

**TENNESSEE BOARD OF REGENTS
PROCUREMENT MANUAL**

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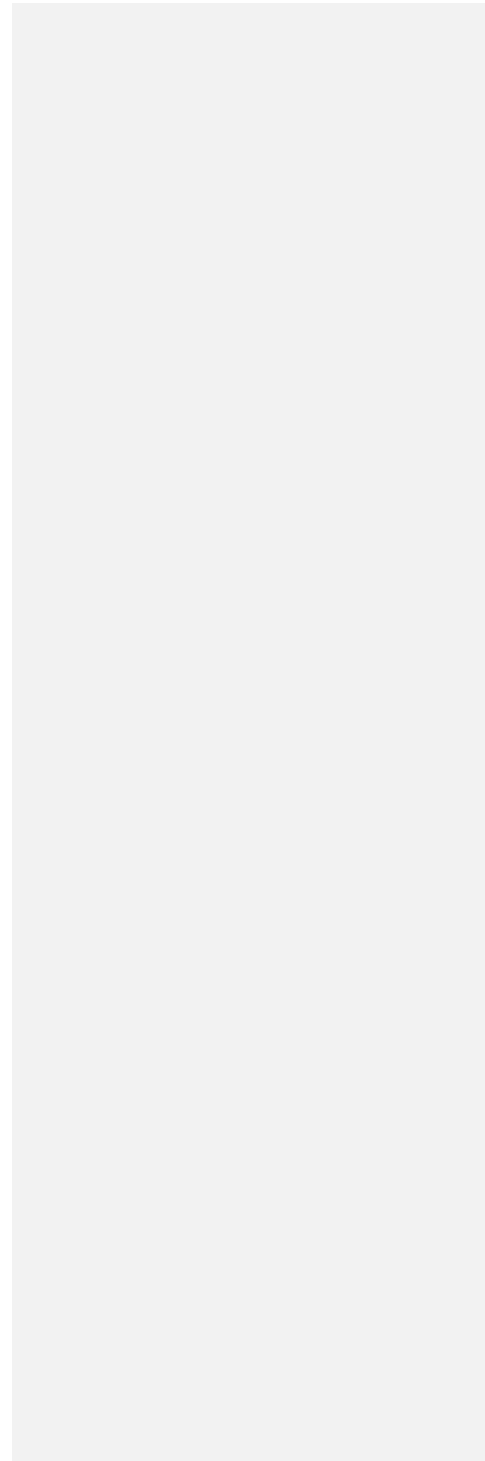
TABLE OF CONTENTS

Commented [AGF1]: An interactive Table of Contents will be developed upon finalization of the Manual.

1.0	Introduction.....	4
2.0	Code of Ethics.....	4
3.0	Conflicts of Interest.....	4
4.0	Definitions and Identification Codes.....	5
4.1	<i>Definitions.....</i>	
4.2	<i>Identification Codes.....</i>	
5.0	Purchasing Authority.....	13
6.0	Procurements.....	13
6.3	<i>Purchases from Small/Minority/Women/Veteran-Owned Businesses.....</i>	
7.0	Procurement Methods.....	15
7.1	<i>Small Dollar Purchases.....</i>	
7.2	<i>Informal Solicitations.....</i>	
7.3	<i>Formal Solicitations.....</i>	
7.3.1.	<i>Request for Information (RFI).....</i>	
7.3.2.	<i>Invitation to Bid (ITB)/Request for Quotation (RFQ).....</i>	
7.3.3.	<i>Request for Proposals (RFP).....</i>	
7.3.4.	<i>Determining Type of Solicitation.....</i>	
7.4	<i>Reverse Auction.....</i>	
7.5	<i>Procurements Under Another State Entity’s Bid Process.....</i>	
7.6	<i>General Services Administration (GSA) Contracts.....</i>	
7.7	<i>State Manufactured Goods and Services.....</i>	
7.8	<i>Procurements Under Cooperatives.....</i>	
7.9	<i>Emergency Purchases.....</i>	
7.10	<i>Competitive Negotiation/Alternative Competitive Procurement Method.....</i>	
7.11	<i>Non-Competitive Procurements.....</i>	
7.11.1	<i>Contracting with Another State/Government Entity.....</i>	
7.11.2	<i>Sole Source and Proprietary Purchases.....</i>	
7.11.3	<i>Purchases for Resale in Auxiliary Enterprises.....</i>	
7.12	<i>Special Purchase Categories.....</i>	
7.12.1	<i>Purchases for Libraries.....</i>	
7.12.2	<i>Grant Purchases.....</i>	
7.12.3	<i>Utility Contracts.....</i>	
7.13	<i>Gifts.....</i>	
7.14	<i>Outsourcing.....</i>	
8.0	Procurement Processes.....	22
8.1	<i>Initiating a Purchase.....</i>	
8.2	<i>Purchase Order.....</i>	
8.3	<i>Contract.....</i>	
8.4	<i>Procurement Card Purchase.....</i>	
8.5	<i>Competitive Solicitations.....</i>	
8.5.1	<i>Planning the Solicitation.....</i>	

8.5.2	<i>Scope of Work and Specification</i>	
8.5.2.1	<i>Scope of Work</i>	
8.5.2.2	<i>Specifications for Competitive Bidding</i>	
8.5.3	<i>Drafting the Solicitation</i>	
8.5.4	<i>Minimum Notice and Number of Bids</i>	
8.5.5	<i>Communication with Bidders/Proposers</i>	
8.5.6	<i>Pre-Bid/Proposal Conference/Question and Answer Period</i>	
8.5.7	<i>Delivery of Bids/Proposals</i>	
8.5.8	<i>Vendor’s Information on Bid</i>	
8.5.9	<i>Bid Format and Signature</i>	
8.5.10	<i>Bid Withdrawal, Revision, and Rejection</i>	
8.5.11	<i>Acceptance of Bids/No Rights Created</i>	
8.5.12	<i>Evaluations of Bids Received in Response to an ITB/RFQ</i>	
8.5.13	<i>Evaluation of Bids Received in Response to an RFP</i>	
8.5.14	<i>Site Visits and Presentations</i>	
8.5.15	<i>Tied Responses – Resolution</i>	
8.5.16	<i>Notice of Intent to Award</i>	
8.5.17	<i>Alternate Bids</i>	
8.5.18	<i>New, Used, Remanufactured or Reconditioned Goods</i>	
8.6	<i>Exceptions</i>	
9.0	Protested Bids	34
9.1	<i>Right to Protest</i>	
9.2	<i>Signature on Protest Constitutes Certificate</i>	
9.3	<i>Protest Bond</i>	
9.4	<i>Authority to Resolve Protest</i>	
9.5	<i>Stay of Award</i>	
10.0	Reports	38
11.0	Vendors	38
11.1	<i>Vendor Registration</i>	
11.2	<i>Vendor Requirements</i>	
11.2.1	<i>Illegal Immigrants</i>	
11.2.2	<i>Sales and Use Tax</i>	
11.3	<i>Removal from Vendors List</i>	
12.0	Receiving	40
12.1	<i>Freight and Shipping</i>	
12.1.1	<i>Free On Board (FOB)</i>	
12.1.2	<i>Receipt</i>	
12.1.3	<i>Shipping Documents</i>	
13.0	Contract Monitoring	41
13.1	<i>Service Contracts</i>	
13.2	<i>Monitoring Plan</i>	
13.3	<i>Goods, Materials and Supplies</i>	
14.0	Surplus Property	41
15.0	Accessibility	42
16.0	Fiscal Review	42

17.0	Bonds.....	43
17.1	<i>Performance Bonds.....</i>	
17.2	<i>Bid Bonds.....</i>	
17.3	<i>Protest Bond.....</i>	
18.0	Council of Buyers.....	44
19.0	Strategic Sourcing Group.....	45
20.0	Prohibited Transactions.....	45
21.0	Procurement Manual.....	46
22.0	Exceptions.....	46



1.0 Introduction.

The purpose of this Procurement Manual (“Manual”) is to provide guidance and detailed procedures concerning procurement methods, procurement administration, award and management. This Manual applies to the Tennessee Board of Regents (TBR) System. For procurements that result in contract documents, the Contract Policy No. ____ and Contracts Manual shall apply.

2.0 Code of Ethics

- 2.1. Employees must discharge their duties and responsibilities fairly and impartially.
- 2.2 Employees shall grant competitive bidders equal consideration, regard each transaction on its own merits, and foster and promote fair, ethical and legal trade practices.
- 2.3. 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.

3.0 Conflict of Interest

- 3.1. 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.
- 3.2. 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.
- 3.3. 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.

4.0 Definitions

4.1 Definitions.

As used in this Manual, unless the context otherwise requires:

“Advisory Council” means the council created and empowered by Tenn. Code Ann. § 4-56-106.

“Agency” means each State board, commission, committee, department, officer, or any other unit of State government.

“Agency Term Contract” means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

“Aggrieved Respondent” means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.

“Approval Process” means the process by which necessary State approvals are obtained.

“Award” means a State Agency’s notice to a respondent of the acceptance of a response.

“Base Contract” means the original contract prior to any amendments.

“Bid” means a response by a vendor to an invitation to bid.

“Bidding” means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.

“Bonus” means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

“Calendar Day” means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.

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“Central Procurement Office” means the State office established and empowered by Tenn. Code Ann. § 4-56-104.

“Central Procurement Office Policy” means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with Tenn. Code Ann. §§ 4-56-101, *et seq.*

“Chief Procurement Officer” means the official as defined by Tenn. Code Ann. § 4-56-104.

“Competitive Sealed Proposal” means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

“Contract” means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

“Contract Amendment” means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.

“Contract Approval” means the procedures a State Agency must follow to obtain final approval of a contract.

“Contract Management Plan” means a State Agency’s approved plan for managing its contracts.

“Contracting Party” means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.

“Cooperative Purchasing Agreement” means a written contract procured for the benefit of two or more governmental entities to make purchases of goods or services.

“Cost-reimbursement Grant” means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.

“Debarment” means excluding a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor or subcontractor, as specified by the Chief Procurement Officer.

“Delegated Authority” means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.

“Delegated Grant Authority” means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.

“Delegated Loan Authority” means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program.

“Delegated Purchase Authority” means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

“Delegated State Agency” means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.

“Department of General Services” means the State department created and empowered by Tenn. Code Ann. §§ 4-3-1101, *et seq.*

“Edison” means the enterprise management system of the State through which all procurement transactions are conducted.

“Emergency Purchases” means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

“Endowment Grant” means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

“Evaluation Committee” means the committee comprised of persons who will evaluate responses to a RFP, RFI or ITB/RFQ. All persons serving on an evaluation committee shall be state employees.

“Fully Executed Contract” means a signed contract that has been duly approved as evidenced by the affixation, or electronic approval, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.

“Gift” means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:

- Capacity of the donor to make the gift;
- Intention of the donor to make the gift;
- Completed delivery of the gift to or for the State, and
- Acceptance of the gift by the State.

Nothing in this Rule shall be construed to mean that the State must accept any gift.

"Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term “Goods” does not include leases, acquisitions, or disposals of an interest in real property.

"Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term “Grant” does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

“Grant Budget” means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.

“Grantee” or “Grant Recipient” means the person or entity awarded a grant.

“Grantor State Agency” means a State Agency that awards a grant to a person or entity.

“Immediate Family” – means a Central Procurement Office or procuring State Agency employee’s spouse, parent, sibling, or child.

“Incentive” means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party’s performance at a specified level beyond that which is minimally required.

“Interagency Agreement” means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

“Invitation to Bid” means a procurement method where a contract is awarded to one or more bidders based on the lowest responsive and responsible price.

“Necessary Contract Provision” means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.

“No Cost Contract” means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

“Notice of Intent to Award” means a State Agency’s written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.

“Non-responsive” means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation’s requirements.

“Parties” means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.

“Performance Bond” means a surety bond issued by an insurance company or bank to secure a Contracting Party’s performance of a contract.

“Procurement” means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

“Procurement Commission” means the State entity created and empowered by Tenn. Code Ann. § 4-56-102.

“Procurement Professional” means an employee of the Central Procurement Office or a State Agency who has a meaningful role in the procurement of goods or services. By way of example

only, a procurement professional may include a contract administrator, a solicitation coordinator or a market analyst.

“Procuring Agency” means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.

“Pro Forma Contract” means the form of contract that is attached to a solicitation that each awarded respondent is required to sign, absent negotiation as set forth in the solicitation.

“Proposal” means a proposer’s response to a Central Procurement Office’s or Delegated State Agency’s solicitation for goods or services.

“Proposal Bond” means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.

“Proposer” means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.

“Proprietary” means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.

“Proprietary Procurement” means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.

“Protest” means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

“Protest Committee” means the committee created and empowered under Tenn. Code Ann. § 4-56-103.

“Purchase Order” means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a “purchase order” becomes a binding contract on both parties.

“Request for Information” means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.

“Request for Proposals” means a written solicitation for written proposals to provide goods or services to the State.

“Request for Qualifications” means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.

“Respondent” means a person providing a written response to a solicitation.

“Response” means a respondent’s written response to a solicitation.

“Responsible Proposer” means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.

“Responsive Proposer” means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.

“Revenue Contract” means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

“Review Process” means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

“Rule Exception” means a request to relax the strict application of certain requirements of these Rules or applicable statutes as allowed by applicable law.

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

"Services" means all services and agreements procured by the State and formalized by contract.

“Sole Source Procurement” means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

“Solicitation” means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an

Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

“Solicitation Coordinator” means the procurement professionals within the Central Procurement Office or State Agencies who act as the primary points of contact and manage the procurement. Only those State Agency procurement professionals who have gone through training and certification by the Central Procurement Office may act as a solicitation coordinator.

“Specification” means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. “Specification” includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

"State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

“State Agency” means the departments, agencies, and entities of the State of Tennessee.

“State Architect” means the person, who oversees the Office of the State Architect.

“Statewide Contract” means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

“Subrecipient” is as defined in Office of Management and Budget (OMB) Circular A-133.

“Supplier” means a person or legal entity identified in Edison who has the legal capacity to enter into contracts and sue and be sued who supplies goods or services to the State through a contract or a purchase order. A “supplier” includes all persons or legal entities referenced as “vendors” in this Manual.

“Suspension” means a temporary or limited exclusion of a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor or subcontractor, pending completion of a State investigation or administrative or judicial proceedings, as specified by the Chief Procurement Officer.

“Term Contract” means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.

“Vendor” means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

4.2 Identification Codes.

The National Institute of Government Purchasing (NIGP) codes and The United Nations Standard Products and Services Code (UNSPSC) are the standard item codes utilized by the TBR System.

5.0 Purchasing Authority.

- 5.1 Goods and services shall be procured in accordance with the guidance provided herein.
- 5.2 Except as specifically provided in TBR policies or guidelines, the authority of the Presidents and Directors shall not include the purchase or lease of real property, any purchase totaling more than \$249,999.99 annually, the purchase of insurance, or purchases for capital outlay projects from any fund source whatsoever. Purchase orders issued pursuant to purchase orders and/or contracts which have already received approval by the System Office do not require additional submission to the System Office when the purchase orders clearly specify the goods and services of said contracts or any approve amendments thereto. This exception does not include purchase orders issued from University of Tennessee, State of Tennessee or Cooperative contracts.
- 5.3 The Chancellor, President, Director, Chief Business Officer, or Chief Procurement Officer may delegate approval authority as specified in this policy to designees.
- 5.4 Exceptions noted in Section 5.2 above may require additional approval(s) by the System Office, Fiscal Review, SBC, etc.
- 5.5 See **Exhibit X** for submittal documentation required for procurements and contracts that require TBR System Office and/or Fiscal Review approval.

6.0 Procurements Generally.

The procedures set forth in this section shall apply to all procurements of goods or services.

- 6.1 In cases where the TBR policies and procedures do not address a specific procedure for purchase of a particular item, federal and state requirements will govern, where applicable.
- 6.2 All purchases shall be based upon the principle of competitive bidding except as may be otherwise provided herein. It is the responsibility of the procurement officer to ensure that all competitive bidding is considered fair and open in a bid process. Required documentation related to competitive bidding shall be routed through the Institution’s procurement/contracts office, prior to the purchase, to ensure compliance with applicable policies and guidelines.

- 6.3 No procurement shall be divided or split to circumvent the proper procurement process. For example, if seven items totaling \$12,000 are needed for a particular project or purpose and can be obtained from a single source of supply, these items should be obtained via a competitive process instead of multiple small dollar purchases. Similarly, if purchases that fall within the small dollar purchase authority are of a recurring nature and the aggregate total is expected to exceed the amount allowable for small dollar purchases, the procurement is presumed to exceed the small dollar purchase authority and a competitive procurement method must be used (e.g., RFQ, ITB or informal quotes). If the procuring party cannot easily determine estimated total expenditures, the appropriate competitive process should followed.
- 6.4 Purchases from Small/Minority/Women/Veteran-Owned Businesses
- 6.4.1 All Institutions, in accordance with state and federal law, shall actively promote and encourage diversity participation with small, minority, women and veteran-owned businesses in order to obtain a fair proportion of goods and services from such businesses as further defined in **Exhibit X** to this policy.
- 6.4.2 Institutions shall encourage these business classes to be certified by the Governor’s Office of Diversity Business Enterprise (GoDBE).
- 6.5 Limitations of Liability – Materials, Supplies, Equipment and Services.
- 6.5.1 The Chancellor, President, and the Vice Chancellor for the Colleges of Applied Technology or their respective designee(s) 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, subject to the following provisions:
- a. 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 (2) times the total value of the contract. Further, TBR nor its institutions may indemnify contractors for the acts or negligence of the contractors or third parties.
- b. 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/RFQ/RFP 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/RFQ/RFP 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.

- c. Approval Process. The request under this section 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, as applicable:
 - 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.
- d. The approving authority may deny or approve the request or may authorize limitation of liability under other language than that proposed in the request.
- e. 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 total 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. .
- f. The provisions of this Section 6.4 are not required to be followed for contracts of adhesion; for such contracts, the provisions of G-030, Section 11, Contracts of Adhesion, may be applied.

7.0 Procurement Methods.

The following methods may be used to procure goods and/or services.

- 7.1. Small Dollar Purchases. Institutions may make non-recurring purchases totaling less than \$10,000, cumulatively in expense or revenue, without documenting any quotes or proposals from multiple vendors. Purchasers should take appropriate steps, e.g. conducting price comparisons, processing appropriate agreement documents, etc., to ensure that such Small Dollar Purchases are made based upon terms, conditions and pricing that are in the best interest of the Institution.
- 7.2. Informal Solicitations. Institutions may make purchases totaling less than \$50,000 in expense or revenue based upon written, telephone or electronic bids. For purchases totaling \$10,000 - \$49,999.99, bids must be solicited from at least three (3) Responsive/Responsible Bidders/Proposers. Informal bids do not require an original signature, and bids may be written, electronically transmitted or telephoned. Complete file documentation shall be maintained.

7.3. Formal Solicitations. A formal solicitation process shall be used when the estimated aggregate total of the expense or revenue is \$50,000 or more, including renewal terms of multi-year awards. Written sealed bids must be solicited from fifteen (15) vendors or the number of vendors on the Approved Vendors List--whichever is less and to all that request the specific ITB/RFQ/RFP. The Chief Procurement Officer must approve the use of less than fifteen (15) vendors. In addition, if the annual estimated aggregate total of the purchase is \$100,000 or more, solicitations must be sent in a manner that verifies proof of delivery.

The types of formal solicitations are provided below.

7.3.1. Request for Information (RFI). An RFI may be used to gather information regarding the capabilities, including technical aspects and services offered, by various suppliers/vendors for particular goods or services. The information resulting from the RFI shall typically be followed by a competitive process for the actual procurement.

7.3.2. Invitation to Bid (ITB)/Request for Quotation (RFQ)

7.3.2.1 Goods, materials, and supplies (cumulatively called "goods") should be awarded to the lowest Responsive and Responsible Bidder pursuant to an ITB/RFQ.

7.3.2.2 An ITB/RFQ may be used to procure services, if the specifications for delivery of such services are defined to a level of detail such that award is made to the lowest Responsive and Responsible Bidder.

Examples of this type of services 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.

7.3.3 Request for Proposals (RFP).

For competitive procurements of goods and/or services, where cost is not the only determining factor for award, a Request for Proposal using the Standard RFP Template should be used. An RFP shall specify all steps and evaluation criteria as necessary to finalize selection of the successful proposer. A multi-step RFP process should be used when additional steps are necessary to qualify and/or demonstrate the goods and/or services proposed.

7.3.4 Determining Type of Solicitation.

- 7.3.2.1 For competitive procurement of goods, an ITB/RFQ is appropriate, and in general, purchase order may be used to finalize the purchase.
- 7.3.2.2 For competitive procurement of services, an RFP is more appropriate, and a purchase order is generally not sufficient to serve as the written contract for the services.
- 7.3.2.3 For procurement of services which will require System Office approval, the Standard RFP Format shall be used.
- 7.3.2.4 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 manual are met, but it may be grounds for the Institution to terminate the procurement process.

7.4 Reverse Auction

A reverse auction process allows responses for specified goods or services electronically and adjustments to pricing during a specified time period. When conditions are favorable, Institutions may elect to use a reverse auction procurement method to achieve maximum competition among qualified respondents, and to obtain the highest level of quality at the lowest price for goods or services. An award shall be made to best the lowest responsive and responsible bidder.

7.5 Procurements Under Another State Entity's Bid Process.

Institutions may purchase goods or services using the competitive procurement process of another state entity. The process of the other state entity, except for the Central Procurement Office, must have specified that other Institutions would be permitted to purchase under the process. Institutions are strongly encouraged to include language in their competitive processes to allow extension of their process for use by other TBR and/or UT institutions as well as state departments. This Section does not preclude Institutions from using a statewide contract as a bid in accordance with its competitive bidding process.

7.6 General Services Administration (GSA) Contracts.

When a vendor maintains a General Services Administration (GSA) agreement with the United States of America, or any agency thereof, the Institution's procurement office may directly negotiate with that vendor for the commodity/services provided for in the GSA agreement. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

7.7 State Manufactured Goods and Services.

Institutions are required to purchase goods and services from other State agencies, e.g. Department of Corrections, Tennessee Rehabilitative Initiative in Correction (TRICOR), Tennessee Business Enterprises, and Community Rehabilitation Agencies (CMRA) / TRUST in Tennessee, whenever

such items or services are available therefrom and meet the desired conditions and standards. Such contracts may be based upon non-competitive negotiation.

7.8 Procurements Under Cooperatives.

Pursuant to the Tennessee Interlocal Cooperation Act, T.C.A. 12-9-101, Institutions may purchase goods and services through System Office approved cooperatives. The current list of TBR contracted cooperatives may be found at: <https://www.tbr.edu/purchasing/cooperatives>

7.9 Emergency Purchases.

Institutions may make purchases of goods or services, without utilizing formal solicitation procedures, to meet bona fide emergencies arising from any unforeseen cause. Bona fide emergency purchases must be approved by the Chancellor, President, Director or their designee, and file documentation on the circumstances of any such emergency shall be maintained. Emergency purchases must be made on a competitive basis and processed by the Institution's procurement office, if practicable.

7.10 Competitive Negotiation/Alternative Competitive Procurement Method.

7.10.1 A competitive negotiation process may be used only in cases when the institution is unable to obtain needed goods and/or services by a traditional competitive bid process. Reasons to use a competitive negotiation process include:

- a) Public need will not permit the delay incident to the RFP process;
- b) No acceptable proposals have been received after the RFP process;
- c) Rates payable for the services are regulated by law;
- d) Other circumstances as approved by the System Office.

7.10.2 The requesting party shall work with the Institution's procurement office to define the process to ensure the safeguarding of the information and provide fairness to the vendors in the process.

7.10.3 Use of the competitive negotiation process requires prior approval of the Chancellor, President, Director or their designee.

7.10.4 File documentation specific to each use of competitive negotiation shall be maintained.

7.11 Non-Competitive Procurements.

7.11.1 Contracting with Another State/Governmental Entity. 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, or any other public entity in Tennessee, or an entity of the federal government.

7.11.2 Sole Source and Proprietary Purchases.

7.11.2.1 Whenever specifications are not so worded or designed to provide for competitive bidding, a sole source or proprietary purchase may be allowed. A sole source purchase is available only from a single supplier; a proprietary purchase allows for a competitive procurement process to be used that specifies a particular good or service.

7.11.2.2 Written justification for sole source or proprietary purchases must be submitted in writing for approval by the Chancellor, President, Director, or their designee. The TBR Justification for Non-Competitive Purchases and Contracts Form must be completed and approved by the TBR System Office (when applicable).

7.11.2.3 In addition to the Justification for Non-Competitive Purchases and Contracts Form, the following additional documentation may also be required as a part of the request:

- a) A letter from the supplier, which details the basis for non-competitive procurement, based upon the factors listed in Section 7.11.2.4.
- c) Letter(s) from business and industry which supports the purchase of a particular good or service as industry or business standard.
- d) A letter from the manufacturer specifying their distribution practices, i.e. available only directly or through distributors.

(Note: All letters mentioned in this section are to be provided on the originator's company letterhead and must be signed by an authorized official of the company.)

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

- a) Whether the vendor possesses exclusive and/or predominant capabilities or the items contain a patented or copyrighted feature providing superior utility not obtainable from similar products;
- b) Whether the product or service is unique and easily established as one of a kind;
- c) Whether the program requirements can be modified so that competitive products or services may be used;
- d) Whether the product is available from only one source and not merchandised through wholesalers, jobbers, and retailers;

- e) Whether items must be interchangeable or compatible with in-place items;
- f) Whether the cost of conversion, including but not limited to disruption, retraining, and replacement precludes bidding competitively;
- g) 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;
- h) For personal, professional and consultant services, whether the use of non-competitive negotiation is in the best interest of the Institution;
- i) Other justification(s) as approved by the Chancellor, President, Director or their designee.

7.11.3 Purchases for Resale in Auxiliary Enterprises.

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 requirements for minimum notice and number of bids. Appropriate documentation shall be maintained which supports the action taken.

7.12 Special Purchase Categories.

7.12.1 Purchases for Libraries.

- 7.12.1.1 Each Institution shall be responsible for developing procurement policies and procedures for its library.
- 7.12.1.2 Purchases of books, electronic or hard copy, are capital expenditures and can be made without formal bids or quotations.
- 7.12.1.3 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 or when Fiscal Review Committee is required.
- 7.12.1.4 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.
- 7.12.1.5 Appropriate documentation must be maintained for purchases to support sole source procurement.
- 7.12.1.6 Library purchases for electronic media may be subject to Accessibility Standards. (See Section 15)

7.12.2 Grant Purchases.

- 7.12.2.1 Purchases utilizing grant funding shall comply with the conditions of the grant and applicable state and federal guidelines.

7.12.2.2 State grant purchases for goods or services shall not be made from vendors on the State of Tennessee Debarred Vendors List, http://www.tn.gov/assets/entities/generalservices/cpo/attachments/Debarred_Vendors.pdf.

7.12.2.3 Federal grant purchases for goods or services shall not be made from vendors on the List of Parties Excluded from Federal Procurement and Non-Procurement Programs, available at www.sam.gov.

7.12.3 Utility Contracts.

7.12.3.1 Institutions 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.

7.12.3.2 Each such purchase or contract shall be made on a competitive basis, whenever possible 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 the section above related to Non-Competitive Negotiation.

7.13 Gifts.

Gifts do not require a procurement process subject to this manual. See TBR Policy 4:01:04:00 Solicitation and Acceptance of Gifts.

7.14 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:

- a) 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.
- b) The service may be the subject of an ITB/RFQ/RFP, as appropriate, which approximately describes the services provided by the TBR/institution.
- c) The ITB/RFQ/RFP may require that if the proposer's/bidder's price exceeds the state's confidential cost, the proposal/bid may be rejected.

8.0 Procurement Processes.

8.1 Initiating a Purchase.

A Purchase Requisition or other appropriate documentation may be used by an Institutional department to request the Procurement Office procure a given good and/or service. All Purchase Requisitions/requests require sufficient detail, as specified by the Institution's procurement office, to allow the proper processing to acquire the good and/or service (e.g. quantity, description, vendor, delivery instructions, etc).

Purchase requisitions/requests will result in one of the following:

- a) Purchase Order
- b) Contract
- c) Procurement Card Purchase
- d) Competitive Solicitation

8.2 Purchase Order.

A purchase order means a written or electronic document issued by the Institution's Procurement Office to a supplier authorizing a purchase. Sending a purchase order to a supplier constitutes a legal offer to buy products and/or services. Acceptance of a purchase order by a supplier forms a contract between the TBR Institution and supplier. Delivery by the supplier constitutes acceptance of the purchase order.

8.3 Contract.

A contract is a written agreement which conforms to TBR Guideline No. G-030, Contracts and Agreements, <https://policies.tbr.edu/guidelines/contracts-and-agreements>

8.4 Procurement Card Purchase.

A procurement card purchase is an acquisition of goods and/or services using a payment method whereby internal customers (requisitioners) are empowered to deal directly with suppliers for purchases using a credit card issued by a bank or major credit card provider. Generally a pre-established credit limit is established for each card issued. All institutional policies, TBR policies and applicable state laws shall govern procurement card purchases.

8.5 Competitive Solicitations

Whenever a purchase necessitates a competitive solicitation, the solicitation may be a formal or informal process and may take the form of a Request for Quotation / Invitation for Bid (ITB/RFQ) or Request for Proposal (RFP), which may involve a multi-step process in order to determine the successful proposer. The steps and components defined below are required in a competitive solicitation, regardless of its form.

8.5.1 Planning the Solicitation. Proper and sufficient planning should be performed to ensure the successful acquisition of the goods/services. Such planning may include, but not be limited to, the following:

- a) Determine appropriate method of procurement, i.e. ITB/RFQ/RFP, based upon nature and scope of deliverables being purchased;
- b) Estimate expected total expenditure or revenue;
- c) Confirm availability of funds for expenditure;
- d) Evaluate historical spending trends for the same or similar items;
- e) Draft open specifications using available information sources;
- f) For all ITB/RFQ/RFPs 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.
- g) Identify existing equipment, if any, as trade-ins;
- h) Define timeline for receipt of deliverables;
- i) Determine evaluation criteria, i.e. how an award will be made, i.e. lowest total cost, lowest cost per item or groups of items, best overall evaluated bidder, etc.
- j) Identify prospective vendors

8.5.2 Scope of Work and Specifications. Whenever possible, scopes of work and procurement specifications for goods and services shall be worded or designed to permit open and competitive solicitation.

8.5.2.1 The scope of work is a detailed description of what is required of the vendor to satisfactorily perform or deliver what is required under the contract. The scope of work should provide a clear and concise description of the desired goods and/or services.

8.5.2.2 Specifications used for competitive bidding shall be functional or performance specifications, when practicable, and must be clear, unambiguous and written to promote open and fair competition. Specifications may take the following forms:

- a) *Descriptive Specifications.* Specifications should be presented in a
 - i. Identify descriptive format and should, if practicable, achieve the following: the product using generic terminology in the description;
 - ii. List any characteristics that determine performance capability and identify those characteristics that are essential in order to meet performance requirements; and
 - iii. Detail the minimum or maximum acceptable performance requirements for each characteristic with as much tolerance and flexibility as practicable.

- b) *Specifications Based on Brand Name.* All brand and model numbers used for the purchase of goods must be those in current production and available in the market. The use of brand and model names alone will not be permitted as a substitute for performance or functional specifications, unless providing performance or functional specifications is impracticable. When an item is specified by the use of brand names, the words "or equal" should be included.

Reference to brand names, trade names, model numbers, or other descriptions peculiar to specific brand goods, is made to establish a required level of quality and functional capabilities. It is not intended to exclude other goods of comparable quality or functionality. Comparable goods of other manufacturers will be considered if proof of comparability is contained in the response.

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.

- c) *Specifications Based on Standard Specifications and Scopes of Work.* Institutions may develop standard specifications and scopes of work for the procurement of goods and/or services which fit, insofar as possible, the requirements of the majority of its departments that use the same.
- d) *Specifications Based on Catalogs, Price List, or Price Schedules.* Specifications may require vendors to respond to a solicitation using a plus (+) percentage (%), minus (-) percentage (%), or net cost offered as a discount or surcharge applying to the goods listed in the catalog, price list, or price schedule described within the solicitation. Solicitations of this type shall include a specific list of items for competitive analysis.
- e) *Specifications Based on Qualified Goods List.* Specifications may include a list of pre-approved brands and model numbers that meet the requirements. Whenever such pre-approved items are listed, the solicitation shall provide an opportunity for the submittal of additional items for consideration by the Institution for inclusion in the approved brands/model numbers. If additional items are approved for bidding, notification shall be provided to all bidders. The decision to approve additional brands/models for bidding shall be at the sole discretion of the Institution.

- f) *Life Cycle Costing.* The life cycle costs of commodities as developed and disseminated by the federal government shall be used as feasible. In determining life cycle costs, the following factors may be considered in the bid evaluation:
 - i. the acquisition cost of the product;
 - ii. the energy consumption and the projected energy cost of energy over the useful life of the product; and
 - iii. the anticipated resale or salvage value of the product.

- g) *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 utilized by the federal government in its contracting for major energy-consuming goods. The Energy Star website, <http://www.energystar.gov/>, provides a qualified list of goods meeting Energy Star's minimum energy specifications, life cycle costing calculations, life cycle cost formula information, and qualified goods that meet Energy Star's rating for using less energy and helping to protect the environment. Institutions may use goods listed on the Energy Star website's list of qualified goods as "acceptable brands and models" on bid documents. Office equipment, appliances, lighting, and heating and cooling products and systems purchased by Institutions shall be Energy Star qualified; provided, that such Energy Star qualified products and systems are commercially available.

- h) *Specifications to Permit Remanufactured/Recycled/Re-Refined/ Used Goods.* For applicable procurements, whenever an Institution deems such to be advantageous, specifications may be worded or designed so as to permit bidding of remanufactured / recycled /re-refined/ used goods. Such specifications shall be comparable in use and quality to new materials, supplies and equipment.

- i) *Specifications for Purchases of Chemical Products.* Specifications for purchases of chemical products shall require the vendor to provide a material safety data sheet (MSDS) for such chemical products as listed on the national MSDSSEARCH repository. A site, operated by or on behalf of the manufacturer or a relevant trade association shall be acceptable so long as the information is freely accessible to the public.

8.5.3 **Drafting the Solicitation.** The Institution's procurement office will prepare a solicitation document using the information developed during solicitation planning. The solicitation document shall include sufficient information to permit a complete and accurate bid/proposal and shall, at a minimum, contain the following information:

- a) The required sole point of contact from the Institution;
- b) The time and place that bids will be received and opened;
- c) Information describing the purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired;
- d) The quantity of goods or services required;
- e) If the estimated expenditure or revenue exceeds \$100,000 annually, the solicitation document shall specify at least one question/answer period and/or pre-bidders' conference, with a written record of questions and responses provided to all prospective bidders;
- f) Expected time of delivery;
- g) Amount of insurance, bid or performance bond, if any;
- h) Pro-forma contract, if applicable, containing the terms and conditions required by the Institution;
- i) Description of the criteria used to evaluate bids/proposals;
- j) Date bids/proposals will be available for public inspection;
- k) An inquiry to bidder regarding whether other TBR/UT institutions and/or state agencies may purchase from the contract; and if so, the period of time during which the contract terms and pricing will be available to other institutions; and
- l) Standard terms and conditions applicable to the solicitation.

8.5.4 Minimum Notice and Number of Bids. The minimum required notice and number of bids for competitive solicitations shall be as follows:

- a) If the estimated amount of the purchase (or revenue) is \$10,000 but less than \$50,000, written, telephone or electronic bids must be solicited from at least three (3) qualified vendors. When telephone bids are solicited, a record of the bidders and amounts bid shall be maintained.
- b) If the estimated amount of the purchase (or revenue) is \$50,000 or more, written sealed bids must be solicited from fifteen (15) vendors or the number of vendors on the Approved Vendors List--whichever is less and to all that request the specific Solicitation. The Institution's Chief Procurement Officer must approve the solicitation of less than 15 bids.
- c) 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.
- d) An ITB/RFQ for goods and services 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.

e) For RFPs and applicable ITB/RFQs, e.g. an ITB/RFQ 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 ITB/RFQ delivery, bid specifications and pre-bid/proposal questions, comments, and responses. Examples of solicitation processes 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 operations;
- Custom software and or IT system services;
- Advertising management services, and
- Any other bid for which the additional time is appropriate.

e) A vendor's general or standing request for notice for all Solicitations of a given type shall not suffice as a request for a specific Solicitation and shall create no obligation on the institution.

8.5.5 Communication with Bidders/Proposers. When specified in the solicitation document, all bidders shall communicate only with the Procurement sole point of contact. Failure of the bidder to communicate with the Procurement sole point of contact may result in disqualification. Amendment and/or modifications to the requirements shall be in writing and provided to all prospective respondents. No solicitation may be orally modified or amended.

8.5.6 Pre-Bid/Proposal Conference/Question and Answer Period. If appropriate, a pre-bid/proposal conference and/or a question and answer period shall be included in the solicitation process. The purpose of the pre-bid/proposal conference and question and answer period is to provide prospective bidders/proposers the opportunity to submit questions/comments regarding the solicitation. A written record of all questions/comments submitted along with the institution's official responses is to be prepared and made available to all prospective bidders, as an addendum to the solicitation document. Bids/proposals shall take into consideration any and all amendments to the solicitation document, and responses shall reflect any changes made to the solicitation. Should extensive changes to a solicitation document be required, the Institution may elect to cancel the solicitation and reissue it based upon a revised solicitation document.

8.5.7 Delivery of Bids/Proposals. Bids/Proposals must be received at the specified location on or before the date and hour designated for bid opening. All bids received shall be date and time stamped to show compliance with the designated opening date and time. Late bids will be rejected and may be retained unopened in the bid file or returned to the bidder/proposer upon their request. Whenever an unopened bid is returned to a vendor, a written record shall be maintained.

8.5.8 Vendor's Information on Bid. Each bid should include the full name and business address of the bidder. If the vendor is a corporation, the name shall be stated as it appears in its corporate charter. Any resulting contract or purchase order will be issued to the business name specified in the bid.

8.5.9 Bid Format and Signature. Bids must be in the form specified by the institution. All formal bids must bear a signature. The signatory on the bid must have authority to bind his or her company in the contract.

8.5.10 Bid Withdrawal, Revision, and Rejection.

8.5.10.1 Bid Withdrawal.

- a) 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.
- b) 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 of a bid after bid opening 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.

8.5.10.2 Bid Revision.

- a) A bid may not be revised after bid opening, however, after evaluation is completed and the successful bidder/proposer is 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.
- b) In no event shall negotiations increase the cost or amend the proposal such that the apparent successful proposer no longer offers the best proposal.

8.5.10.3 Bid Rejection.

- a) All bids shall be subject to rejection by the Chancellor or designee, President or designee, Vice Chancellor for Colleges of Applied Technology or Director.

- b) Any proposal that restricts the rights of the institution or otherwise qualifies or limits the bid/proposal may be considered to be non-responsive, and the bid/proposal may be rejected.
- c) If the institution determines that a bidder/proposer has provided information which the proposer knew or should have known was materially incorrect, or was not submitted independently without collusion, the subject bid/proposal may be determined non-responsive and may be rejected, and the bidder/proposer may be excluded from the solicitation opportunities.
- d) Action to reject all bids shall be taken only for unreasonably high prices, errors in the ITB/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, President, TCAT Director or their respective designees.
- e) When it becomes necessary to reject all bids, in a formal solicitation process, the reason for such rejection must be set out in complete detail and made available to all bidders who submitted a bid.
- f) If another solicitation document is to be issued, all prior bids/ proposals shall remain closed to inspection by the public until the evaluation of the re-bid is complete.

8.5.11 Acceptance of Bids/No Rights Created.

Notwithstanding any provision contained herein or in any solicitation document, submission of a bid/proposal shall not create rights, interests or claims of entitlement in any bidder/proposer, including the successful bidder/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.

8.5.12 Evaluation of Bids Received in Response to an ITB/RFQ.

- a) When more than one item is specified in the bid, the institution may specify in the bid document that it 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.

- b) The contract for purchase shall be awarded to the lowest responsive and responsible bidder which meets the required specifications, taking into consideration quantifiable factors including but not limited to the conformity of the goods and/or services to the specifications, any discount allowed for prompt payment or other reason(s), transportation charges, and the date of delivery specified in the solicitation.

8.5.13 Evaluation of Bids Received in Response to an RFP.

- a) An RFP includes subjective as well as objective evaluation criteria. Evaluation of proposals submitted in response to an RFP is based upon a points system, whereby a contract for purchase of goods or services is made to the best evaluated proposer and not necessarily the lowest cost proposer.
- b) The RFP requires that a proposal contain separately sealed technical and cost proposals. The goal is to permit the evaluation of a proposal's technical capabilities by a selected group of evaluators without considering the cost factor.
- c) Compliance with the mandatory RFP requirements shall be determined by the RFP coordinator in consultation with the Chief Business Officer or designee.
- d) Evaluation of technical offers shall be determined by an evaluation team. Members of the evaluation team should be adequate and appropriate to the scope and nature of the RFP.
- e) 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.
- f) Any technical offers shall be evaluated based on the criteria of the RFP and other information learned during the technical evaluation process.
- g) 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.
- h) Technical proposals must not include any cost proposal information. Inclusion of cost proposal information in a technical proposal will result in automatic disqualification of the proposal without further consideration.
- i) Technical proposals are opened and scored separately prior to cost proposals being opened/evaluated. Once technical scores are finalized, the solicitation coordinator will

open and score the cost proposals based upon the criteria as set out in the RFP, with the lowest cost bidder receiving the highest score and remaining proposers receiving a pro-rated score thereafter.

8.5.14 Site Visits and Presentations.

A solicitation may provide for site visits to bidder/proposer locations by evaluators and/or presentations by bidders/proposers as part of the evaluation process. In such event, any scores resulting from these activities will be applied prior to the opening of the cost proposal.

8.5.15 Tied Responses – Resolution.

A tie exists when two or more respondents offer goods or services that meet all specifications, terms and conditions at identical prices including cash discount offered for prompt payment. A tie will be broken by considering the following factors, in descending order:

- a) First preference shall be given to a “Tennessee Bidder”. Pursuant to Tenn. Code Ann. § 12-4-121(c)(2), a “Tennessee Bidder” means a business that is:
 - Incorporated in this State;
 - Has its principal place of business in this State; or
 - Has an established physical presence in this State.
- b) Second preference shall be given to certified Disadvantaged Business Enterprise (DBE) respondents.
- c) Third preference shall be given to the respondent who was the low bidder on other items being bid for the same requisition.
- d) Fourth preference shall be given to the respondent who offers the best delivery.
- e) Fifth preference shall be given to further negotiations to break the tie.
- f) If a tie remains, it shall be broken by lot or coin toss.

8.5.16 Notice of Intent to Award.

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

8.5.17 Alternate Bids.

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

8.5.18 New, Used, Remanufactured or Reconditioned Goods.

All goods offered and furnished must be new unless the ITB/RFQ/RFP specifically permits offers of used, remanufactured, or reconditioned. ITBs/RFQs/RFPs which specifically permit offers of used, remanufactured, or reconditioned goods shall require a warranty; however, the Chancellor, President, Director or designee shall have the authority to waive this requirement.

8.5.19 The scope of the good(s)/service(s), as defined in the solicitation, shall form the basis of the resulting contract and cannot be expanded beyond the scope of the final solicitation document.

8.5.20 In order to provide a clear audit trail, the ITB/RFQ/RFP file (hard-copy or electronic) shall contain, at a minimum, the following:

- a) A copy of the ITB/RFQ/RFP issued (including specifications),
- b) A list of vendors for the solicitation, including the date vendors were sent the ITB/RFQ/RFP and bidders actions
- c) For RFPs and applicable ITBs/RFQs, any pre-bid questions/responses or addendums to the ITB/RFQ/RFP,
- d) Any vendor correspondence (i.e. intent to propose letters, questions, etc.),
- e) For RFPs and applicable ITB/RFQs, all documentation relating to the composition of the evaluation team and the evaluation documentation used to make the award,
- f) As applicable, any documentation that warrants a re-bid of the ITB/RFQ/RFP,
- g) Any informal bid complaints and the respective responses/actions,
- h) Any formal bid protests,
- i) As applicable, copies of intent to award letters, and
- j) Purchase order and/or contract or respective reference information.

8.6 Exemptions

Certain procurements/payments, as specified by the Institution, may be exempted from these processes/procedures. These include but are not limited to the following:

- Telephone bills
- Utility bills, including connection fees
- Internet Connection Fees
- Freight charges
- Postage charges
- Notary public fees
- Fees in connection with titles or title searches
- Vehicle rental while on approved travel
- Tuition, fees, and supplies for state employees
- Emergency medical expenses

9.0 Protested Bids.

9.1 Right to Protest.

- 9.1.1 Protest procedures shall be included, or a link thereto, shall be provided in all RFQs/RFPs. the bidders/proposers or a link thereto.
- 9.1.2 Any actual proposer who claims to be aggrieved in connection with a specific solicitation process may protest, in writing, to the Chief Procurement Officer within seven (7) calendar days from the date of notice to award. Protests must be received by the Institution's Procurement Office no later than the close of business of the seventh calendar day.
- 9.1.3 Any issues not raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest.
- 9.1.4 Protests shall include the required bond, as specified in **Section 9.3** below. Protests received which do not include the required bond shall not be considered. See **Exhibit X** for sample protest bond.

9.2 Signature on Protest Constitutes Certificate.

- 9.2.1 A protest must be signed by an authorized company representative, who certifies that he has read such document, that to the best of their knowledge, it is well grounded in fact and that it is not submitted 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.
- 9.2.2 If the protest is submitted in violation of any provisions of this **Section 6.12**, appropriate sanctions, which may include removal from future bid opportunities and forfeiture of the protest bond, may be imposed.

9.3 Protest Bond

- 9.3.1 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. Calculation of the value of the bond shall be made based on the total value of the procurement, including any renewals thereof. 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 Chief Financial Officer or designee that:
 - a) A violation of Section 6.12.2;
 - b) The protest has been brought or pursued in bad faith; or
 - c) The protest does not state on its face a valid basis for protest.
- 9.3.2 The Institution shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by the Chief Financial Officer.

9.3.3 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, women, small or service disabled veteran-owned business protesting party may submit a written petition to the Chief Financial Officer for exemption from the protest bond requirement.

- a. Such a petition must include clear evidence of business classification which shall be validated with the ethnicity information supplied with the solicitation. The petition shall be submitted to the Chief Financial Officer who has seven (7) calendar days in which to make a determination.
- b. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted.
- c. Should the Chief Financial Officer deny an exemption from the requirement, the protesting party shall post the bond with the Chief Procurement Officer of the institution as required in Section 6.12.2 within five (5) calendar days of the determination.

9.4 Authority to Resolve Protest.

- 9.4.1 The Institution's Chief Procurement Officer has the authority to resolve the protest. If deemed necessary, the Institution's Chief Procurement Officer may request a meeting with the protesting party to seek clarification of the protest issues.
- 9.4.2 The final determination of the Institution's Chief Procurement Officer shall be given in writing and submitted to the protesting party.
- 9.4.3 The protesting party may request that the final determination of the Institution's Chief Procurement Officer be considered by the Institution's Chief Financial Officer. The request for consideration shall be made in writing to, and received by, the Institution's Chief Financial Officer within seven (7) calendar days from the date of the final determination by the Institution's Chief Procurement Officer.
- 9.4.4 The Institution's Chief Financial Officer has the authority to review and resolve the protest. If deemed necessary, the Institution's Chief Financial Officer may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the Institution's Chief Financial Officer shall be given in writing and submitted to the protesting party.

- 9.4.5 The protesting party may request that the final determination of the Institution's Chief Financial Officer be considered by the Chief Executive Officer, President or Director of the institution. The request for consideration shall be made in writing to, and received by, the Chief Executive Officer President or Director within seven (7) calendar days from the date of the final determination by the Institution's Chief Financial Officer.
- 9.4.6 The institution shall have no longer than sixty (60) calendar days from receipt of the protest to resolve the protest.
- 9.4.7 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, and received by, the Chancellor within seven (7) calendar days from the date of the final determination by the President/Director.
- 9.4.8 The determination of the Chancellor or designee is final and shall be given in writing and submitted to the protestor.
- 9.4.9 Should the institution fail to acknowledge receipt of a protest within fifteen (15) calendar days and to resolve the protest within sixty (60) calendar days, the protesting party may request that the Chancellor consider the protest. Such request shall be in writing and received by the Chancellor within seven (7) calendar days from the expiration of the sixty (60) day period.

9.5 Stay of Award

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

10.0 Reports.

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

- 10.1 Small/Minority/Women/Veteran-Owned Business Report.

This quarterly report, required by T.C.A. § 12-3-1107, consists of transactions with minority-owned, women-owned, small, veteran-owned businesses shall be reported to the TBR System Purchasing and Contracts Office on a quarterly basis (January March, April June, July-September, and October December). A comprehensive report is submitted to the Governor's Office of Diversity Business Enterprise (GoDBE).

10.2 Contracts Report.

This quarterly report consists of contracts for all personal, professional, and consulting contracts exceeding \$5,000. This report shall also include non-competitive contracts with a value of \$50,000 and greater. This report shall be reported to the TBR System Purchasing and Contracts Office. A comprehensive report is then submitted to the State's Fiscal Review Committee.

10.3 ITB/RFQ/RFP Diversity Report.

This quarterly report consists of contracts issued from request for proposals for goods and/or services pursuant to T.C.A. § 12-3-1107 and shall be reported to the TBR System Purchasing and Contracts Office. A comprehensive report is then submitted to the Governor's Office of Diversity Business Enterprise (GoDBE).

10.4 Senate, Finance, Ways and Means Report.

This annual report consists of a list of all contracts (both goods and services) with a value of \$50,000 or greater (both revenue and expenditure contracts). This report includes all contracts currently active. This shall be reported to the TBR Business and Finance Office. A comprehensive report is then submitted to the Senate Finance, Ways and Means Committee.

11.0 Vendors.

11.1 Vendor Registration

Each Institution shall maintain a process by which prospective vendors may register to conduct business with the Institution.

11.1.1 The Institution's registration system shall enable the Institution to generate a list of vendors who have registered to provide specific commodity classes.

11.1.2 The institution may require the vendor to submit information (other than the vendor application) which demonstrates its ability to provide certain goods or services prior to inclusion on the list of vendors.

11.2 Vendor Requirements

11.2.1 Illegal Immigrants

- a) 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

utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract.

- b) 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 Exhibit 2, Minimum General Bid Conditions

11.2.2 Sales and Use Tax

No Institution may enter into a contract to supply goods or services to the state or other state entities without first verifying that the vendor is be registered or has received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax.

11.3 Removal from Vendors List

11.3.1 Vendors who fail to provide adequate goods and/or services may be removed from the vendors list.

11.3.2 Reported failure to comply with bids, awards, and/or orders, etc. shall be documented and maintained.

11.3.3 Examples of failure to comply include but are not limited to:

- a) Over, under and/or late shipments; failure to ship;
- b) Damaged and/or defective products;
- c) Shipments not in conformance with specifications;
- d) Unauthorized substitutions.

11.3.4 Other principal causes for removal from the vendor list are:

- a) Billing Errors;
- b) Service Deficiencies;
- c) Unethical Practices;
- d) Misrepresentation of Merchandise;
- e) Unwillingness to amend impermissible clauses;
- f) State or federal debarment status.

11.3.5 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.

12.0 Receiving.

Freight, Shipping, Receipt, Storage and Inspection of Goods.

12.1. Freight and Shipping. There are two (2) types of shipping: FOB Destination and FOB Origin.

- 12.1.1 Free On Board (FOB). “FOB” is an acronym for "free on board" when used in a sales contract. The seller agrees to deliver merchandise, free of all transportation expense, to the place specified by the contract. After delivery is complete, the title to all the goods and the risk of damage become the buyer's.
- a) FOB Destination. Under “FOB Destination”, title and risk remain with the seller until it has delivered the goods to the location specified in the contract. FOB Destination is the standard method for institutional shipments.
 - b) FOB Origin. “FOB Origin” means that title and risk pass to the buyer at the moment the seller delivers the goods to the carrier. The parties may agree to have title and risk pass at a different time or to allocate shipping charges by a written agreement. In order to agree to FOB Origin, the vendor or institution must provide shipment protection for the institution’s interest.
- 12.1.2 Receipt. Upon receipt of supplies, materials, and equipment, the receiving Institution shall promptly make a written certification that the items received were equal in quality and quantity to those purchased by entering verification on the receipt documents (hard-copy or eProcurement). The Institution’s copy of the Purchase Order may be used to verify goods or services received.
- 12.1.3 Shipping Documents. Upon delivery, the Institution shall:
- a) Verify that the shipping documentation names the Institution as the actual consignee and that the number of cartons, crates, etc., listed is the same as the amount received.
 - b) Examine containers for signs of external damage or pilferage. If signs of damage or pilferage are obvious or suspected, it must be noted on each copy of the freight bill and signed (not initialed) by the delivering driver.
 - c) Sign the freight bill and retain a copy for Institution’s records. The notation "SUBJECT TO FURTHER INSPECTION" may accompany the Institution or central receiving’s signature.
 - d) Count and inspect the internal contents of all boxes, crates or cartons to determine that the material received matches the description listed on the packing slip, receiving documents, and/or purchase order, in regard to quantity, quality, size, color, model number, specifications, etc. and record in the institution’s eProcurement system.
 - e) If any discrepancies (i.e. wrong item(s), overages, shortages, damages) exist, they must be noted on the packing slip, receiving report, and/or purchase order. Appropriate corrective action shall be taken for all discrepancies.
 - f) All receiving records should indicate the quantity and date received and any other information pertinent to the receiving process.

- g) The material received must be retained or sent to the proper department. Damaged goods deemed unacceptable are to be retained for further disposition.

13.0 Contract Monitoring.

13.1 Service Contracts.

All service contracts shall contain a provision that states that the contractor's activities shall be subject to monitoring by the institution and/or state officials. These contract types include, but are not limited to:

- a) Personal Service
- b) Professional Service
- c) Software Related Agreements
- d) Grants, including subcontracts
- e) Memorandums of Understanding

13.2 Monitoring Plan.

Institutions shall maintain a monitoring plan for all service contracts to ensure the following:

- a) Contract performance in terms of progress and compliance with contract provisions;
- b) Communication with Contractor to ensure maximum performance and intended results;
- c) Financial obligations of the institution do not exceed the contract pricing;
- d) Deliverables are received;
- e) Appropriate approval and remittance of payments for acceptable work are in accordance with contract provisions and applicable law;
- f) Maintenance of records for each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
- g) Evaluation of contract results in terms of the achievement of organizational objectives.

13.3 Goods, Materials and Supplies.

Procurement of goods, materials, and supplies under this policy shall not require a monitoring plan, but shall comply with TBR and institution internal controls and audit procedures.

14.0 Surplus Property.

14.1 Surplus property is personal property which has been determined obsolete, outmoded, unusable or, no longer usable by the institution, or property for which future needs do not justify the cost of maintenance and/or storage.

14.2 Disposal of such property must be in accordance with TBR Policy No. 4:02:20:00, Disposal of Surplus Personal Property.

15.0 Accessibility.

- 15.1 Institutions shall seek to afford persons with disabilities the opportunity to use Informational/instructional and technologies to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use.
- 15.2 Institutions shall include language in its applicable procurements that the products/services, including any updates, provided to the Institution will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub 3 and Section 508 of the Vocational Rehabilitation Act.
- 15.3 When signature is required by the Institutions, to demonstrate the vendor's product complies with the aforementioned accessibility guidelines, the vendor shall verify accessibility by completing the Vendor Product Accessibility Statement and Documentation Form. If the vendor is not compliant with the aforementioned accessibility guidelines, the vendor shall describe by using the Accessibility Conformance and Remediation Form its plan for product/service compliance.

16.0 Fiscal Review.

- 16.1 Certain procurements/contracts must be also filed with and reviewed by the State's Fiscal Review Committee.

This includes procurements/contracts that meet all of the following criteria:

- a) Contracts that are non-competitive; and
- b) Contracts that have the potential of being for a period of more than one year; and
- c) Contracts that exceed \$250,000 in total value (including all potential renewals)

- 16.2 For all procurements/contracts that meet these criteria, the Institution shall work with the TBR System Office to produce/coordinate the documentation required for Committee submittal/review.

17.0 Bonds.

"Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.

"Bid Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.

- 17.1 Performance Bonds.

The Institution may require a bond to secure a respondent's response to a solicitation or a performance bond after contract award issued by a surety company licensed to do business by the State of Tennessee. When required, the amount of the bond shall be stated as a percentage of the contract price (but may not exceed 100 percent (100%) of the total contract price) and the amount may be reduced proportionately after contract award or performance under the contract moves forward successfully. All bonds must be filed with the Institution within fourteen (14) calendar days after receipt of request. Personal checks shall not be acceptable in the place of performance bonds. However, bank cashier's checks shall be accepted. An irrevocable letter of credit or a certificate of deposit, which shall be held by the Institution from a State or national bank or a State or federal savings and loan association having a physical presence in Tennessee may be accepted by the Institution in lieu of a performance bond, subject to approval of the terms and conditions of said irrevocable letter of credit or certificate of deposit.

17.2 Bid bonds.

17.2.1 All bid bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the bid bond amount exceed five percent (5%) of the estimated value of the contract. Bid bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of bid bonds. Other forms of security to guarantee a bid bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a bid bond shall be approved by the Institution before they are accepted as security for the respondent's performance.

17.2.2 In addition to any applicable requirement of § 12-4-201, no contract for the services of a construction manager shall be awarded for any public work in this state by any city, county or state authority or any board of education unless there is posted at the time of the submittal of a bid for services by a construction manager a bid bond equal to ten percent (10%) of the value of the services proposed and the value of the work to be managed or may at the time of contracting provide payment and performance bonds in amounts equal to the combined monetary value of the services of the construction manager and the value of the work to be so managed. T.C.A. 62-6-129

17.3 Payment Bonds.

No contract shall be let for any public work by the Institution, until the contractor shall have first executed a good and solvent bond to the effect that the contractor will pay for all the labor and materials used by the contractor, or any immediate or remote subcontractor under the contractor, in such contract, in lawful money of the United States. The bond to be so given shall be for twenty-five percent (25%) of the contract price on all contracts in excess

of one hundred thousand dollars (\$100,000). Where advertisement is made, the condition of the bond shall be stated in the advertisement. T.C.A. 12-4-201.

17.4 Protest Bond

Refer to Section 9.3 above.

18.0 Council of Buyers

- 18.1. The Chancellor has established a Council of Buyers that is comprised of at least one (1) procurement representative and from each Institution and representatives from the TBR System Office appointed by the Chancellor.
- 18.2. 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 in the System, including affirmative action, Accessibility 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, 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 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 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. (Exhibit 3)
 - e) Any other matters referred to the Council by the Chancellor or designee.

19.0 Strategic Sourcing Group

- 19.1 The Strategic Sourcing Group, primarily a subset of the Council of Buyers, shall seek opportunities to improve system-wide efficiencies by leveraging the purchasing and sourcing resources across the entire TBR system. The Group shall seek the advice and input from key functional areas where

procurement and sourcing needs are often common and substantial in cost to acquire goods and/or services that are the most fiscally sound for the System.

- 19.2 The Group's activities shall include but not be limited to:
- a) Developing a framework of shared governance and accountability to ensure the system's approach to strategic sourcing is effective, responsive, and sustainable;
 - b) Establishing new collective agreements and enhancing existing agreements to ensure that procurements are in the best interest of the System.
 - c) Serving in an advisory capacity for system-wide agreements

20.0 Prohibited Transactions

- 20.1. No personal items shall be purchased through the institution or from funds of the institution for any employee of the institution or any relative of any employee.
- 20.2. No employee of an institution 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.
- 20.3. 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.

21.0 Procurement Manual

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

22.0 Exceptions

Any exceptions to the procedures outlined in this manual shall be subject to the approval of the Chancellor or designee shall be requested by the President or Director or his/her designee. Exceptions shall be made on a case-by-case basis and requested in writing. If an exception is made, a written determination signed by the Chancellor or his designee shall be included in the procurement file.

Exhibits:

- Exhibit 1 – Purchases from Small, Minority, Women, and Service-Disabled Businesses
- Exhibit 2 –
- Exhibit 3 –
- Exhibit 4 –

- Exhibit 5 –
- Exhibit 6 –
- Exhibit 7 –
- Exhibit 8 –
- Exhibit 9 –
- Exhibit 10 –
- Exhibit 11 –
- Exhibit 12 –
- Exhibit 13 –
- Exhibit 14 –

Links:

TBR Contracts Guideline, G-030
Approval of Agreements Policy,

