4.02.10.00 Purchasing Policy

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Policy/Guideline Area

Business and Finance Policies

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

To ensure efficiency, fairness, transparency and maximum level of competition in the procurement of goods and services for the Tennessee Board of Regents System. This policy includes the criteria and process for procurements conducted by Colleges governed by the Tennessee Board of Regents. It is not intended to cover all Tennessee Board of Regents policies and guidelines or all possible issues that may arise in the procurement process; rather, it is intended to provide a process for how to address procurement issues. Colleges are responsible for complying with all other relevant policies.

Definitions

The following definitions apply, unless the context otherwise requires:

- College – means any of the community colleges, colleges of applied technology and System Office departments within the Tennessee Board of Regents.
- System Office – the administrative offices of the Tennessee Board of Regents.
- “Aggrieved Respondent” means a respondent, who was not awarded a contract and claims their rights were infringed in connection with a solicitation or award by the Institution.

- “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 offices are closed, the next business day becomes the final calendar day.
- “Central Procurement Office” means the State office established and empowered by T.C.A § 4-56-104.
- “Chief Procurement Officer” means an official of the State as defined by T.C.A. § 4-56-104, the Associate Vice Chancellor for Procurement, Contracts & Payment Services of the System Office, or the senior procurement official of a College, as applicable.
- "Commodity Codes/Classes" means The National Institute of Government Purchasing (NIGP) commodity codes.
- “Contracting Party/Contractor” 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.
- “Debarment” means excluding a vendor from participation in procurements and/or contracts.
- “Emergency Purchase” means a purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- “Evaluation Team” means the committee comprised of persons who will evaluate specifications and responses to a RFP, RFI or ITB/RFQ. All persons serving on an evaluation committee shall be adequate to the scope and nature of the procurement.
- “Fully Executed Contract” means a signed contract that has been duly approved by all necessary State signatories as required by policies, procedures, and laws.
- “General Services Administration” means the procuring agency of the U.S. Federal Government.
- “Gift” means a voluntary transfer of goods and/or services to a College made gratuitously and without consideration.

- "Grant" means an award of funds to a College to provide financial or other assistance to an individual or organization in support of a legally authorized program. A “Grant” does not include an award whose primary purpose is to obtain goods, services, or construction, nor does it include any resulting contract that should be awarded through a competitive procurement process.
- “Immediate Family” means a spouse, parent, sibling or child.
- “College” means any institution governed by the Tennessee Board of Regents, including the System Office
- “Invitation to Bid (ITB)/Request for Quotation (RFQ)” means a procurement method where a contract is awarded to one or more bidders based on the lowest Responsive and Responsible bid 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, and discount allowed for prompt payment or other reason(s), transportation charges, and the date of delivery specified in the solicitation.
- “Notice of Intent to Award” means a College’s written notice to a bidder/proposer 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 failure of a bidder/proposer who submits a response to a solicitation to conform in all material respects to the solicitation’s requirements.
- “Proposal” means a Proposer’s response to a solicitation for goods and/or services.
- "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 College.
- “Proprietary Purchase” means the procurement of a good or service that is protected under trade secret, patent, trademark, or copyright law by a vendor having exclusive legal right to provide, manufacture, or sell the good or service.
- “Protest” means a written complaint filed by an Aggrieved Respondent in connection with a solicitation or award of a contract by the College.

- “Purchase Order” means a written or electronic document issued by the College’s Procurement Office to a supplier authorizing a purchase.
- “Registered Vendors List” means a list of potential bidders who have successfully completed the College’s vendor registration process.
- “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 Quotation.
- “Request for Proposals (RFP)” means a written solicitation for written proposals to provide goods or services to the College.
- “Respondent” means a person providing a written response to a solicitation.
- “Response” means a respondent’s written response to a solicitation.
- “Responsible Bidder/Proposer” means a vendor 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 Bidder/Proposer” means a person who has submitted a proposal which conforms in all material respects, to the terms of a solicitation.
- “Small Dollar Purchases” means the procurements of goods or services totaling less than the amount required for competitive bids.
- “Sole Source Purchase” means procurement of a good or service from a single uniquely qualified vendor.
- “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/Request for Quotation, a Request for Information, and a Request for Proposal.
- “Solicitation Coordinator” means the College's procurement professionals who acts as the primary point of contact and manages the procurement.
- "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.
- “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.
- “Supplier” means a person or legal entity who has the legal capacity to enter into contracts and who supplies goods or services to the College through a contract or a purchase order. A “Supplier” includes all persons or legal entities referenced as “vendors” in this policy.
- “TBR System Office” means the central administrative offices of the Tennessee Board of Regents.
- “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.

Policy/Guideline

I. Purchasing Authority

A. The authority to approve procurements of goods and services is delineated in TBR Policies.

II. General Procurement Policies

A. Procurement Generally

1. Procurements of goods or services shall be in compliance with all applicable federal and state requirements and TBR Policies and Guidelines.
2. All procurement of goods and services shall be based upon the principle of competitive bidding except when an alternate procurement method is justified in writing and approved by the appropriate authority, as required by TBR Policies.

3. A complete record shall be maintained of each procurement transaction to provide a clear audit trail.

B. Procurement Procedure

1. Procurement, Contracts & Payment Services, the Office of Business and Finance, and the Office of General Counsel shall maintain a procurement procedure, which may be in electronic format, setting forth all processes and procedures for the procurement of goods and services to ensure that all procurements are in compliance with federal and state laws, regulations, and all applicable TBR Policies and Guidelines.
2. All College procurements shall be in compliance with the procurement procedures.
3. Each College shall maintain a procurement policy, which may be in electronic format, setting forth any procedures of the College in addition to or necessary to comply with this Policy.

III. PCPS Council

A. The Chancellor has established a PCPS Council that shall be chaired by the Associate Vice Chancellor for Procurement, Contracts & Payment Services for the TBR System Office and shall be comprised of at least one (1) procurement representative from each college who shall be appointed by the Chancellor or designee.

B. The Council should meet quarterly, or at minimum semi-annually, or upon request of the Chancellor or designee.

C. The Council shall develop procurement initiatives, procedures and recommendations which shall be submitted to the Chancellor or designee, related to the following:

1. Development of uniform procedures, forms, and general conditions governing procurements which may be feasible and practicable for use by all Colleges.
2. Strategic sourcing initiatives to foster cooperation and cost savings efficiencies.
3. Consideration of the feasibility and advantages of term contracts for the System and of designation of certain Colleges as responsible procurement agents for specific materials, supplies, equipment, and/or services for the System.
4. Formulation of a uniform code of ethics for governing the professional conduct of employees responsible for procurement.
5. Any other matters referred to the Council by the Chancellor or designee.

IV. Exceptions

A. The Chancellor or designee may approve exceptions to the requirements of this Policy in appropriate cases.

Procedures

I. Introduction

A. The purpose of this section is to provide guidance and detailed procedures concerning procurement methods, administration, award and management. This applies to the Tennessee Board of Regents (TBR) System. For procurements that result in contract documents, TBR Contracts Guideline G-030 Contracts Guideline shall apply.

II. Code of Ethics

A. This Code of Ethics shall be applicable to all employees in the Tennessee Board of Regents System who are primarily responsible for the purchase of goods and/or services.

B. Employees must discharge their duties and responsibilities fairly and impartially.

C. Employees shall grant competitive bidders equal consideration, regard each transaction on its own merits, and foster and promote fair, ethical and legal trade practices.

D. 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.

III. Conflict of Interest

A. It shall be a breach of ethical standards for any employee, in the performance of their 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 their knowledge:

1. They, or any member of their immediate family has a substantial financial interest; or
2. a business or organization in which they or any member of their immediate family has a substantial financial interest as an officer, director, trustee, partner or employee, is a party; or
3. any other person, business, or organization with whom they or a member of their immediate family is negotiating or has an agreement concerning prospective employment is a party.

B. The determination of whether a substantial financial interest exists shall be based upon the criteria identified in Section VI.B.1. of TBR Policy 1.02.03.10 Conflict of Interest.

C. Direct or indirect participation shall include, but not be limited to, involvement through decision-making, 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.

IV. Purchasing Authority

A. Procurement of goods and services made in accordance with the process provided herein may be approved by Presidents of Colleges, with the following exceptions.

B. Except as provided in TBR Policies, the authority of the Presidents shall not include:

1. the purchase or lease of real property;
2. any purchase totaling more than $249,999.99 annually;
3. the purchase of insurance; or
4. purchases for capital outlay projects from any fund source whatsoever.
    a. Purchases as noted above, which are not within the authority of the President, require additional approval(s) by the TBR System Office, Fiscal Review, or the State Building Commission (SBC), etc. as appropriate.
    b. Submittal documentation required for procurements and contracts that require TBR System Office and/or Fiscal Review approval has been identified and provided by TBR's Procurement, Contracts & Payment Services Office

C. Purchase orders issued pursuant to purchase orders and/or contracts which have already received approval by the TBR System Office do not require additional submission to the TBR System Office when the purchase orders clearly specify the goods and services of the contracts or any approved amendments thereto.

1. This exception does not include purchase orders issued from University of Tennessee, State of Tennessee, General Services Administration (GSA)

or Cooperative contracts, unless notified otherwise by the TBR System Office.

D. Goods, Materials and Supplies

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

E. In any instance in this policy in which the Chancellor, President, Chief Business Officer, or Associate Vice Chancellor for Procurement, Contracts & Payment Services is specified to have approval authority, such officer may delegate the approval authority, as specified in TBR Policies to designees.

V. Procurements Generally

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

1. In cases where TBR policies and procedures do not address a specific procedure for purchase of a particular item, federal and state requirements will govern, as applicable.

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 Associate Vice Chancellor for Procurement, Contracts & Payment Services to ensure that the competitive bid process is fair and open. Required documentation related to competitive bidding shall be routed through the College's procurement/contracts office, prior to the purchase, to ensure compliance with applicable policies and guidelines.

3. No procurement shall be divided or split to circumvent the proper procurement process. For example, if seven items totaling $30,000 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 an estimate of total expenditures cannot be determined, but may exceed the bid threshold, a competitive process should be followed.

B. Purchases related to State of Tennessee Governor's Office of Business Initiatives and Development (GO-BID):

1. All Colleges, in accordance with state and federal law, shall actively promote and encourage participation in the bid process by small, minority, women, persons with disabilities, and service-disabled veteran owned businesses.as defined by the GO-BID Office.
2. Colleges shall encourage business to seek certification by the GO-BID, as applicable.

C. Limitations of Liability

1. The Chancellor, President, or their respective designee(s) may authorize the procurement of goods and services with a limitation of a contractor's liability.
2. Unless authorized by the Chancellor or the Chancellor's designee, no contract shall limit a contractor's liability to a College in an amount less than two (2) times the maximum liability, estimated liability, or maximum revenue of a contract.
3. A limitation of liability in a contract with a College shall not be permitted for the following:
    a. Liability for intellectual property or any other liability, including, without limitation, indemnification obligations for infringement of third-party intellectual property rights;

b. Claims covered by any specific provision in a contract with the College providing for liquidated damages; or

c. Claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

D. A limitation of liability included in a contract with a College shall not waive or limit the College's legal rights, sovereign immunity, or any other immunity from suit provided by law.

E. Notwithstanding the above, the Chancellor, President, or their respective designee(s) may authorize:

1. The acquisition of software for use restricted solely to academic teaching or research upon terms that may limit the contractor's liability or warranties in an amount less than two (2) times the maximum liability; provided, that in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct; and

2. The acquisition of software or services, materials, supplies and equipment for free or at nominal cost upon terms that may limit the contractor's liability or warranties in an amount less than two (2) times the maximum liability; provided, that in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct. T.C.A § 12-3-1210

F. The provisions of this Section V, are not required to be followed for contracts of adhesion; for such contracts, the provisions of G-030, Contracts of Adhesion, may be applied.

VI. Procurement Methods

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

1. Small Dollar Purchases. Colleges may make non-recurring purchases totaling less than $25,000, 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 College.

2. Informal Solicitations. Except as provided in Section 1. above for Small Dollar Purchases, Colleges may make purchases totaling less than $100,000 in expense or revenue, including renewal terms of multi-year awards, based upon written or electronic bids. Colleges shall solicit bids, by sending written documentation specifying the good and/or service being requested with detailed specifications, to at least three (3) Responsive/Responsible Bidders/Proposers. Informal bids do not require an original signature, and bids may be electronically transmitted. Complete file documentation shall be maintained, including documentation evidencing College's efforts to achieve competition.
3. Formal Solicitations. A formal solicitation process shall be used when the estimated aggregate total of the expense or revenue is $100,000 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 Registered Vendors List--whichever is less and to all that request the specific ITB/RFQ/RFP. The Associate Vice Chancellor for Procurement, Contracts & Payment Services must approve the use of less than fifteen (15) vendors. In addition, solicitations must be sent in a manner that verifies proof of delivery.
    a. The types of formal solicitations are provided below.
        (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.

(2) Invitation to Bid (ITB)/Request for Quotation (RFQ)

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

(b) 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:

(i) pest control;

(ii) security services;

(iii) moving and hauling;

(iv) refuse collections;

(v) charter services;

(vi) printing services, and

(vii) maintenance services

(c) At a minimum, Colleges shall use the ITB/RFQ Terms and Conditions provided by TBR's Procurement, Contracts & Payment Services Office.

(3) Request for Proposals (RFP).

(a) For competitive procurements of goods and/or services, where cost is not the only determining factor for award, an RFP using the Standard RFP Template provided by the

TBR Procurement, Contracts & Payment Services Office should be used.

(b) An RFP shall specify all steps and evaluation criteria as necessary to finalize selection of the successful proposer.

(c) A multi-step RFP process should be used when additional steps are necessary to qualify and/or demonstrate the goods and/or services proposed.

(4) Determining Type of Solicitation.

(a) For competitive procurement of goods, an ITB/RFQ is appropriate, and in general, a purchase order may be used to finalize the purchase.

(b) Except as permitted under Section VI.A.3.(2)(b), 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.

(c) For procurement of services which will require TBR System Office approval, the Standard RFP Format shall be used.

4. Reverse Auction. A reverse auction process allows for specified goods or services to be made electronically during a specified time period. When conditions are favorable, Colleges 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 the lowest Responsive and Responsible bidder.

5. Procurements Under Another State Entity’s Bid Process. Colleges 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 Colleges would be permitted to purchase under the process. Colleges may purchase goods or services using the competitive procurement process of the Central Procurement Office which do not so specify. Colleges are strongly encouraged to include language in its competitive processes to allow extension of the process for use by other TBR and/or UT institutions as well as state departments. This Section does not preclude Colleges from using a Statewide Contract as a bid in accordance with its competitive bidding process.

6. General Services Administration (GSA) Contracts. When a vendor maintains a GSA contract with the United States of America, or any agency thereof, the College's procurement office may directly negotiate with that vendor for the commodity/services provided for in the GSA contract. The price shall not be higher than that contained in the contract between GSA and the vendor affected.
7. State Manufactured Goods and Services. Colleges are required to purchase goods and services from other State Agencies, e.g. Department of Correction, Tennessee Rehabilitative Initiative in Correction (TRICOR), Tennessee Business Enterprises, and Community Rehabilitation Agencies (CMRA) / TRUST in Tennessee, whenever such items or services are available there from and meet the desired conditions and standards. Such contracts may be based upon non-competitive negotiation.
8. Procurements under Cooperatives. Pursuant to the Tennessee Interlocal Cooperation Act, T.C.A. § 12-9-101, Colleges may purchase goods and services through TBR System Office approved Cooperative Purchasing Agreements. The current approved list of TBR contracted cooperatives may be found at: TBR contracted Cooperatives.

9. Emergency Purchases. Colleges 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, or their designee, and file documentation of the circumstances of any such emergency shall be maintained. Emergency purchases must be made on a competitive basis and processed by the College's procurement office, if practicable.
10. Competitive Negotiation/Alternative Competitive Procurement Method.
    a. A competitive negotiation process may be used only in cases when the College is unable to obtain needed goods and/or services by a traditional competitive bid process. Reasons to use a competitive negotiation process include:
        (1) Public need will not permit the delay incident to the RFP process;
        (2) No acceptable proposals have been received after the RFP process;
        (3) Rates payable for the services are regulated by law;
        (4) Other circumstances as approved by the TBR System Office.
    b. The requesting party shall work with the College's procurement office to define the process to ensure the safeguarding of the information and provide fairness to the vendors in the process.
    c. Use of the competitive negotiation process requires prior approval of the Chancellor, President, or their designee.
    d. File documentation specific to each use of competitive negotiation shall be maintained.
11. Non-Competitive Procurements

a. 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.

b. Sole Source and Proprietary Purchases.

(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.

(2) Written justification for Sole Source or Proprietary Purchases must be submitted in writing for approval by the Chancellor, President or their designee. The TBR Justification for Non-Competitive Purchases and Contracts Form provided by the TBR Procurement, Contracts & Payment Services Office must be completed and approved by the TBR System Office (when applicable).

(3) In addition to the Justification for Non-Competitive Purchases and Contracts Form, the following additional documentation is 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 VI.A.11.b.(4) below.

(b) Letter(s) from business and industry which supports the purchase of a particular good or service as industry or business standard.

(c) A letter from the manufacturer specifying its 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.)

(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 with or compatible with, existing equipment, infrastructure, or operational assets in place;

(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, or their designee.

c. 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.

12. Special Purchase Categories

a. Purchases for Libraries:

(1) Each College shall be responsible for developing procurement policies and procedures for its library.

(2) Purchases of books, electronic or hard copy, are capital expenditures and can be made without formal bids or quotations.

(3) Purchases of electronic journals, subscriptions, and databases for libraries shall be procured through the College's procurement or contract office in instances when a competitive process can be used or when Fiscal Review Committee is required.

(4) In addition, any required electronic or written agreements to license journals, subscriptions, or databases shall be routed through the College's procurement or contracts office for review and approval prior to use.

(5) Appropriate documentation must be maintained for purchases to support Sole Source Purchase.

(6) Library purchases for electronic media are be subject to Accessibility Standards. (See Section XIV.)

b. Grant Purchases

(1) Purchases utilizing grant funding shall comply with the conditions of the grant and applicable state and federal guidelines and TBR Policies and Guidelines.

(2) State grant purchases for goods or services shall not be made from vendors on the State of Tennessee Debarred Vendors List, Local Units of Governments

(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 SAM.

(4) Grant purchases must follow competitive bidding requirements when the amount of the procurement warrants competitive bidding.

c. Utility Contracts

(1) Colleges shall purchase or contract for all telephone, internet, 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 College deems to be in the best interest of the State of Tennessee.

(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 Procurements.

13. Gifts. Gifts do not require a procurement process subject to this policy. See TBR Policy 4.01.04.00 Solicitation and Acceptance of Gifts.

14. Outsourcing. Colleges 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, 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/College.

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.

VII. Procurement Processes

A. Initiating a Purchase

1. A Purchase Requisition or other appropriate documentation may be used by a College department to request the Procurement Office procure a

given good and/or service. All purchase requisitions/requests require sufficient detail, as specified by the College's Procurement Office, to allow the proper processing to acquire the good and/or service (e.g. quantity, description, vendor, delivery instructions, etc.).

2. Purchase requisitions/requests will result in one of the following:
    a. Purchase Order
    b. Contract
    c. Procurement Card Purchase
    d. Competitive Solicitation

B. Purchase Order

1. A purchase order means a written or electronic document issued by the College'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 College and Supplier. Delivery by the Supplier constitutes acceptance of the purchase order. Colleges shall use the standard PO Terms and Conditions provided by the TBR Procurement, Contracts & Payment Services Office.

C. Contract

1. A contract is a written agreement which conforms to TBR Guideline G-030 Contracts Guideline.

D. Procurement Card Purchase

1. A procurement card purchase is an acquisition of goods and/or services using a payment method whereby purchasers 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. Procurement card purchases are subject

to the requirements of the College's/TBR Policy 4:02:10:10 Procurement Card Policy and applicable state laws.

E. Competitive Solicitations

1. 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 (RFQ/ITB) 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.

   a. 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:

      (1) Determine appropriate method of procurement, i.e., ITB/RFQ/RFP, based upon nature and scope of deliverables being purchased;

      (2) Estimate expected total expenditure or revenue;

      (3) Confirm availability of funds for expenditure;

      (4) Evaluate historical spending trends for the same or similar items;

      (5) Draft open specifications using available information sources;

      (6) 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.

      (7) Identify existing equipment, if any, as trade-ins;

      (8) Define timeline for receipt of deliverables;

(9) 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.

(10) Identify prospective vendors.

(11) If grant funded, consideration for supply chain timelines that conform to grant spend and receipt deadlines.

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

(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.

(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*. A descriptive format consists of a conventional listing or paragraph text description of specification data and should; if practicable:

(i) Identify 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*.

(i) 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.

(ii) 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.

(iii) 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*. Colleges 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 College 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 College.

(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, 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. Colleges 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 Colleges 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.* 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, or designee shall have the authority to waive this requirement. For applicable procurements, whenever a College 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.

c. Drafting the Solicitation. The College'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:

(1) The required sole point of contact from the College;

(2) The time and place that bids will be received and opened;

(3) Information describing the purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired;

(4) The quantity of goods or services required;

(5) 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;

(6) Expected time of delivery;

(7) Amount of insurance, bid or performance bond, if any;

(8) Pro-forma contract, if applicable, containing the terms and conditions required by the College;

(9) Description of the criteria used to evaluate bids/proposals;

(10) Date bids/proposals will be available for public inspection;

(11) 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 colleges; and

(12) Standard terms and conditions applicable to the solicitation.

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

(1) If the estimated amount of the purchase (or revenue) is $25,000 but less than $100,000, written or electronic bids must be solicited from at least three (3) qualified vendors.

(2) If the estimated amount of the purchase (or revenue) is $100,000 or more, written sealed bids must be solicited from fifteen (15) vendors or the number of vendors on the Registered Vendors List--whichever is less and to all that request the specific Solicitation. The College's Procurement Officer must approve the solicitation of less than 15 bids.

(3) 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.

(4) An ITB/RFQ for goods and services must be sent at least fourteen (14) days (10 days when all vendors are local vendors) before the date that the bids are scheduled to be opened. The College's Procurement Officer may approve a shorter number of days or electronic informal bids, as applicable.

(5) 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:

(a) Banking and other financial services;

(b) Bookstore and food services operations;

(c) Custom software, SAAS solutions, and/or IT system services;

(d) Advertising management services, and

(e) Any other bid for which the additional time is appropriate.

(6) 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 College.

e. Communication with Bidders/Proposers. When specified in the solicitation document, all bidders shall communicate only with the procurement Solicitation Coordinator. Failure of the bidder to communicate with the procurement Solicitation Coordinator 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.

f. 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 College'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 College may elect to cancel the solicitation and reissue it based upon a revised solicitation document.

g. 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.

h. Vendor's Information on Bid. Each bid should include the full name and business address of the bidder as well as the solicitation number on the submittal. 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.

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

j. Bid Withdrawal, Revision, and Rejection.

(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.

(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 College may initiate negotiations which serve to alter the bid/proposal in a way favorable to the College. 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.

(3) Bid Rejection.

(a) All bids shall be subject to rejection by the Chancellor or designee, or President or designee.

(b) Any proposal that restricts the rights of the College 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 College 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 College of other State Agency, or a determination that proceeding with the procurement would be detrimental to the best interests of the College, the reason for which must be documented and approved by the Chancellor, President, 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.

k. Acceptance of Bids/No Rights Created.

(1) 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 Fully Executed Contract is issued.

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

(1) When more than one item is specified in the bid, the College 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.

(2) 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.

m. Evaluation of Bids Received in Response to an RFP.

(1) 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.

(2) 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.

(3) Compliance with the mandatory RFP requirements shall be determined by the Solicitation Coordinator in consultation with the Chief Business Officer or designee.

(4) 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. Members of the Evaluation Team must complete an RFP Evaluator Conflicts of Interests and Confidentiality Statement

(5) 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. When procurement related solicitations are conducted, the Procurement Department representation shall not be the same as the Solicitation Coordinator for the specific procurement in question.

(6) Any technical offers shall be evaluated based on the criteria of the RFP and other information learned during the technical evaluation process.

(7) 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 College.

(8) 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.

(9) 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 or highest revenue bidder receiving the highest score and remaining proposers receiving a pro-rated score thereafter.

n. Site Visits and Presentations.

(1) 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.

o. Tied Responses – Resolution.

(1) 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 T.C.A. § 12-3-1113(c)(2), a “Tennessee Bidder” means a business that is:

(i) Incorporated in this State;

(ii) Has its principal place of business in this State; or

(iii) Has an established physical presence in this State.

(b) Second preference shall be given to the bidder who was the low bidder on other items being bid for the same requisition.

(c) Third preference shall be given to the bidder who offers the best delivery.

(d) If a tie remains, it shall be broken by lot or coin toss.

p. Notice of Intent to Award.

(1) For RFPs and applicable ITB/RFQs, a notice of intent to award shall be sent to all responsive and Responsible Bidder/Proposers containing, at a minimum, the content provided by the TBR System Office.

q. Alternate Bids.

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

r. 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.

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

(1) Documentation from the requesting department

(2) A copy of the ITB/RFQ/RFP issued (including specifications),

(3) A list of vendors for the solicitation, including the date vendors were sent the ITB/RFQ/RFP and bidders actions,

(4) For RFPs and applicable ITBs/RFQs, any pre-bid questions/responses or addendums to the ITB/RFQ/RFP,

(5) Any vendor correspondence (i.e. intent to propose letters, questions, clarifications, etc.),

(6) 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,

(7) The award notice

(8) As applicable, any documentation that warrants a re-bid of the ITBs/RFQ/RFP,

(9) Any informal bid complaints and the respective responses/actions,

(10) Any formal bid protests,

(11) As applicable, copies of intent to award letters,

(12) Purchase order and/or contract or respective reference information, and

(13) And any other documentation applicable to the procurement.

F. Exemptions

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

a. Utility bills, including connection fees

b. Freight charges

c. Postage charges

d. Notary public fees

e. Fees in connection with titles or title searches

f. Vehicle rental while on approved travel

g. Tuition, fees, and supplies for state employees

h. Emergency medical expenses

i. Service charges

j. fuel surcharges

k. tariff surcharges

VIII. Protested Bids

A. Right to Protest.

1. Protest procedures shall be included, or a link thereto, in all ITBs/RFQs/RFPs.
2. An Aggrieved Respondent 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 College's Procurement Office no later than the close of business of the seventh Calendar Day.
3. The following are the sole grounds for a protest:
    a. The contract award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the awarding entity;
    b. The procurement process violated a constitutional, statutory, or regulatory provision;
    c. The awarding entity failed to adhere to the rules of the procurement as set forth in the solicitation and this failure materially affected the contract award;
    d. The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; and
    e. The contract award resulted from a technical or mathematical error during the evaluation process.

Any issues not raised by the protesting party after the seven (7) Calendar Day period shall not be considered as part of the protest

4. Any objections to solicitation terms that are raised only after award or notice of intent to award, when the issue was apparent earlier in the process, will not be considered.
5. Protests shall include the required bond, as specified in Section VIII.C, below. Protests received which do not include the required bond shall not

be considered. A sample protest bond may be supplied to the Protesting Party by the College upon their request.

B. Signature on Protest Constitutes Certificate.

1. A protest must be signed by an authorized company representative, who certifies that they have 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.
2. If the protest is submitted in violation of any provisions of this Section VIII.B, appropriate sanctions, which may include removal from future bid opportunities and forfeiture of the protest bond, may be imposed.

C. Protest Bond

1. The protesting party shall post, with the Chief Procurement Officer of the College, at the time of filing a notice of protest, a bond payable to the College 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 College and shall be immediately payable to the College conditioned upon a decision by the Chief Financial Officer or designee that:
   a. A violation of Section VIII.B.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.

2. The College shall hold such protest bond for at least eleven (11) Calendar Days after the date of the final determination by the Chief Financial Officer.
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, persons with disabilities 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 College as required in Section VIII.C.1. within five (5) Calendar Days of the determination.
4. Authority to Resolve Protest.
    a. The College’s Chief Procurement Officer has the authority to resolve the protest. If deemed necessary, the College’s Chief Procurement Officer may request a meeting with the protesting party to seek clarification of the protest issues.
    b. The final determination of the College’s Chief Procurement Officer shall be given in writing and submitted to the protesting party.

c. The protesting party may request that the final determination of the College's Chief Procurement Officer be considered by the College's Chief Financial Officer. The request for consideration shall be made in writing to, and received by, the College's Chief Financial Officer within seven (7) Calendar Days from the date of the final determination by the College's Chief Procurement Officer.

d. The College's Chief Financial Officer has the authority to review and resolve the protest. If deemed necessary, the College's Chief Financial Officer may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the College's Chief Financial Officer shall be given in writing and submitted to the protesting party.

e. The protesting party may request that the final determination of the College's Chief Financial Officer be considered by the Chief Executive Officer, or President of the College. The request for consideration shall be made in writing to, and received by, the Chief Executive Officer or President within seven (7) Calendar Days from the date of the final determination by the College's Chief Financial Officer.

f. The College shall have no longer than sixty (60) Calendar Days from receipt of the protest to resolve the protest.

g. The protesting party may request that the final determination of the President 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.

h. The determination of the Chancellor or designee is final and shall be given in writing and submitted to the protestor.

i. Should the College 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.

5. Stay of Award

a. Prior to the award of a contract, a proposer who has protested may submit to the College's Chief Procurement Officer a written petition for stay of award. Such stay shall become effective upon receipt by the College's Chief Procurement Officer.

b. The College'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 College'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 College.

IX. Reports

A. Reports shall be submitted to the TBR System Office as follows:

1. Small/Minority/Women/Persons with Disabilities, Veteran-Owned Business Report. This quarterly report, required by T.C.A. § 12-3-1107, consists of transactions with minority-owned, women-owned, small, persons with disabilities owned, and service disabled veteran-owned businesses shall be reported to the TBR Procurement, Contracts & Payment Services Office on a quarterly basis (January March, April June, July-September, and October December). A comprehensive report is submitted to GO-BID.

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 Procurement, Contracts & Payment Services Office. A comprehensive report is then submitted to the State's Fiscal Review Committee.

3. GO-BID Spend Report. This quarterly report consists of contracts/purchase orders issued from the College and pursuant to T.C.A. § 12-3-1107 and shall be reported to the TBR Procurement, Contracts & Payment Office. A comprehensive report is then submitted to GO-BID.
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 request includes all contracts currently active. This shall be reported to the TBR Procurement, Contracts Payment Services Office. A comprehensive report is then submitted by the TBR Business Office to the Senate Finance, Ways and Means Committee.
5. House and Senate, Finance Ways and Means Grant Reports. These annual reports consist of all grants that have been disbursed by the Colleges. This shall be reported to the TBR Procurement, Contracts & Payment Services Office. A comprehensive report is then submitted by the TBR Business Office to the House and Senate Finance, Ways and Means Committees.
6. Foreign Investment Act Report – This annual report consists of a list of contracts entered into with foreign sources during the previous fiscal year, singly or in the aggregate, at more than $10,000. This shall be reported to the TBR Procurement, Contracts & Payments Service Office. A comprehensive report is then submitted to the Comptroller of the Treasury.

7. Drones Report. This annual report consists of a list of drones procured by the Colleges. This shall be reported to the TBR Procurement, Contracts & Payments Service Office. A comprehensive report is then submitted to the State of Tennessee, Department of Risk Management.

X. Vendors

A. Vendor Registration. The TBR System Office shall maintain a unified, system-wide process governing vendor registration to: (1) ensure consistent standards and the coordinated management of vendor information and approvals across all Colleges, and (2) alleviating vendors from having to register with each indiv. The System Office shall administer and oversee the eprocurement online vendor registration system, which shall serve as the official platform for all vendor registrations with the TBR System Office and the Colleges.

1. The eprocurement online vendor registration system shall enable the College to generate a list of vendors who have registered to provide specific commodity classes.
2. The System Office and Colleges may require the vendor to submit additional information (other than information required in the vendor registration or vendor application process) which demonstrates its ability to provide certain goods or services prior to inclusion on the list of vendors.

B. Tennessee Statutory Vendor Requirements/Registration

1. Illegal Immigrants
   a. No person may enter into a contract to supply goods or services to the College 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. T.C.A. § 50-1-103.

2. Sales and Use Tax
    a. No person may enter into a contract to supply goods or services to an entity without first registering registered or receiving an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. T.C.A. § 67-6-601–608.
3. Pursuant to T.C.A §§ 62-6-101 et seq., construction bids with an estimated total of $25,000 or greater require bidders to provide its TN contractor's licensure information, including classification and date of expiration with its bid response.

C. Removal from Vendors List
1. Vendors who fail to provide adequate goods and/or services may be removed from the vendors list.
2. Reported failure to comply with bids, awards, and/or orders, etc. shall be documented and maintained.
3. Examples of failure to comply include but are not limited to:
    a. Over, under and/or late shipments;
    b. Failure to ship;
    c. Damaged and/or defective products;
    d. Shipments not in conformance with specifications;
    e. Unauthorized substitutions.
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.

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 College.

XI. Receiving

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

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

a. 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.

(1) 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 college shipments.

(2) 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 College must provide shipment protection for the College’s interest.

b. 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 College’s copy of the Purchase Order may be used to verify goods or services received.

c. Shipping Documents. Upon delivery, the College shall:

(1) Verify that the shipping documentation names the College as the actual consignee and that the number of cartons, crates, etc., listed is the same as the amount received.

(2) 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.

(3) Sign the freight bill and retain a copy for College's records. The notation "SUBJECT TO FURTHER INSPECTION" may accompany the College or central receiving's signature.

(4) 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 College's eProcurement system.

(5) 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.

(6) All receiving records should indicate the quantity and date received and any other information pertinent to the receiving process.

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

XII. Contract Monitoring

A. Service Contracts. All service contracts shall contain a provision that states that the contractor's activities shall be subject to monitoring by the College and/or state officials. These contract types include, but are not limited to:
   1. Personal Service
   2. Professional Service
   3. Software Related Agreements
   4. Grants, including subcontracts
   5. Memorandums of Understanding

B. Monitoring Plan. Colleges shall maintain a monitoring plan (template provided by TBR Contracts & Reporting) for all service contracts to ensure the following:
   1. Contract performance in terms of progress and compliance with contract provisions;
   2. Communication with Contractor to ensure maximum performance and intended results;
   3. Financial obligations of the College do not exceed the contract amounts;
   4. Deliverables are received;
   5. Appropriate approval and remittance of payments for acceptable work are in accordance with contract provisions and applicable law;
   6. Maintenance of records for each contract that documents activities such as procurement, management, and sub-recipient monitoring, if applicable; and
   7. Evaluation of contract results in terms of the achievement of organizational objectives.

C. 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 college internal controls and audit procedures.

XIII. Surplus Property

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

B. Disposal of such property must be in accordance with TBR Policy No. 4.02.20.00 Disposal of Surplus Personal Property.

XIV. Accessibility Compliance

A. Colleges 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.

B. Colleges shall include language in applicable procurements that the products/services, including any updates, provided to the College will meet the accessibility standards set forth in WCAG 2.1 AA and EPub 3, where applicable.

C. In accordance with the Department of Justice 28 CFR Part 35, Docket No. 144, AG Order No. 5919-2024, vendors shall verify accessibility by completing the Vendor Product Accessibility Statement and Documentation Form. If the vendor is not compliant with the aforementioned accessibility standards, the vendor shall describe by using the Accessibility Conformance and Remediation Form its plan for product/service compliance.

D. Alternate Access plan or sign an exception to accept risk and liability.

XV. Fiscal Review

A. 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:

1. Contracts that are non-competitive; and

2. Contracts that have the potential of being for a period of more than one year; and
3. Contracts that exceed $250,000 in total value (including all potential renewals)

B. For all procurements/contracts that meet these criteria, the College shall work with the TBR System Office to produce/coordinate the documentation required for Committee submittal/review. The TBR Procurement, Contracts & Payment Services Office will submit the documentation on behalf of the College.

XVI. Bonds

A. Performance Bonds

1. The College may require a bond to secure a Contracting Party's performance of a contract.
2. 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.
3. All bonds must be filed with the College 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.
4. An irrevocable letter of credit or a certificate of deposit, which shall be held by the College 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 College in lieu of a performance bond, subject to approval of the terms and conditions of said irrevocable letter of credit or certificate of deposit.

B. Bid bonds.

1. A bid bond is a surety bond issued by an insurance company, bank, or other financial institution, to ensure that the winning proposer will enter into a contract.
2. 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.
3. Bid bonds submitted by unsuccessful Respondents shall be returned upon contract award.
4. Personal checks shall not be accepted in the place of bid bonds.
5. 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.
6. The terms and conditions of all forms of security to guarantee a bid bond shall be approved by the College before they are accepted as security for the Respondent's performance.
7. In addition to any applicable requirement of T.C.A. § 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.

C. Payment Bonds

1. A payment bond is a good and solvent bond to ensure that the contractor will pay for all the labor and materials used by the contractor, or any subcontractor under the contractor, in such contract.
2. No College shall award any contract in excess of $100,000.00 for public work until a payment bond of twenty-five percent (25%) of the contract price is provided by the contractor to the College.
3. Where advertisement is made, the solicitation shall include the bond requirement. T.C.A. § 12-4-201.

D. Protest Bond - Refer to Section VIII. C., above.

XVII. Prohibited Transactions

A. Employees may not personally purchase goods or services and then seek reimbursement when the purchase requires acceptance of terms and conditions by the employee. Acceptance of terms includes, but is not limited to:

(1) Impermissible terms included in a quote
(2) Links to terms and conditions where language indicates that completing the purchase constitutes acceptance
(3) Click-through agreements or online terms
(4) An employee's signature on terms and conditions

All College purchases that include any terms and conditions must be reviewed and approved by the Procurement and/or Contracts Office prior to purchase. Failure to follow this process will result in the employee being ineligible for reimbursement.

B. No personal items shall be purchased through the College or from funds of the College for any employee of the College or any Immediate Family of any employee.

C. No employee of a College responsible for initiating or approving requisitions shall personally 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 any promise, obligation or contract for future awards or compensation.

D. Whenever any procurement or contract is awarded contrary to the provisions of TBR 4.02.10.00 Purchasing Policy, the purchase/contract may be void and of no effect, and if the violation was intentional, the employee responsible for the purchase may result in disciplinary proceedings under TBR and College policy. TBR Policy 1.02.03.10 Conflict of Interest.

XVIII. Procurement Policy

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

XIX. Exceptions

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

Exhibits

For Exhibits, click the Attachments button at the top right of the page.

Sources

Authority

T.C.A. § 49-8-203; All State and Federal statutes, codes, Acts, rules and regulations referenced in this policy.

History

TBR Meetings, March 5, 1976; June 30, 1978; December 12, 1980; September 18, 1981; June 25, 1982; September 30, 1983; September 20, 1985 ; December 4, 1987; June 24, 1988; June 30, 1989; September 22, 1989; September 21, 1990; June 28, 1991; June 25, 1993; September 23, 1994; September 20, 1996, March 7, 1997, December 5, 1997; March 27, 1998, December 4, 1998; June 28, 2002; June 27, 2003, April 2, 2004; September 30, 2005; December 8, 2006; March 30, 2007; June 29, 2007; September 28, 2007; March 28, 2008; December 4, 2008; June 19, 2009; TBR Board Meeting September 25, 2009. Revisions to Exhibits: 9/13. March 30, 2016: Complete policy revision and renaming (changed from Purchasing Policies and Procedures); Sept. 2018 ministerial revisions due to FOCUS Act and policy & guideline revamp, and deletion of Guideline B-120; Revision approved December 1, 2022, Board Meeting; Ministerial change December 9, 2022; Ministerial changes September 12, 2023; Ministerial changes February 14, 2025; Board approved revision June 12, 2026 (effective July 1, 2026); Ministerial changes July 30, 2026.

Related Polices

4.02.01.00 Approvals of Agreements and Contracts (formerly 1:03:02:10)

4.02.20.00 Disposal of Surplus Personal Property