate performance of the services may be satisfactorily determined in the absence of progress reports, payments may be made after performance of the agreed upon services upon submission of invoices or other appropriate requests for payment indicating the services performed, the date of performance, and the amount payable pursuant to the agreement.

Sales/Ownership/Ethnicity Information. As part of the purchasing and contracting process, institutions shall attempt to collect: type of business, annual sales, business ownership and ethnicity information before payment is made to the vendor. Information shall be collected in accordance with TCA § 12-3-8 and TBR Purchasing Policy No. 4:02:10:00.

D. In appropriate cases, the institution shall require the contractor to demonstrate proof of appropriate forms of insurance, and/or to provide a performance bond.

E. Institutions are responsible for monitoring the Title VI compliance of sub-recipients of federal funds.

F. Appropriate language regarding intellectual property rights should be included in contracts developed under this Section III. (TBR Policy 5:01:06:00.)

G. Any part of this guideline may be waived by the Chancellor or designee in the event of conflict with applicable federal regulations or provisions governing the use of federal grant funds.

H. Each institution shall maintain all necessary records to reflect compliance with this guideline and TBR Purchasing Policy, including records of all bids, proposals, or other offers for services submitted for each service contract.

I. Gramm Leach Bliley Act (GLBA) Language.

All contracts with service providers that, pursuant to the terms and/or nature of the agreement, will have access to the institution's customers' non-public financial information (e.g., personal information that is maintained by the institution to provide a financial product or service, such as a student loan) must include the following clause:

“Throughout the term of this Agreement, Service Provider shall implement and maintain ‘appropriate safeguards,’ as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all ‘customer information,’ as that term is defined in § 314.2(b) of the FTC Safeguard Rule, delivered to Service Provider by Institution pursuant to this Agreement. The Service Provider shall implement an Information Security Program (‘the Program’) as required by the FTC Safeguard Rule. Service Provider shall promptly notify the Institution, in writing, of each instance of (i) unauthorized access to or use of that nonpublic financial customer information that could result in substantial harm or inconvenience to a customer of the Institution or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that nonpublic financial customer information.

Service Provider shall forever defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this provision. Service Provider shall further agree to reimburse the Institution for its direct damages (e.g., costs to reconstruct lost or altered information) resulting from any security breach, loss, or alteration of nonpublic financial customer information caused by the Service Provider or its subcontractors or agents.

Service Provider grants Institution the right to conduct on-site audits, as deemed necessary by the Institution, of the Service Provider's Program to ensure the integrity of the Service Provider's safeguarding of the Institution's customers' nonpublic financial information.

Institution retains the right to unilaterally terminate the Agreement, without prior notice, if Service Provider has allowed a material breach of its Program in violation of its obligations under the GLBA, if Service Provider has lost or materially altered nonpublic financial customer information, or if the Institution reasonably determines that Service Provider's Program is inadequate.

Within thirty (30) days of the termination or expiration of this Agreement, Service Provider shall, at the election of Institution, either: (1) return to the Institution or (2) destroy (and shall cause each of its agents to destroy) all records, electronic or otherwise, in its or its agent's possession that contain such nonpublic financial customer information and shall deliver to the Institution a written certification of the destruction."

#### J. Red Flags Language

**Red Flags contract language is to be included in contracts, or added as an amendment to existing contracts, with contractors that obtain personally identifiable information (including but not limited to: name, address, telephone number, social security number, date of birth, driver's license or government issued ID number, alien registration number, government passport number, employer or taxpayer ID number, student ID number, computer Internet Protocol address or routing code, credit card number or other credit card information) under an agreement with the Institution. If a student, employee or other person has or establishes an on-going relationship (an account) with Institution, and the account permits multiple transactions or payments in arrears (such as a loan) or poses a reasonably foreseeable risk of being used to promote an identity theft, then the contract involves a "covered account", and the contract with the "service provider" ( the contractor) is required to include this language. TBR Policy 4:01:05:60.**

Red Flags and Identity Theft. The Service Provider shall have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Service's Provider's activities under the Agreement, or review the Institution's Red Flags identity theft program and report any Red Flags to Institution.

If Service Provider maintains its own identity theft prevention program consistent with the guidance of the Red Flag Rules and validated by due diligence, the Service Provider shall have met the requirements of the first paragraph of this Section.

K. The first form contract in this Section III may be adapted for many purposes. For example, when a service contract is with another Tennessee state agency, the following items are not essential and may be omitted: the second paragraph of B. 3 and C. 1, 2, 3, 4, and 13. The second form contract in this Section III may be used any time the additional terms are appropriate. This form is included in the approved RFP format as the pro forma. Additionally, it is required to be used, if the other party is not insisting on using its own contract form, in the following instances: (1) for personal service contracts that result from an RFP process; (2) for personal service contracts which require Central Office approval; (3) for personal service contracts which require Fiscal Review approval; and (4) for all other service contracts, in which the institution's procurement and/or contracts office determines this form is appropriate.

#### GRANT AGREEMENTS

A. The President or designee of an institution is authorized to approve applications for grants from agencies or organizations; provided that, when matching funds or services in lieu of funds are required by the institution, no application shall be made unless the operating budget provides the funds and/or resources necessary for the project. The President is further authorized to accept the award of a grant and enter into agreements confirming grants, provided that the acceptance of grants and agreements confirming the award of grants shall be subject to the requirements of this guideline. Grants which conform to the requirements of this guideline do not require the approval of the Chancellor regardless of the amount of the grant.

B. The following procedures shall govern expenditures for personal, professional or consulting services pursuant to grant contracts:

#### Procedures

1. The institution shall conduct negotiations when possible to ensure that payments are appropriate to support the activity contemplated.
2. A written budget and work program shall be prepared and included in the grant agreement.

C. Contracts Representing Grants. Grant contracts not involving federal money must include the following provision:

"The contractor shall cause to be performed, in accordance with auditing standards prescribed by the Comptroller of the Treasury of the State of Tennessee, an audit of all its program(s) funded by this contract; provided, however, that any contract for such audit shall be subject to prior approval of the Comptroller of the Treasury of the State of Tennessee, and must be submitted on the standard contract to audit accounts' form published by the Comptroller of the Treasury. The audit may include and be combined with an audit of other programs of the contractor, and the existence of more than one contract between the contractor and any agency of the State of Tennessee shall not necessitate more than one (1) audit of the contractor's programs to be performed every two years."

Grant contracts involving Federal money must include the following provision:

"The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this grant to the commissioner or head of the granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives \$300,000.00 or more in aggregate federal and/or state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the State Granting Department, the Tennessee Comptroller of the Treasury, the Department of Finance and Administration, and shall be made available to the public."

D. Grant Contracts. Procurement by grantee--grant contracts which provide for reimbursement for the cost of procuring goods, materials, supplies, equipment or services shall contain the following provision:



“If the terms of this contract allow reimbursement for the cost of procuring goods, materials, supplies, equipment or services, such procurement shall be made on a competitive basis (including the use of competitive bidding procedures), when practicable.”

E. Federally Funded Grant Contracts. Procurement by contractor--when a grant contract provides that the contractor may make purchases and be reimbursed for its cost with funds derived wholly or partially from federal sources, the following clause or one of substantially the same effect should be included:

"Reimbursement for the cost of procuring goods, materials or services shall be subject to the contractor's compliance with applicable federal procurement requirements."

F. Federally Funded Contracts. Compliance with federal regulations--if federal funds are used to support the contract, the following clause must be included:

"The contractor shall comply with all applicable federal regulations in the performance of duties under this contract."

Source: Finance and Administration Regulations, Chapter 0620-3-3

Sample Personal Service, Professional Service, and Consultant Service Contracts

Pro Forma Contract

#### *Section 4*

### ***DUAL SERVICES AGREEMENTS***

#### **I. SCOPE**

This guideline is applicable to agreements whereby an institution in the Tennessee Board of Regents System or any agency of state government desires to procure the services of an employee of another institution or state agency or to provide the services of one of its employees to other institutions or state agencies. See TBR Policy 5:01:05:00.

#### **II. GENERAL RULES**

A. Job priorities. It is the policy of the Tennessee Board of Regents that a full-time employee of an institution must devote his or her full working time to his or her position; therefore, any agreement which diminishes an employee's availability for the performance of his or her duties will not be approved, except as provided in this guideline. In general, the services to be performed are of an infrequent or short term nature.

B. Overtime. If the work to be performed constitutes overtime or extra services for the employee involved and if the vendor institution receives payment from the procuring agency or institution and desires that the employee be compensated for such work, then compensation must be made pursuant to one of the following methods: (i) for faculty workload reduction or extra compensation; or (ii) for other employees, compensatory time, overtime payment, workload reduction, or temporary salary adjustment.

### **III. ESSENTIAL CONTENTS OF THE AGREEMENT**

The form agreement at the end of this section contains all required elements; however, a few elements are described below:

A. A brief description of the services provided or secured from the state agency concerned.

B. Include the name and social security number of the employee providing the services.

C. In describing the terms of the agreement, include a statement of the rate and means of compensation to be paid by the procuring agency or institution to the employer agency or institution (the vending party), including when payment will be made and to what address invoices are to be sent.

D. Conditions governing employee services and methods of compensation.

A letter or other notice from the procuring party that the services have

been provided and the submission of an invoice from the vendor party are

required prior to payment for services rendered when:

1. An employee of another institution is to be compensated for services other than as a temporary part-time employee; or
2. Compensation is to be paid to another institution or state agency for services to be performed pursuant to an agreement.

E. Number 7 of the form agreement may be omitted in dual services agreements: between TBR institutions, between TBR and UT, and between TBR and any other state entity; however, some state entities may require this provision.

**IV. RULES, GOVERNING DUAL SERVICES AGREEMENTS WITH OTHER STATE AGENCIES  
(OTHER THAN THE UNIVERSITY OF TENNESSEE AND TENNESSEE BOARD OF REGENTS  
INSTITUTIONS)**

A. No payment shall be made by a Tennessee Board of Regents institution directly to an employee of another state agency for services of any nature. Any payment or transfer of funds for such services shall be between the institution and the state agency.

B. Approvals - all dual services agreements of this kind require the signature of:

1. An authorized official of the institution or agency procuring the services.
2. In addition, if compensation exceeds \$1,500.00 to any state agency employee, other than UT or between TBR institutions, approval is required by the Department of Finance and Administration.
3. Regardless of amount involved, a copy of each agreement must be filed with the Department of Personnel and the Department of Finance and Administration.

C. No dual services agreement which conforms to the requirements of this guideline shall require the approval of the Central Office, except dual services agreements in which the Central Office is either the vendor or procuring party.

**V. RULES GOVERNING DUAL SERVICES AGREEMENTS WITH THE UNIVERSITY OF TENNESSEE  
INSTITUTIONS**

A. When the agreement concerns an institution in the Tennessee Board of Regents System and a University of Tennessee institution, the agreement may take one of two forms. The contract may be either:

1. Between the employee involved and the other institution pursuant to the provisions in B. below; or
2. Between the two institutions involved, pursuant to the provisions in G. below.

B. Contracts between an employee of one system and a procuring institution in the other system are permitted only in the following situations:

1. When the services to be performed are of an infrequent or short term nature.
2. Payment will not exceed the maximum rate provided in TBR Policy No. 5:01:05:00 (Outside Employment and Extra Compensation).
3. When the services to be performed involve teaching or instruction by an employee, the maximum services permitted shall be as provided in TBR Policy No. 5:01:05:00 (Outside Employment and Extra Compensation).

Contracts under this Section B. may be between the employee and the institution or between institutions. If payment is made directly to the employee, the employee shall be treated as a temporary part-time employee of the procuring institution.

*Dual services agreements under this Section V B., between an employee and the procuring institution, are the only dual services agreements in which an employee may be a party, and the employee's signature is only required on dual services agreements in which an employee is a party.*

C. When an agreement is made directly between the employee and the institution as discussed in V B., the employee must obtain the written approval of his or her supervisor and dean or director; and the procuring institution must provide written notice of the agreement to the employer institution. A copy of the agreement must be forwarded to the vendor party's Human Resource Office.

D. Any payment made to an exempt employee of a TBR institution by a University of Tennessee institution should be treated as, and counted toward the maximum of, extra compensation for such employee as described in TBR Policy No. 5:01:05:00.

E. Any compensation paid shall not exceed the rate the procuring institution or agency normally pays for such services.

F. Conflicts of interest must be avoided.

G. In all dual services agreements covered by Section V other than those set forth in paragraph V B.:

1. A memorandum of agreement must be signed between the two institutions involved.
2. Any payment or transfer of funds for such services must be between the two institutions, and must not involve the individual employee.
3. No employee of an institution may be a party to such agreement.

## **VI. RULES GOVERNING DUAL SERVICES AGREEMENTS BETWEEN TENNESSEE BOARD OF REGENTS INSTITUTIONS**

A. When one TBR institution procures the services of an employee of another TBR institution, the agreement shall take the following form:

1. The agreement shall be between the institutions involved, pursuant to the provisions in B. below.
2. Blanket dual services agreements are allowed. For example, if an institution is employing twenty (20) individuals from another TBR institution, one blanket agreement which includes the names and rates of compensation may be used.
3. Payment shall only be made after performance. The procuring institution shall be required to send a copy of the agreement and notice to the vending institution that the services have been completed, and the vendor institution will then invoice the procuring institution for payment.

B. Contracts between the TBR institutions are permitted in the following situations:

1. When the services are of an infrequent or short term nature; and

2. When the services to be performed involve teaching or instruction by an employee not in excess of the maximum permitted under TBR Policy No. 5:01:05:00.

C. Any payment made by the procuring institution to another institution shall be treated as, and counted toward the maximum of, extra compensation for an exempt employee as described in TBR Policy No. 5:01:05:00.

D. Any compensation paid shall not exceed the rate the procuring institution normally pays for such services.

E. Conflicts of interest must be avoided.

Source and Authority: TBR Policy No. 5:01:05:00; Section 36 of Chapter 732 of the Public Acts of 1976, and the rules of the Department of Finance and Administration.

## Sample Dual Services Agreement

### *Section 5*

#### ***USE OF CAMPUS FACILITIES***

(General use by non-affiliated organizations)

#### **I. SCOPE**

Use this guideline for agreements for short-term rental or use of campus facilities for activities by non-affiliated organizations. Such agreements include, but are not limited to, those for musical performances, speakers, conventions, exhibits, etc. This guideline does not apply to lease of property for residential use and/or commercial lease of property (See TBR Guideline B-026). See also Section 6 of this guideline.

#### **II. GENERAL RULES**

A. All use of campus facilities and agreements providing for such use must comply fully with TBR Policy No. 3:02:02:00.

B. All agreements providing for campus-based performances and any other agreements subject to Sections 5 and 6 of this guideline with a value exceeding \$249,999.99 must be submitted to the Central Office for approval.

C. Agreements which deviate from this guideline must be submitted to the Central Office for approval.

D. All use of campus facilities must be related to the mission of the institution.

E. The agreement should include as parties, each non-affiliated individual or organization who has direct responsibility for fulfilling terms of the agreement or who is to share in the revenue.

F. The agreement may not require the institution to make future commitments beyond the end of the agreement for exclusive dealing.

Source and authority: TBR Policy No: 3:02:02:00

### **Sample Use of Campus Facilities Agreement**

#### ***Section 6***

#### ***ADDITIONAL FORMS FOR USE OF SPACE***

(Special alternative agreement forms)

#### **I. SCOPE**

Below are additional/alternative approved, forms for short-term lease or use of TBR space, and the applicable terms and conditions for each, as well as the instructions for filling them out.

#### **A. MUTUAL USE AGREEMENT**

Involving a Tennessee Board of Regents Institution

**B. TRANSIENT USE AGREEMENT**

Involving a Tennessee Board of Regents Institution

**C. TENANT USE AGREEMENT**

Between Two Tennessee Board of Regents Institutions

**D. MUTUAL OR TRANSIENT USE** Terms and Conditions For an Agreement Involving a Tennessee Board of Regents Institution

**E. TENANT USE** Terms and Conditions For an Agreement between Two Tennessee Board of Regents Institutions

**F. INSTRUCTIONS** for filling out Use Agreements

**II. TYPES OF AGREEMENTS NOT COVERED:**

A. Leases subject to State Building Commission oversight, identified at TBR web site in the Facilities section.

B. Event-Oriented Use Agreements For short-term use of facilities for a specific event, such as a concert, festival, special competition, or single-day educational events, the requirements continue to be those set forth in TBR Policy 3:02:02:00 and in Section 5 (above) of this guideline.

**III. TYPES OF AGREEMENTS COVERED:**

A. Tenant Use Agreements Which are arrangements similar to a lease, but occurring between two TBR institutions.

B. Transient Use Agreements

1. Provide short-term, continuing, non-exclusive use of facilities, such as evening use of high school space as a teaching extension site for a semester.

1. Distinct from the event-oriented Use Agreement under TBR Policy



2. 3:02:02:00 and Section 5 of this guideline.

2. Can be for TBR use of non-TBR facilities, or non-TBR use of TBR facilities.

#### C. Mutual Use Agreements

1. Similar to Transient Use, except that both parties make use of each other's spaces.

2. Between two TBR institutions or one TBR institution and a non-TBR entity.

3. Instead of financial compensation, the consideration is the mutual use of each other's facilities.

#### IV. APPROVALS

Tenant, Transient, and Mutual Use Agreements are simplified versions of the standard lease, designed for the less-formal arrangements described above. They are not subject to most SBC and TBR lease approval processes when properly used in their intended circumstances, but may still be subject to review and/or approval in the TBR Central Office (as provided in TBR Policy 1:03:02:10, TBR Policy 3:01:02:10, TBR Guideline B-026 and TBR Guideline G-030), and are subject to the signature requirements set forth in TBR Policy 1:03:02:10, TBR Policy 3:01:02:10, TBR Guideline B-026 and TBR Guideline G-030 for other use agreements.

#### V. APPLICABLE TERMS AND CONDITIONS

Standard Terms and Conditions are provided containing the "boilerplate" fixed provisions, so that the agreement forms focus on the permissible variables, and editing is less likely to result in the insertion of unacceptable clauses or removal of necessary ones.

#### *Section 7*

#### ***CONTRACTS FOR ACQUISITION OF HARDWARE, SOFTWARE AND RELATED SERVICES***

#### I. SCOPE

This guideline applies to purchases, rentals, leases, licenses, trades or gifts of computer hardware (equipment) and software or related services for data processing or audio visual purposes and music performance license agreements. Acquisition of computer systems involving the purchase of hardware with the development of application software shall be made in accordance with this guideline.

## II. GENERAL RULES

A. Each acquisition by an institution should be documented in writing in the form of a purchase order issued by the institution and/or a contractual agreement to formalize acceptance of a vendor's bid and delivery of products or services.

B. All institutional acquisitions of hardware, software, and related services must comply with this guideline. It is the responsibility of the institution to negotiate changes in all vendor provided agreements so that such agreements comply with this guideline.

If vendor does not provide an agreement, the attached standard agreement may be used for software licenses and, with appropriate adaptation, for equipment purchases. If maintenance contractors do not provide an agreement, the standard agreement for personal service contracts should be adapted for use as a maintenance contract.

The Office of General Counsel is available for assistance in negotiating modifications with the vendor. The institution may wish to consult General Counsel prior to contacting the vendor regarding modification.

C. All agreements subject to this Section 7 which exceed \$249,999.99 or which do not comply with this guideline shall be subject to the express approval of the Chancellor of the Tennessee Board of Regents. Institutions must negotiate deletion of all unacceptable provisions and must attempt to secure the agreement of the vendor prior to submission to the TBR Central Office for approval.

D. The TBR Central Office has negotiated master agreements with several vendors permitting purchases thereunder by all institutions in the TBR system. These agreements contain terms and conditions that have already been approved by the TBR Central Office. Whenever acquiring data processing related products, TBR institutions should first consult the Director of Purchasing and Contracts in the TBR Central Office to see what may be available

pursuant to any existing agreements. Whenever acquiring audio visual related software, TBR institutions may wish to first consult the TBR media consortium.

#### E. Testing of Hardware, Software or Related services

Agreements authorizing the institution to conduct experimentation or testing of hardware, software or related services shall require the written approval of the Chief Information Officer in the TBR Central Office. This category includes agreements which permit the experimental use of such products or services without warranty at little or no cost to the institution and for the benefit of the vendor. In relation to such agreements:

1. The institution may not agree to use such experimental products or services in place of existing ones for ordinary academic or administrative purposes.
2. The institution may not agree to hold the vendor harmless from any liability, notwithstanding the fact that the state may not be paying for the use of the experimental products or services.

#### F. Bidding Process

Generally, contracts for the acquisition of hardware and software should be awarded pursuant to the bidding process.

Service agreements are also subject to the bidding process.

1. All requests for proposals (bids), invitations to bid and bid specifications must comply with TBR Policy 4:02:10:00 and this guideline and must clearly state all contractual provisions and requirements including the mandatory provisions.
2. The bidding process must comply with TBR Policy 4:02:10:00.
3. All bid specifications must be incorporated by reference in all contracts awarded pursuant to the bidding process. The following language should be included in the contract:

The contract documents consist of this Agreement, the Institution's purchase order no. \_\_\_\_\_, the Institution's request for bids no. \_\_\_\_\_ (or Institution's request for proposals no. \_\_\_\_\_), Contractor's bid dated \_\_\_\_\_ (or Contractor's proposal dated \_\_\_\_\_) and any addenda and/or amendments to this Agreement hereafter executed. In the event that provisions of the contract documents conflict, priority of interpretation shall be as follows: addenda and/or amendments (latest addendum or amendment with first priority), the Agreement, the Institution's purchase order, the Institution's request for bid (or Institution's request for proposals), and the Contractor's bid (or the Contractor's proposal).

4. All bid specifications and all other relevant contract documents must be attached to contracts that are submitted to the TBR Central Office for approval.

#### G. Software Licensing and Warranties

See also the provisions of TBR Purchasing Policy Sections XV H. and I. and Section 11 of this guideline.

1. Generally, the legal right to use software is obtained in the form of a license agreement. The permissible use of the software is governed solely by the terms and conditions stated in the license agreement. A standard form software license agreement is attached and should be used when the vendor does not provide an agreement. Vendor provided license agreements must be amended to conform to this guideline.
2. Limited warranty. Unless internet service / access is a specific service to be paid for and provided under an agreement, no warranty regarding the internet is required, and the vendor may disclaim warranties regarding the internet.
3. If software is provided at a nominal cost or free, and the vendor has not offered any warranty, the Institution should ask for language that the vendor warrants that the vendor has the right to license the software as provided in the agreement.
4. Agreements authorizing the institution to conduct experimentation or testing of hardware, software or related services shall require written approval of the TBR Central Office. This category includes agreements which permit the experimental use of such products or services without warranty, at little or no cost to the institution and for the benefit of the vendor. In relation to such agreements:

a. The institution may not agree to use such experimental products or services in place of existing ones for ordinary academic or administrative purposes.

b. The institution may not agree to hold the vendor harmless from any liability, notwithstanding the fact that the state may not be paying for the use of the experimental products or services.

#### H. Related Services

Agreements for related services include those for maintenance and support services.

1. Service agreements may be included as part of an acquisition agreement for hardware or software or may be a totally separate agreement with the same vendor or with a non-related vendor.
2. Service agreements are in the nature of personal services irrespective of the form of the service and must comply fully with Section 3 of this guideline for personal service agreements as well as this Section.

#### I. Music performance license agreements (See also, sample agreement under Section 5 above.)

1. A music performance license agreement grants a non-exclusive license to perform publicly or permit the public performance of copyrighted musical compositions to which BMI, ASCAP, or SESAC (music licensing organizations) has the right to grant a license. Music performances which are under the sponsorship, control, authority or receive direct or indirect approval of the institution will require a license.
2. In the event that an affiliated or non-affiliated group wishes to perform or sponsor a performance on campus of such music, the following provisions or equivalent language must be included in the contract:
3. The performer hereby gives assurances that he/she has obtained all necessary copyright and royalty licenses from ASCAP, BMI, SESAC, any other performing rights organization or the copyright owner for the performance(s) presented under the terms of this agreement.
4. The performer agrees to indemnify, hold harmless, and defend the institution and the State of Tennessee from and against any and all claims, demands or suits which may be brought for copyright infringement allegedly arising in the course of the performance(s) presented under the terms of this agreement. Such indemnification shall extend to both criminal and civil actions and shall include any loss, damage, penalty, court costs or attorneys' fees incurred by the institution.
5. The institution/state shall promptly notify the performer of any such claim brought against the state. The settlement or compromise of any claim brought against the state shall be subject to the approval of the appropriate state officials, as required by T.C.A. § 20-13-103.

## Sample Software License Agreement

### *Section 8*

#### *INTELLECTUAL PROPERTY AGREEMENTS*

##### I. SCOPE

TBR Policy 5:01:06:00, Intellectual Property, sets out the approved procedures governing TBR intellectual property issues. In addition, resource information and approved form/sample agreements are provided at the TBR web site in the General Counsel section.

##### II. FORM CONTRACTS

Form/Sample contracts provided in the General Counsel section of the TBR website can be found at the following links:

Invention Disclosure Form

Copyrightable Works Disclosure Form

IP Agreement

Employee Work for Hire Agreement

Copyright License Agreement

Partial Assignment of Copyright Ownership Agreement

Joint Ownership of Copyright Agreement

##### III. RESEARCH AGREEMENT

An agreement form which may be used for sponsored research contracts and which contains key provisions / issues that should be covered / considered if the other party proposes to use its own contract form is provided below.

Source: TBR Policy 5:01:06:00

## Sample Intellectual Property/Research Agreement

### *Section 9*

#### ***CONTRACTS FOR DEPOSIT AND INVESTMENT OF FUNDS***

##### **I. SCOPE**

This guideline shall be used for the deposit and investment of all funds, regardless of source, which are received by a TBR institution or technology center. Where the term "bank" or "banking institution" is used in this guideline, it refers to all financial institutions including savings and loan associations.

##### **II. GENERAL RULES**

A. Each TBR institution is authorized by the TBR to enter into one contract for the deposit of funds for the institution's general operating account, one Tennessee insurance account, and one payroll account at a bank or banking institution authorized under Tennessee law to accept state deposits. Each Technology Center is authorized to have one imprest checking account. No additional accounts of this nature will be approved for opening or maintained by any Institution or technology center unless specifically approved by the Chancellor or designee.

##### **B. Petty Cash Funds**

1. The president of each Institution is authorized to establish one or more checking accounts for the deposit and disbursement of petty cash funds, provided that no such account shall exceed five hundred dollars (\$500.00)
2. The president may designate a custodian of the funds. If the custodian has accepted responsibility for the funds in writing, and has agreed to repay any shortages or expended funds not properly accounted for from the account, then the custodian may be designated in the agreement as the signatory authority for the account, and the custodian or the chief business officer of the Institution shall be authorized to withdraw funds from the account.

C. Complimentary non-interest bearing accounts are prohibited and will not be approved.

D. All agreements between a banking institution and an institution of the TBR are subject to the express written approval of the President or designee or the Vice Chancellor for Tennessee Technology Centers or designee and the Chancellor of the TBR or designee, as appropriate.

E. All documents required by a banking institution shall be obtained, reviewed, and negotiated to ensure that the documentation complies with TBR policy.

### III. ESSENTIAL CONTENTS OF THE AGREEMENT

The “Banking Agreement” at the end of this section should form the basis of the agreement; however, a few additional elements are described below:

A. Facsimile Signatures - Facsimile signatures may be used on instruments of withdrawal unless the withdrawal exceeds one percent (1%) of the State appropriation to the institution for the year or ten thousand dollars (\$10,000.00), whichever is greater, in which case the withdrawal must bear the original signature of the president or the chief business officer.

B. A provision which states the purpose of the account and that the amount of funds to be deposited and maintained in the active (checking) account will be reasonably related to the number of checks to be processed through the account during any month and other servicing costs, if any.

C. A provision identifying the nature and level of services to be provided by the banking institution and the cost, if any, for these services. Such services should include but are not limited to:

1. the provision of standard services for processing checks and deposits in accounts;
2. the provision of the required collateral security for all deposits;
3. the provision of a branch office of the bank within a specified distance from the campus;

4. the provision of interest on savings accounts at a rate equal to the maximum rate offered by other banking Institutions in the county, with the ability to transfer funds between active and savings accounts upon a specified minimum notice;
5. the provision of investment services;
6. the provision of account reconciliation services;
7. the provision related to Automatic Clearing House debits and credits including direct deposit; and
8. the provision of safe deposit box services.

(Any additional services provided must also conform to TBR and state laws regulating public funds.)

D. A provision which states that funds of the institution will only be invested in a bank or savings and loan savings account or certificate of deposit or in bonds, notes or treasury bills of the United States which are backed by the full faith and credit of the United States or bonds or obligations guaranteed as to principal and interest by the United States or any of its agencies.

E. In addition, agreements with savings and loan associations must state that the savings and loan agrees to comply with the collateral security requirements of TBR Policy 4:01:01:10 and state law and that the savings and loan will provide upon request:

1. an opinion of legal counsel that the association has the authority to collateralize public funds;
2. a resolution adopted by the board of directors authorizing such investments; and
3. appropriate written instructions for the transfer of funds.

Source and Authority: TCA Chapter 4 of Title 9; TBR Policy 4:01:01:10.



## Sample Banking Agreement

### *Section 10*

#### ***NON-CREDIT INSTRUCTION AGREEMENT***

##### I. SCOPE

This section is applicable to revenue-generating agreements whereby an institution in the TBR system provides non-credit instruction/training for business and industry.

##### II. GENERAL RULES

The institution is responsible for the administration of fees, charges, and refunds in accordance with TBR Guideline B-060.

##### III. ESSENTIAL CONTENTS OF THE AGREEMENT

The form agreement at the end of this section contains all required elements; however, a few elements are described below:

A. The program title name, a brief description of the program, Continuing education Units (CEUs) awarded, if applicable, the name of the instructor, if applicable, conducting the course, and the dates, times, and location of the course.

B. The minimum and maximum number of participants and the program fee that will be invoiced to company.

C. Other provisions should be specific to include such elements as deliverables by the institution including textbooks, instructional materials, CEU records/transcripts for participants, and/or certificates awarded, etc.

D. Specific requirements of the company should be included such as safety and security of institutional equipment, additional fee assessments outside of the instructional costs, documents/information necessary for instruction, etc.

Sample Non-Credit Instruction Agreement up to \$50,000

Sample Non-Credit Instruction Agreement above \$50,000

Add to this form agreement:

“Payments not received within thirty days of receipt of invoice will be delinquent and subject to collection in accordance with TBR and Institution policies and guidelines, including referral to a collection agency. Company agrees to pay all collection costs incurred by Institution.”

### *Section 11*

#### *NEGOTIATING WITH THE NOTWITHSTANDING CLAUSE /CONTRACTS OF ADHESION*

It will be a rare contract that does not require some negotiating unless we draft it ourselves. Upon receiving a contract, mark or circle all impermissible clauses and prepare an amendment to the contract that addresses each impermissible clause. In most cases, you will also need to include our standard language concerning non-discrimination, auditing, etc. found in this guideline. If you are unsure whether a clause is impermissible, please call the Director of Purchasing and Contracts or the Office of General Counsel for guidance.

Keep a record of your contract negotiations with the company, including telephone calls, emails and other correspondence. Before suggesting the notwithstanding clause as an alternative, you may want to ask the Office of General Counsel to contact the company to explain the legal problems.

If the company refuses to amend the contract in accordance with our requirements, the Attorney General’s office has approved the use of the notwithstanding clause if the company is the sole source of the product (or all vendor’s require the limitation language), the product is indispensable to the institution’s need, and the notwithstanding clause is inserted in the contract immediately following the impermissible clause. (The Attorney General’s Office has not approved any other use or placement of the notwithstanding clause.) Another consideration is the amount of risk assumed by the institution in the event the product fails to perform. In many instances, replacement of the product is an acceptable remedy. In others, such as the malfunction of software, the failure to perform may make the institution very vulnerable to costly damages. The notwithstanding clause only sets forth the state’s position in the event the matter goes to court; it doesn’t improve your available remedies.

NOTWITHSTANDING CLAUSE:

Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent they are (it is) finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

The notwithstanding clause is also called a severability clause. Many contracts contain such a clause in the “General” provisions. It means that if the matter goes to court, and the court finds the hold harmless clause, for example, unconstitutional, then the court will delete or sever the hold harmless provision from the contract; and the rest of the contract will remain in effect. Without a severability clause, the court will find the entire contract null and void if it contains unconstitutional provisions.

The second reason for the notwithstanding clause is to put the company on notice that we will challenge the legality/constitutionality of the provision should the occasion arise.

Use of the notwithstanding clause as provided in this Section 11 does not require Central Office approval. Therefore, when negotiating with the notwithstanding clause, your file should show:

1. Documentation of attempts to negotiate out impermissible language;
2. The need for the item or service;
3. The fact that vendor is the sole source (or that all vendors require the limitation language); and
4. The notwithstanding clause inserted in the contract immediately following the impermissible clause and a letter to the company showing a clear understanding of the clause.\*

\*Sample language for the letter: Please be advised that the state considers the provision concerning (description of impermissible clause) void under Tennessee law, and the state reserves the right to challenge such provision should the occasion arise.

5. NOTE: if the provisions of TBR Purchasing Policy Sections XV H. and I. have been followed to address limitation of liability or warranty language, the notwithstanding clause is not necessary and should NOT be used.

### CONTRACT OF ADHESION

One last opportunity to purchase or accept goods or services is if the contract is an adhesion contract. An adhesion contract must meet all the following criteria:

1. A standard form contract or license;
2. Offered to the consumer on a 'take it or leave it' basis;
3. The consumer has no realistic opportunity to negotiate different terms; and
4. The desired product or service cannot be obtained except by agreeing to the form contract.

### General Rule

To obtain approval of a contract of adhesion, the institution must document the following steps:

1. Documentation of attempt to negotiate needed changes in the contract and the vendor's refusal to agree to any\* changes;
2. The need for the item or service(s);
3. The fact that the vendor is the sole source (or that all vendors require the impermissible language); and
4. A copy of a letter to the company (which the company has agreed to accept) stating that the institution regards the agreement as a contract of adhesion.

In order to facilitate acquisition of contracts of adhesion for necessary electronic subscriptions, computer software, and other goods and services, the initiating department must route these contracts through the institutional procurement and/or contracts office. The following procedures are required for approval:

1. For contracts of adhesion up to \$5,000 not requiring signature -procedures, documentation and reporting required under this Section 11 shall not apply.
2. For such contracts or licenses costing more than \$5,000 but less than \$25,000 - Steps 1 through 4 in the General Rule above must be followed. These contracts or licenses must be approved by the President or designee. The file documentation shall be maintained at the institutional level, and central office approval is not required.
3. For such contracts or licenses costing \$25,000 or more - Steps 1 through 4 in the General Rule above must be followed, and approval by the Chancellor or designee is required.

The purchasing officer, contract officer, or other designated official at each institution must maintain a record of all software and other acquisitions over \$5,000, and those under \$5,000 requiring signature, made pursuant to this guideline G-030, Section 11, Contracts of Adhesion and supply the record upon request to the Chancellor or designee.

\*In appropriate instances, the President or designee, or the Chancellor or designee, as applicable, may approve a contract as a contract of adhesion when the vendor has agreed to some change(s), but the contract still contains impermissible language; documentation as required above must be maintained.

November 12, 1985, Presidents' Meeting; August 15, 1989, Presidents' Meeting; November 8, 1995, Presidents' Meeting; May 14, 1996 Presidents' Meeting; November 12, 1996, Presidents' Meeting; August 5, 1997 Presidents' Meeting, November 5, 1997 Presidents' Meeting; February 17, 1998 Presidents' Meeting & March 27, 1998 Board Meeting; November 4, 1998 Presidents' Meeting, November 7, 2001 Presidents Meeting. August 16, 2005 Presidents' Meeting, August 16, 2006 Presidents' Meeting; May 15, 2007 Presidents' Meeting, February 12, 2008 Presidents' Meeting; Presidents Meeting, November 5, 2008; Presidents Meeting, February 17, 2009.

## **Policy 4:02:10:00**

### **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 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, purchase of data processing equipment over \$249,999.99, 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 Chancellor, President, or Director 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 Procurement Officer may delegate approval authority as specified in this policy to 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. Required documentation related to competitive bidding shall be routed through the institution's procurement/contract office, prior to the purchase, to ensure compliance with applicable policies and guidelines. Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guideline B-095, and TCA §12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for proposals, or other solicitations electronically. 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. For all RFPs and RFQs exceeding \$100,000, written certification from the author or committee that the specifications, to the best of their knowledge, are not proprietary shall be documented in the bid file. It is the responsibility of the procurement officer to ensure all competitive bidding is considered fair and open in a bid process. It will be considered open and competitive bidding by utilizing one of the following procurement techniques:

A. Requests for Quotation (RFQ)/Invitation to Bid (ITB) – a competitive process soliciting bids from possible suppliers for a one-time procurement of product(s) and/or service(s).

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 Procurement Officer whenever specifications procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the Chief Procurement 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;

Specifications based on standard specifications;

Specifications based on qualified products list; or

Specifications based on catalogs, price lists, or price schedules.

For any contract that results from an RFQ or ITB, Institutions are not permitted to change the scope of the service(s) once a contract is awarded. (Department of General Services Purchasing Division, Agency Purchasing Procedures Manual, Revision Twelve, Approved by the Board of Standards, January 30, 2007)

B. Requests for Proposals (RFP) – a competitive process in which bids are solicited from possible suppliers, with a source or sources of supply established for a specified period of time at agreed upon unit pricing for goods and/or services.

1. Request for Proposal – Under \$25,000, sealed bid with cost and technical proposal submitted as one document (under \$25,000 does not require sealed bids; can be written, telephone or electronic as provided in Section IV.B).
2. Request for Proposal – \$25,000 and over, sealed bid with separate sealed technical and cost proposals which must be submitted at the same time. Compliance with the mandatory RFP requirements shall be determined by the RFP Coordinator in consultation with the Chief Business Officer or designee. Evaluation of technical offers shall be determined by an evaluation team selected by the president or designee. Members of the evaluation team should be adequate and appropriate to the scope and nature of the RFP. Procurement department representatives shall review the proposals to ensure procurement procedures were followed and shall offer guidance to the evaluation

team, but shall not serve on the evaluation team, and shall not score technical proposals received, except in instances where the RFP is directly related to a good/service needed by the procurement department. Any technical offers shall be evaluated based on the criteria of the RFP and other information learned during the technical evaluation process. **Any technical offer submitted which contains any pricing information of any type shall be rejected.** 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 and cost proposals shall not be made public until the inspection period following the evaluation of the cost proposals; or

3. Additional Procedures for Multi-step Sealed Bidding – the use of a multi-step sealed bidding process is required in the bidding process for the procurement of products and/or services when it is not practical to prepare initially definitive specifications.

Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which proposers submit unpriced technical offers to be evaluated and a second phase in which those proposers whose technical offers are determined to be responsive during the first phase have their price proposals considered.

For any contract that results from an RFP, Institutions are not permitted to change the scope of the service(s) once a contract is awarded. (Department of General Services Purchasing Division, Agency Purchasing Procedures Manual, Revision Twelve, Approved by the Board of Standards, January 30, 2007)

#### 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 to a vendor through the competitive bidding process 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. Institutions are strongly encouraged to include language in RFPs/RFQs asking if the bid is open to other TBR and UT institutions. This Section does not preclude institutions from utilizing an 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, Tennessee Rehabilitative Initiative in Correction (TRICOR),



Community Rehabilitation Agencies (CMRA) / TRUST in Tennessee, 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. Procurement Under Contracts with Group Purchasing Organizations (See Section XXI for Reporting and Documentation Requirements):

Institutions and technology centers are permitted to make purchases of goods and services under a contract with a group purchasing program as provided in TCA 49-7-127. The statute specifically permits such purchases when the price for goods or services under a group purchasing program is lower than the price available on a state contract. A state contract is defined in this section as a TBR institution contract, a TBR system contract, a UT contract, or a General Services contract. Comparison pricing must have been obtained within twelve (12) months of the date of comparison.

F. Gifts:

Gifts do not require a 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 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 responsive and/or not 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 a 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. For procurement of services which will require Central Office approval, the Request for Proposal format approved by the Central Office shall be used.

C. Services. A contract for personal, professional, 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 TBR Guideline G-030. A sample Request for Proposal for service contracts is available at the TBR web site. Each institution's RFP should contain, at a minimum, the requirements of the sample RFP provided by TBR Central Office.

A contract for consulting services hereunder which exceeds \$25,000 shall not be allowed unless it is determined by the Chancellor, President, or Director, in writing that the services are in fact needed and that they cannot be satisfactorily or economically performed by a state agency. A cover form will be required to be completed by the requisitioning department, submitted to the institution's procurement office, certifying the need for the service(s) and that appropriate consideration has been given to the use of state resources (sample language is available through the TBR Central Office).

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 Chancellor, President, or Director, as appropriate, in a sealed envelope prior to bid/proposal due date.

(2) The service may be the subject of an RFQ/RFP, as appropriate, which approximately describes the services heretofore provided by the TBR/institution.

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

E. Monitoring of Services. Institutions shall have a monitoring plan for all service contracts\*, including grants and grant subcontracts, to ensure the following:

(1) that deliverables are received,

(2) financial obligation of the institution does not exceed the contract pricing, and

(3) services are in compliance with the terms and conditions of the contract.

\*Service contracts shall have the same meaning as provided in Section II of this policy. Procurement of goods under this policy shall not require a monitoring plan, but shall comply with TBR and institution internal controls and audit procedures.

F. Illegal Immigrants. No person may enter into a contract to supply goods or services to the state or other state entities without first attesting in writing that the person will not knowingly utilize the services of illegal immigrants in the performance of the contract, and will not knowingly utilizing the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. The procedures for implementing this Policy and the attestation form are provided in TBR Guideline G-030. Language to be included in bids/proposals is included in Attachment A, Minimum General Bid Conditions

### III. REQUESTS FOR QUOTATION AND REQUESTS FOR PROPOSAL

A. 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
- (3) the amount or number of articles or services required
- (4) For all RFPs and RFQs exceeding \$100,000, in estimated expenditure or revenue, a question/answer period and/or pre-bidders' conference, with all questions and responses forwarded to all prospective bidders (The larger or more complex an RFP is, the more likely a pre-bidders' conference should be held, and the more likely it may be that two periods of questions and answers may be appropriate.);
- (5) the time of delivery;
- (6) the amount, if any, of any bid bond or certified checks to accompany the bid/proposals,
- (7) the amount, if any, of any performance bond which may be required if the vendor is the successful bidder;
- (8) a declaration of the contract terms and conditions which shall be required by the institution;
- (9) a description of the factors to be considered in evaluating bids/proposals, if applicable;
- (10) date bid/proposals evaluations will be available for viewing;
- (11) if applicable, whether other TBR institutions and/or UT institutions may purchase from the contract; and
- (12) 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. RFQs/RFPs may specify any other requirements, conditions, or information in reference to the purchase deemed necessary.

C. RFQ/RFP files (hard-copy or electronic) shall contain, at a minimum, the following:

- (1) a copy of the RFQ/RFP issued (including specifications),
- (2) a list of vendors for solicitation,
- (3) the date vendors were sent the RFQ/RFP,
- (4) for RFPs and applicable RFQs, any pre-bid questions/responses or addendums to the RFQ/RFP,
- (5) for RFPs and applicable RFQs, all documentation relating to the composition of the evaluation team and the evaluation documentation used to make the award,
- (6) as applicable, any documentation that warrants a re-bid of the RFQ/RFP,
- (7) any informal bid complaints and the respective responses/actions,
- (8) as applicable, copies of intent to award letters, and
- (9) the executed purchase order and/or contract.

#### 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 \$25,000 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 Procurement Officer must approve the solicitation of less than 15 bids). If the annual estimated amount of the purchase is \$100,000 or more, solicitations must be sent in a manner that verifies proof of delivery. An RFQ for goods must be sent 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. For RFPs and applicable RFQs, (for example, those RFQs having requirements in addition to or other than the purchase of goods), a minimum of four (4) to six (6) weeks should be allowed for vendors to adequately prepare a competitive proposal based on the method of RFP or RFQ delivery, bid specifications and pre-bidders questions/responses. Examples of types of bids which would need to allow at least six (6) weeks include, but are not limited to, banking and other financial services, bookstore and food services, custom software and or IT system services, advertising management services and any other bid for which the additional time is appropriate. 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 \$5,000 but less than \$25,000, written, telephone or electronic bids must be solicited from at least three (3) qualified vendors (with the exception of Section I. E. above). 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, 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 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 contract 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 RFQ/RFP, cessation of need, unavailability of funds, failure of all proposals to meet technical specifications, lack of competition, 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 or designee, President or designee, Vice Chancellor for Technology Centers or Director.

If another RFP is to be issued, all prior offers and/or proposals shall remain closed to inspection by the proposers and/or the public until the evaluation of the re-bid is complete

## 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.

For RFPs and applicable RFQs, a notice of intent to award shall be sent to all proposers containing, at a minimum, the content provided by the TBR Central Office.

All bids shall be subject to rejection by the Chancellor or designee, President or designee, Vice Chancellor for Technology Centers or Director. 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 RFP/RFQ.

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

A complete written record on all procedures and justifications shall be maintained on each procurement 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. All bids received must be date and time stamped to show compliance with the designated opening date and time. Late bids will not be considered in contract award.

All RFQs received shall be publicly opened and examined by a designated institutional representative at the time and place specified in the RFQ. Whenever sealed bidding is utilized, bidders shall have no less than five (5) working days after the opening before a purchase order/contract may be awarded.

All RFQs/RFPs conforming to the RFQ/RFP specifications, together with the name of the bidders, shall be recorded. Only after the completion of evaluation shall the complete procurement files become a matter of public record and open to public inspection.

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 informal procurement electronically, and if the institution requests or permits electronic bidding, no bidder's signature shall be required. TCA §12-3-704. Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guidelines B-095 and TCA §12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for proposals, or other solicitations electronically. 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, the institution may provide in the RFQ/RFP that the institution shall have 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 specifically permits offers of used, remanufactured, or reconditioned items. RFQs/RFPs which specifically permit offers of used, remanufactured, or reconditioned items shall require a warranty; however, the Chancellor, President, or Director 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 Procurement 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 Chief Procurement 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 institution. If the protesting party appeals the determination in accordance with subdivision (vii), 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 Procurement 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 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 Procurement Officer 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 Procurement Officer of the institution has the authority to resolve the protest. If deemed necessary, the Chief Procurement Officer may request a meeting with the protesting party to seek clarification of the protest issues.

(ii) The final determination of the Chief Procurement 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 Procurement 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 Procurement 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 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 Procurement 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 rights.

### E. Appeal to Chancery Court

Protests appealed to the chancery court from the Chancellor's decision shall be by common law writ of certiorari. The scope of review in the proceedings shall be limited to the record made before the Chancellor and shall involve only an inquiry into whether the Chancellor exceeded his/her jurisdiction; followed an unlawful procedure; or acted illegally, fraudulently or arbitrarily without material evidence to support his/her action.

### F. 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 goods and/or services 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) Tennessee businesses will be given preference. Tennessee business means a business (T.C.A. § 12-4-121(c)(2):

- (a) incorporated in this state;
- (b) that has its principal place of business in this state; or
- (c) that has an established physical presence in this state.

(2) Small, minority and women-owned business will be given preference (business classifications defined in Section XII).

(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 maintain a record of receipt that the supplies, equipment, or materials received were equal in quality and quantity to those requisitioned. Appropriate documentation of contract performance or specific deliverables shall be provided by the requisitioning department prior to payment for services, supplies, equipment, and materials. Complete records on all receiving reports/documentation 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 and/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. PURCHASES FROM SMALL/MINORITY/WOMEN OWNED BUSINESSES

All institutions, in accordance with state and federal law, shall actively promote and encourage diversity participation with small, minority, and women-owned businesses in order to obtain a fair proportion of goods and services from such businesses as further defined in Attachment C to this policy. Information regarding small, minority, and women-owned business solicitations and purchases will be filed with the Governor's Office of Diversity Business Enterprise and the Department of General Services which will consolidate this information into reports to the Legislature.

## XIII. 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 Chancellor, President, or Director, and a written report on the circumstances of any such emergency justifying the purchase shall be prepared and maintained. All emergency purchases shall, if practicable, be made on the basis of competitive bids.

#### XIV. 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 the 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 Chancellor, 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; 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 Chancellor, President, or Director. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chancellor, President, or Director, 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. The vendor must furnish a letter indicating that it is the sole source and the letter must be signed by an authorized company representative.

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 \$5,000.

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 Chancellor, President, Director.

Only authorized sole source may be procured utilizing non-competitive negotiation and a completed non-competitive justification form.

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 Chancellor, President, or Director. The TBR Justification for Non-Competitive Purchases and Contracts Form must be completed and approved by the institution's procurement office or TBR Central Office (when applicable).

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.

#### 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 procurement 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.

Purchases of electronic journals, subscriptions, and databases for libraries shall be procured through the institution's procurement or contract office in instances when a competitive process can be used. In addition, any required electronic or written agreements to license journals, subscriptions, or databases shall be routed through the institution's procurement or contracts office for review and approval prior to use. Appropriate documentation must be maintained for purchases to support sole source procurement. Additionally, these items may require the approval of the Fiscal Review Committee if the purchase exceeds the Fiscal Review Committee threshold.

#### E. 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 Non-procurement Programs.

#### F. 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 this 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. B., Non-competitive negotiation, of this TBR Purchasing Policy.

## XV. 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. No agreement of any nature which requires the expenditures 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 affirmative action and nondiscrimination requirements provided by Federal or State laws and regulations.

C. 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. Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months. Revenue contracts may not have a contract term for a period in excess of one hundred twenty (120) months.

F. 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.

G. Individuals who execute agreements, contracts or subcontracts containing impermissible clauses may be subject to personal liability (TCA 12-3-105)

H. Limitation of Liability – Personal, Professional and Consultant Service Contracts.

**The provisions of this Section XV subsection H. are not required to be followed for contracts of adhesion; for such contracts, the provisions of G030 Section 11 subsection Contract of Adhesion may be applied.**

1. The Chancellor or designee, President or designee, and the Vice Chancellor for the Tennessee Technology Centers or designee may approve limitations of liability below two (2) times the value of the contract and limitations of warranty in contracts for personal services, professional services, and consultant services.

Approval Process. The request made under this Section must be submitted in writing, with appropriate supporting information, to the approving authority and must be signed by the Chief Procurement Officer of the institution.

Not Authorized. In no event shall a limitation of liability or warranty permitted under this Section limit the liability of the contractor for intentional torts, criminal acts, or fraudulent conduct. This Section does not authorize any further limitation of the legal rights of TBR as a state entity, does not constitute a waiver of sovereign immunity, and does not authorize a cause of action against TBR in any jurisdiction.

2. Institutions may purchase software for use restricted solely to academic teaching or research upon terms which may limit the contractor's liability or warranties; provided, that in no event shall the liability of the contractor be limited for intentional torts, criminal acts, or fraudulent conduct.

Approval Process. The request made under this Section must be submitted in writing, with appropriate supporting information, to the approving authority and must be signed by the Chief Procurement Officer of the institution.

3. Institutions may acquire software or services, materials, supplies and equipment free or at a nominal cost upon terms which may limit the contractor's liability or warranties; provided, that in no event shall the liability of the contractor be limited for intentional torts, criminal acts, or fraudulent conduct.

Approval Process. The request made under this Section must be submitted in writing, with appropriate supporting information, to the approving authority and must be signed by the Chief Procurement Officer of the institution.

I. Limitations of Liability – Materials, Supplies, Equipment and Services.

**The provisions of this Section XV subsection I. are not required to be followed for contracts of adhesion; for such contracts, the provisions of G030 Section 11 subsection Contract of Adhesion may be applied.**

The Chancellor or designee, President or designee, and the Vice Chancellor for the Tennessee Technology Centers or designee may approve contracts for the purchase of materials, supplies, equipment and services when such contracts contain limitations of the liability of contractors for damage claims.

Not Authorized. The approving authority is not authorized to approve limitations of contractor liability for intentional torts, criminal acts, or fraudulent conduct; nor is the approving authority authorized to accept limitation of liability for an amount less than two times the value of the contract. Further, Sections H. and I. do not authorize TBR or its institutions to indemnify contractors for the acts or negligence of the contractors or third parties.

Approval Timeliness. Any request to the approving authority under this Section must be made at an appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the state in competitive procurements. In a formal ITB process, the procuring institution may determine to request the approving authority's approval under this Section I. after receiving written comments from potential proposers. If the approving authority approves such request, an amendment to the ITB may be made. An institution may request, and the approving authority may approve, initiation of a new procurement process, including a contractor's limitation of liability, at any stage of the procurement process and may authorize negotiation of a limitation on a contractor's liability in circumstances in which the applicable procurement process has failed to provide a qualified proposer or a responsive bid.

Approval Process. The request under this Section I. must be submitted in writing to the approving authority and must be signed by the Chief Procurement Officer. The request must contain justification that addresses the following:

1. the text of the limitation of liability sought to be used;
2. the risks of liability to the state created by the information technology services and/or products to be purchased under the contract, and the impact on the state of allowing the limitation;
3. the conditions of the market which justify a limitation of liability;
4. the anticipated impact on the state's procurement if limitation of liability is not approved; and
5. the identification of one or more persons at the procuring TBR institution familiar with the information set forth in the request.

The approving authority may deny or approve the request or may authorize limitation of liability under other language than that proposed in the request.

Notwithstanding the above, the approving authority may authorize, with respect to contracts for telecommunications and information technology goods and services, a limitation of liability of not less than two (2) times the value of the contract provided that the limitation of liability permitted under this paragraph shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. Any limitation beyond that permitted in this paragraph must be approved by the Chancellor..

TCA § 12-3-315 and General Services Rule 0690-3-2

#### XVI. COORDINATION OF PROCUREMENT FUNCTIONS AMONG SYSTEM INSTITUTIONS AND TECHNOLOGY CENTERS AND WITH THE UNIVERSITY OF TENNESSEE SYSTEM

In all contracts and other bid processes wording should be included that would allow TBR member institutions and UT institutions to purchase under the terms and conditions of the bid of the individual institution unless to do so would not be potentially helpful to other schools or unless to do so is not in the best interests of the institution.. TBR institutions shall also be permitted to purchase under the terms and conditions of a contract or bid of the UT System if the contract or bid authorizes TBR institutions to do so. That is to say that TBR institutions and UT institutions may purchase under the bid of any other institution in either system if language in the bid documents specifies that the other institutions may do so. Sometimes an exception applies, and a procurement is made without a bid process; in such situations, TBR and UT institutions may purchase off the contract resulting from the procurement process as long as the contract specifies that they may do so.

#### XVII. LIFE-CYCLE COSTS

It is the policy of TBR to use the life cycle costs of commodities as developed and disseminated by the federal government when feasible. (T.C.A. §12-3-602)

In determining life cycle costs, the acquisition cost of the product, the energy consumption and the projected energy cost of energy over the useful life of the product and the anticipated resale or salvage value of the product may be considered in the evaluation. (T.C.A. §12-3-606)

#### XVIII. ENERGY EFFICIENCY STANDARDS

Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that has established energy efficiency standards that are used by the Federal Government in its contracting for major energy-consuming products, as well as energy efficient best practices.

TBR institutions shall use energy efficiency standards prescribed by Energy Star for the purchase of energy-consuming products. The Energy Star website (<http://www.energystar.gov>) provides a qualified list of products and commodities meeting Energy Star's minimal energy specifications, life cycle costing calculations, life cycle formula information and qualified products that meet Energy Star's rating for using less energy and helping to protect the environment. (T.C.A. §§12-3-604 & 12-3-605) Products and commodities listed on the Energy Star website's list of qualified products and commodities will be used as "acceptable brands and models" on bid documents.

The minimal energy specifications for products and commodities listed on the Energy Star Qualified Products list (see link above) must be included in the line item specifications on all bid documents for the purchase of major energy-consuming products.

#### 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 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.

#### XXI. PROCUREMENT MANUAL

Each institution and technology center shall maintain a written procurement manual (may be in electronic format) which sets forth any procedures of the institution or technology center which are in addition to and necessary to comply with this guideline.

#### XXII. REPORTS

Reports shall be submitted to the TBR Central Office as follows:

A. Small/Minority/Women-Owned Business Report. This report consists of transactions with minority-owned, women-owned, and small businesses required by TCA 12-3-808 shall be reported to the TBR Director of Purchasing and Contracts on a quarterly basis (January-March, April-June, July-September, and October-December).

B. Group Purchasing Report. This report consists of transactions procured with comparison pricing from group purchasing organizations required by TCA 49-7-124 and shall be reported to the TBR Director of Purchasing and Contracts on an annual basis.

C. RFP Diversity Report. This report consists of contracts issued from request for proposals for goods and/or services pursuant to TCA 12-3-807(b) and shall be reported to the TBR Director of Purchasing and Contracts.

### XXIII. EXCEPTIONS

Any exceptions to the policies and procedures established herein shall be subject to the approval of the Chancellor or designee. 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 or designee is obtained for the proposed method to be used in the specified instance.

### XXIV. COUNCIL OF BUYERS

The Chancellor has established a Council of Buyers. The Council shall be comprised of at least one (1) procurement representative from each institution, and representatives from the TBR Central Office appointed by the Chancellor. The Council should meet quarterly, or at minimum semi-annually, or upon request of the Chancellor or designee, and shall have the responsibilities including but not limited to the following:

A. Development of uniform procedures, forms, and general conditions governing procurement 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 procurement 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, equipment, and/or services which may be feasible and practicable for use by the institutions and technology centers, for review and approval by the Chancellor or designee. Standard specifications for purchase of specific materials, supplies, equipment, and/or services 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 procurement agents for specific materials, supplies, equipment, and/or services for the System, and of the possibility of coordinating procurement 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 procurement. (Attachment B)

E. Any other matters referred to the Council by the Chancellor or designee.

**APPENDIX I**

**Protest Bond**

The Surety Company issuing the 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)(I)(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)(I)(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; June 27, 2003, April 2, 2004; September 30, 2005; December 8, 2006; March30, 2007; June 29, 2007; September 28, 2007; March 28, 2008; December 4, 2008; June 19, 2009.

ATTACHMENT A

TENNESSEE BOARD OF REGENTS

COUNCIL OF BUYERS

Minimum General Bid Conditions

Pursuant to Section II of TBR Policy 4:02:10:00, Purchasing Policy and Procedures, the following Minimum General Bid Conditions have been developed by the TBR Council of Buyers and approved by the Chancellor.

1. ACCEPTANCE AND REJECTION. The Institution reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. Bids may be awarded based on low by item, low by group of items or low by total items accepted, as best suits the needs of the Institution.

2. PREPARATION AND SUBMISSION OF BID.

- a. Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.
- b. Each bid should give the full name and business address of the bidder. Unsigned bids will be rejected. The person signing the bid must show his title, and if requested by the Institution, 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. Purchase order will be issued to the firm name appearing on the bid.
- c. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.
- d. Discounts, other than "Time" or "Cash", offered should be deducted from the unit price.
- e. Specifications: Reference to available specifications shall be sufficient to make the terms of the specifications binding on the bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the bidder to that manufacturer or specific article, unless specifically stated. The articles on which the bids/proposals are submitted must be equal or superior to that specified. Informative and Descriptive Literature: Bidders must furnish all information requested in the space provided in the bid form unless otherwise specified by the Institution. When applicable, bidders must submit for bid evaluation, cuts, sketches, descriptive literature and technical specifications covering the product(s) offered. References to literature submitted with a previous bid or on file with the Institution will not be sufficient.
- f. Samples: Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon request, be returned at the bidder's expense. Requests for the return of samples must be made within ten (10) days of bid opening. Each sample must be labeled with the bidder's name, manufacturer's brand name and number, bid number and item reference.
- g. Time of Acceptance. If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the Institution shall have sixty (60) days to accept.
- h. Time of Performance: The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, bidder agrees that delivery is to be made within two weeks (10 business days) of order.
- i. Transportation and delivery charges should be included in the price and be fully prepaid by the vendor to make delivery F.O.B. Institution, or another destination which may be specified in the bid.
- j. All items bid must be new unless otherwise specifically stated in the bid.
- k. Alternate/multiple bids will not be considered unless specifically called for in the bid.
- l. Bond Requirements: Bond Requirements, if any, will be stated on the face of the Request for Quotation/Proposal (RFQ/RFP). The Institution reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the Institution. The cost of the bond shall be separately identified in the bid. The Institution reserves the right to waive the bond requirement and delete the cost of the bond from the successful bid.
- m. Brand and Trade Names. The bidder must show brand or trade names of the articles bid, when applicable.
- n. Bids for purchases of \$25,000 or more must be signed and sealed with the bid number or other identifying information listed on the outside of the envelope.

o. Late bids will NOT be opened or considered. Bidders are cautioned to verify their bids before submission, as amendments received after the bid deadline will not be considered.

p. Bids are to be submitted on bid forms furnished by the Institution, otherwise they may not be considered. The Institution reserves the right to consider telephone, e-mail or faxed bids for purchase under \$25,000 if received by the deadline and confirmed in writing within five (5) days on Institution forms.

3. FAILURE TO BID/ERROR IN BID. Failure to bid without advising the Institution that future invitations for bids are desirable may result in removal from Institution's bidders' list covering this category of items. In case of errors in the extension of prices in the bid, the unit price will govern. No bid shall be altered or amended after the specified time for opening bids. 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. Bid withdrawals will be considered only upon written request from the vendor.

4. INSPECTION OF BIDS. All bids will be opened publicly and are subject to public inspection after completion of the bid evaluation. Bidders may be present at opening.

5. DISCOUNT PERIOD. Time in connection with discount offered will be computed from date of satisfactory delivery at destination and performance, or from the date correct invoices are received, whichever is later. Discount periods of less than 20 days will not be considered in determination of low bid. Discounts other than time discounts will be shown on the face of the bid opposite the item to which it applies.

6. DEFAULT OF SELECTED VENDOR. In case of default of the vendor, the Institution may procure the articles or services from other sources and hold the vendor responsible for any excess cost occasioned thereby.

7. TAXES. The Institution is tax exempt; do not include taxes in quotation. Appropriate exemption certificates will be furnished to the successful bidder upon request. Vendors making improvements to, additions to, or repair work on real property on behalf of the Institution are liable for any applicable sales or use tax on purchases of tangible personal property used in connection with the contract or furnished to vendors by the Institution for use under the contract.

8. INSPECTION OF PURCHASES. Articles received which are not equivalent will not be accepted and will be picked up by the vendor or returned to vendor, shipping charges collect. The Institution shall have a reasonable period in which to inspect and accept or reject materials without liability. If necessity requires the Institution to use nonconforming materials, an appropriate reduction in payment may be made.

9. NON-DISCRIMINATION. The parties agree to comply with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, and the American Disabilities Act of 1990, and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

10. PROHIBITIONS / CONFLICT OF INTEREST. Acceptance of gifts from vendors is prohibited. TCA 12-3-106. Bidding by state employees is prohibited. TCA 12-4-103. The bidder warrants that no part of the total contract amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee.

11. NO VENDOR CONTRACT FORM – TERMS / TENNESSEE LAW. The contract documents for purchase under the RFQ/RFP request shall consist of the RFQ OR RFP, the successful bidder's quotation/proposal, the contract awarded and/or the Institution's purchase order. The terms and conditions of an order and duly authorized change orders shall be the sole terms and conditions that apply to a purchase. Any subsequent terms and conditions set forth by the vendor on invoices, or in any other manner, shall not apply unless expressly agreed to in writing by the institution. The contract shall be governed by Tennessee law.

12. AUDIT. The Contractor shall maintain documentation for all charges against the Institution and payment made by the Institution under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment. These documents shall be subject to audit at any time and upon reasonable notice, by Institution or the Comptroller of the Treasury or their duly appointed representatives. The Contractor's financial statements shall be prepared in accordance with generally accepted accounting principles.

13. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of

Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

14. PURCHASING POLICIES / BID PROTESTS. This bid request and any award made hereunder are subject to the policies and guidelines of the Tennessee Board of Regents.

ATTACHMENT B

TENNESSEE BOARD OF REGENTS  
CODE OF ETHICS IN PROCUREMENT AND CONTRACTING

The code of ethics was developed by the TBR Council of Buyers, approved by the Chancellor, and shall be applicable to all employees in the Tennessee Board of Regents System who are primarily responsible for the purchase of goods or services for any institution or technology center in the System.

1. Statement of Policy

Employees must discharge their duties and responsibilities fairly and impartially. They also should maintain a standard of conduct that will inspire public confidence in the integrity of the institutions and technology centers.

2. General Standards of Ethical Conduct

- (a) Any attempt to realize personal gain through public employment, inconsistent with the responsible discharge of that public employment, is a breach of public trust.
- (b) Employees shall base all purchases on the principle of competitive bidding consistent with policies of the Board and the institution or technology center.
- (c) Employees shall grant all competitive bidders equal consideration, regard each transaction on its own merits, and foster and promote fair, ethical and legal trade practices.
- (d) Employees shall avoid misrepresentation and sharp practices, and demand honesty in sales representations whether offered through the medium of a verbal or written statement, an advertisement, or a sample of a product.
- (e) Employees shall be receptive to competent counsel from colleagues, and be willing to submit any major controversy through the appropriate appeals processes.
- (f) Employees shall accord prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.
- (g) Employees shall not use without consent the original designs developed by a vendor for competitive purposes.

### 3. Conflict of Interest

It shall be a breach of ethical standards for any employee, in the performance of his or her official duties, to participate directly or indirectly in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal thereof, in which to his or her knowledge:

- (a) he or she or any member of his or her immediate family has a substantial financial interest; or
- (b) a business or organization in which he or she or any member of his or her immediate family has a substantial financial interest as an officer, director, trustee, partner or employee, is a party; or
- (c) any other person, business, or organization with whom he or she or a member of his or her immediate family is negotiating or has an agreement concerning prospective employment is a party.

The determination of whether a substantial financial interest exists shall be based upon the criteria identified in TBR Policy No. 1:02:03:10, Conflict of Interest.

Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or in any other advisory capacity.

### 4. Gratuities

It shall be a breach of ethical standards for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal thereof.

### 5. Contemporaneous Employment Prohibited

It shall be a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the particular governmental body by which the employee is employed.

PURCHASES FROM  
SMALL, MINORITY, AND WOMEN OWNED BUSINESSES

Objective:

The Tennessee Board of Regents (TBR Institutions), consistent with state and federal law, seek to optimize opportunities for entering into contractual or purchasing opportunities with minority-owned businesses, woman-owned, and small businesses. TBR Institutions will seek to do business with firms and organizations that demonstrate and foster commerce with diversity businesses within their programs and policies. Through these efforts TBR Institutions will actively pursue its goals of building a more reflective marketplace for the community within the State of Tennessee.

TBR Institutions will fully cooperate and seek guidance from the Governor's Office of Diversity Business Enterprise (GO-DBE) to meet this objective.

Supporting Legislation:

TCA §§12-3-101, 12-3-103 and 12-3-801 through 12-3-808.

Tennessee Minority Owned, Woman Owned and Small Business Procurement and Contracting Act

Executive Order Number 14 issued December 8, 2003.

Definitions:

Minority-owned business – A continuing, independent, for profit business which performs a commercially useful function and is at least 51% owned and controlled by one or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background in accordance with the provisions of T.C.A § 12-3-802.

Woman-owned business – A women owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least 51% owned and controlled by one or more women; or, in the case of any publicly owned business, at least 51% of the stock of which is owned and controlled by one or more women and whose management and daily business operations are under the control of one or more women in accordance with the provisions of T.C.A § 12-3-802.



Small business – A business which is independently owned and operated, in accordance with the provisions of T.C.A § 12-3-802, and is not dominant in its field of operation.

Procedures:

1. TBR Institutions shall incorporate diversity language into the vendor application/registration process.
2. TBR Institutions shall ensure that minority owned, woman owned and small businesses are included when soliciting bids for awarding of contracts or purchasing goods or services, through the purchasing department, whenever practicable. These businesses are subject to and governed under the same policies and procedures applicable to all businesses in relationship to terms, price, conditions, and quality for participation in procurement activities with the State of Tennessee.
3. TBR Institutions will request diversity information for all bids and requests for proposals processed through Purchasing Departments.
4. The Governor’s Office of Diversity Business Enterprise has compiled a comprehensive directory of minority owned, woman owned and small businesses. This directory and TBR Institutional lists of qualified bidders will be used in locating potential sources for various products and services. The directory maintained by the State of Tennessee is located on the world-wide-web at: [www.tennessee.gov/diversity](http://www.tennessee.gov/diversity) or intranet site at [www.intranet@state.tn.us](http://www.intranet@state.tn.us). The State of Tennessee’s database provides a listing of diversity businesses including industry capabilities for which these vendors are registered.
5. Vendor/bidder complaints that may lead to the cancellation or termination of contracts or purchase orders awarded to diversity businesses registered with the Governor’s Office of Diversity Business Enterprise, and will be shared with the Director of the Governor’s Office of Diversity Business Enterprise.
6. The Tennessee Board of Regents shall provide a report to the Governor’s Office of Diversity Business Enterprise, as requested.

Related Policies and Guidelines:

Policy No. 4:02:10:00

Guideline No. G-030

**Teacher Education Redesign  
Community Colleges' Involvement and Benefits**

- The TQI will provide professional development for Arts & Sciences and AST faculty in the areas of Problem-Based Learning and Modeling of Evidence Based Practices.
- A redesign of curriculum will take place in the Associate of Science in Teaching (AST) degree as well as a move from traditional courses to a modular structure will take place to better meet teacher candidates' needs. Involvement with TQI will provide the faculty at the community colleges the training and support to accomplish this task.
- Master teachers serving in teacher leadership roles from local public schools will collaborate with faculty from Arts and Sciences and education at both community colleges and universities to facilitate clinical experiences for teacher candidates.
- Partnerships between Arts & Sciences and education faculty at both community colleges and universities will be strengthened leading to high quality instruction and faculty collaboration across both sectors.
- There will be a stronger and more seamless integration between the Associate of Science in Teaching (AST) degree program and the last two years of university-based teacher preparation programs. Community college students benefit from this integration.
- Community college and university faculty will be engaged in intensive professional development to enhance technology integration in their courses (e.g., simulations, smart boards, Skype, Amazon Kindle, etc.).

### **Funding Proposal**

- Establish a discrete UTR system charge to institutions to support the proposed program budget
  - Suggest universities support 90% of UTR budget and community colleges support 10%
  - Majority of UTR system charge revenue is intended for distribution back to universities to cover program implementation costs
  - UTR system charge would be in effect for 3 years (FY 2009-10, 2010-11, 2011-12)
- For years beginning with FY 2012-13 -
  - Initial UTR system charge terminates;
  - Institutions assume the on-going operational cost of the UTR program; and
  - A new system charge is established to support the on-going performance assessment and evaluation component of the UTR program

### **Accounting**

- Program revenue and expense will be established as a separate fund code within the TBR Central Office Budget, Office of Academic Affairs

### **Reporting**

- Presidents receive quarterly report on disbursements from UTR chargeback; and
- Presidents receive an annual report on financial operation of UTR program (in the form of a program income/expense statement)

### **Refund of Unused Portions**

- Uncommitted funds will be refunded to institutions annually, probably in form of a credit against the following year UTR system charge

### **Attachments:**

- A. Resolution on Support of Teacher Quality Initiative (adopted 6/19/09)
- B. Tennessee Teaching Quality Initiative; Undergraduate Teaching Residency; Budget Justification
- C. Tennessee Teaching Quality Initiative; Undergraduate Teaching Residency; Budget Summary
- D. Undergraduate Teaching Residency Program; Draft Funding Proposal

### Budget Summary

This budget summary categorizes the UTR budget based on whether funds would be distributed to institutions for specific uses or retained by TBR Central Office for use in support of the UTR program.

Description	2009-10	2010-11	2011-12	2012-13
<b>Funds Distributed to Campuses</b>				
Mentor Instructors	\$ 300,000	\$ 600,000	\$ 600,000	\$ -
UTR Coordinator - Arts & Sciences	\$ 30,000	\$ 30,000	\$ 30,000	\$ -
UTR Coordinator - Education	\$ 30,000	\$ 30,000	\$ 30,000	\$ -
School-Based Mentor Teachers	\$ 12,000	\$ 30,000	\$ 60,000	\$ -
Benefits	<u>\$ 75,000</u>	<u>\$ 150,000</u>	<u>\$ 150,000</u>	<u>\$ -</u>
Subtotal	<u>\$ 447,000</u>	<u>\$ 840,000</u>	<u>\$ 870,000</u>	<u>\$ -</u>
Travel - Site Visit Mileage	\$ -	\$ 18,000	\$ 18,000	\$ -
Materials & Supplies				
Video & Audio Recording Supplies	\$ 6,000	\$ 6,000	\$ 6,000	\$ -
Software & Computer Supplies	<u>\$ 12,000</u>	<u>\$ 12,000</u>	<u>\$ 12,000</u>	<u>\$ -</u>
Subtotal	<u>\$ 18,000</u>	<u>\$ 18,000</u>	<u>\$ 18,000</u>	<u>\$ -</u>
<b>Total - Funds to Campuses</b>	<b>\$ 465,000</b>	<b>\$ 876,000</b>	<b>\$ 906,000</b>	<b>\$ -</b>
<b>Funds to TBR Central Office</b>				
Travel				
Coordination, Data Gathering	\$ 3,000	\$ 3,000	\$ 3,000	\$ -
Planning Conferences	<u>\$ 18,000</u>	<u>\$ 12,000</u>	<u>\$ 6,000</u>	<u>\$ -</u>
Subtotal	<u>\$ 21,000</u>	<u>\$ 15,000</u>	<u>\$ 9,000</u>	<u>\$ -</u>
Professional Development				
Regional School/University/P-16 Training	\$ 30,000	\$ -	\$ -	\$ -
Evidence Based Teaching Modules	\$ 20,000	\$ 30,000	\$ 30,000	\$ -
Content Training for Univ./School Personnel	<u>\$ 50,000</u>	<u>\$ 25,000</u>	<u>\$ 10,000</u>	<u>\$ -</u>
Subtotal	<u>\$ 100,000</u>	<u>\$ 55,000</u>	<u>\$ 40,000</u>	<u>\$ -</u>
Consultants				
Problem Based Learning	\$ 5,000	\$ -	\$ -	\$ -
Teaching Residency	<u>\$ 5,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Subtotal	<u>\$ 10,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Performance Assessment & Evaluation System	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000
<b>Total - Funds to TBR Central Office</b>	<b>\$ 331,000</b>	<b>\$ 270,000</b>	<b>\$ 249,000</b>	<b>\$ 200,000</b>
<b>Grand Total</b>	<b>\$ 796,000</b>	<b>\$ 1,146,000</b>	<b>\$ 1,155,000</b>	<b>\$ 200,000</b>




## Tennessee Board of Regents

### OFFICE OF GENERAL COUNSEL

1415 Murfreesboro Road, Suite 336  
Nashville, TN 37217  
Phone (615) 366-4437 Fax (615) 366-3910

#### MEMORANDUM

TO: Dale Sims  
Vice-Chancellor

FROM: Christine Modisher   
General Counsel

DATE: July 8, 2009

RE: **Summary of recent state and federal laws regulating credit card solicitations of college students.**

---

#### STATE LAW

In 2008 the Tennessee legislature passed a law about solicitations and issuance of credit cards to students in public higher education. (TCA 49-7-143, copy attached) Provisions of the law are as follows:

1. A school collecting directory information from students must give the student an opportunity to indicate that the student does not wish to receive "solicitations, offers, or other advertisements by mail or otherwise based on the directory listing." The student's preference must be indicated as part of their directory information.
2. Credit card issuers may not recruit potential student cardholders on campus or at college or university facilities or through student organizations except at athletic events in accordance with college or university policies.
3. Offering gifts or promotional incentives to students at institutions properties or facilities is prohibited.
4. An institution that receives funds from the distribution of credit cards to students or any percentage from the use of cards bearing the college or university name or logo shall report the amount of such funds or percentage it received, as well as how the funds were spent, to the Tennessee select oversight committee on education by October of each year.

#### FEDERAL LAW

In 2009 the United States Congress passed the Credit Card Accountability Responsibility and Disclosure Act to 2009 (Credit CARD Act of 2009). Sections 304 and 305 of the Act relate specifically to college students and college credit card agreements. (Section 304 and Section 305 attached)

Section 304 requires that an institution of higher education publicly disclose any contract or other agreement made with a credit card issuer or creditor for the purpose of marketing a credit card. Section 304 further prohibits a credit card issuer or creditor from offering to a higher education student any "tangible item to induce such student to apply for or participate in an open end consumer credit plan." on the campus, near the campus, or at an event sponsored by or related to an institution of higher education.

Section 304 also states that it is the sense of Congress that credit card and debt education and counseling sessions be offered as a regular part of any orientation program for new students of such institution.

Section 305 of the Act requires that companies issuing college affinity cards as defined by the Act submit an annual report to the Board of Governors of the Federal Reserve Board containing various information, including the terms and conditions of the agreements with an institution of higher education, an alumni organization, or a foundation with respect to any college student credit card issues to a college student at such institution. This section does not require any particular action by the higher education institution.

#### SUMMARY

Reading the state and federal laws together, the requirements applicable to TBR colleges and universities are as follows:

1. No credit card solicitation at all is permitted on campus or at school facilities or through student organizations except at athletic events in accordance with school policies. (State Law)
2. No credit card issuer may offer a 'tangible item..' to induce a student to apply for a credit card at athletic events or near the campus or at off campus events "sponsored by or related to an institution of higher education". (Federal & State Law)
3. Schools must include as part of a student's directory information whether a student wishes to receive solicitations, offers, or other advertisements by mail or otherwise based on their directory information. (State Law)
4. Institutions must 'publicly disclose' any contract or other agreement made with a credit card issuer or creditor for the purpose of marketing a credit card. (Federal Law)
5. Institutions that receive funds from distribution of credit cards to students or any percentage from the use of cards bearing the institution's name or logo must report the amount of funds received and how the funds were spent to the Tennessee legislative oversight committee on education. (State Law)

Please contact the Office of General Counsel with any questions or comments.