



631 Procurement and Contract Standards

Approved by President

Sidney A. McPhee, President

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Responsible Division: Business and Finance

Responsible Office: Administrative and Business Services

Responsible Officer: Assistant Vice President, Administrative and Business Services

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I. Purpose

This policy establishes the criteria and process for execution of procurements for Middle Tennessee State University (MTSU or University) and is not intended to cover all State of Tennessee policies and guidelines, or all possible issues that may arise while reviewing purchases or contracts. Rather, it is intended to give a general process for how to address purchasing issues. This policy is subject to regular update, revision, and improvement.

II. Procurement Logistic Services

- A. For purposes of efficiency in administration and management, the responsibilities for the purchasing of supplies, materials, services and equipment from outside vendors for all University departments has been centralized in Procurement Logistic Services. The operation of Procurement Logistic Services is designed to relieve the faculty and other staff of most of the details connected with procurement, except in instances of supplies and/or services costing less than Twenty-five thousand dollars (\$25,000.00).
 1. The procedures set forth herein are applicable in all cases where the expenditure is from funds administered by the University regardless of whether the funds arise from State or federal appropriations, student fees, gifts, grants, endowments, research, contracts, or other fund sources.
 2. In cases where University policies and procedures do not address a specific procedure for purchase of a particular item or service, federal and State requirements shall govern, as applicable.
 3. All purchases shall be based upon the principle of competitive bidding, except as may be otherwise provided herein. It is the responsibility of the Chief Procurement Officer to ensure that the competitive bid process is fair and open. Required documentation related to competitive bidding shall be routed through Procurement Logistic Services prior to the purchase to ensure compliance with applicable policies.
 4. Special or unusual procurement problems should be brought to the attention of the Chief Procurement Officer who is authorized to approve special exceptions or establish special procedures where necessary.
 5. Electronic Signatures. An Electronic Signature shall be a valid form of signature, provided that the signatory has authority for its affixation to any procurement, bid document, or contract for which a signature is required. See [Policy 940 Use of Electronic Signatures](#).
- B. The general responsibilities and functions of Procurement Logistic Services are as follows:
 1. Except as otherwise provided by these procedures or applicable law, the purchase of supplies, materials, equipment, and services related thereto for the various departments of the University in such a manner that maximum value is obtained for every dollar spent, and to insure that qualified suppliers are given equal opportunity to participate in furnishing University requirements.
 2. To expedite the delivery of materials to meet the requirements of the using department, when so requested.

3. To handle complaints, claims, and adjustments, and to negotiate for the return of material or arrange for other settlements.
4. To conduct correspondence with suppliers relating to quotations and purchase orders.
5. To set up standard specifications for materials and supplies commonly used by the University.
6. To consolidate purchases wherever possible and thus leverage quantity discounts for such volume purchases.
7. To dispose of all materials which have been declared surplus or obsolete by heads of departments and/or other administrators.
8. To furnish, upon request, prices or estimates of cost of materials, services, and supplies to departments.
9. Providing necessary guidance, determinations, and interpretations as required by this policy or applicable law.
10. Providing procedural direction governing procurements/contracts for goods and services in accordance with this policy or applicable law.
11. Providing guidelines for drafting procurement/contract documents in accordance with this policy or applicable law.
12. Resolving protests of aggrieved respondents.
13. Promulgating and implementing [Policy 630 Procurement and Contract Policy](#) as approved by the President or designee, and by the Board of Trustees.
14. Performing such other duties and responsibilities as prescribed by this policy or applicable law.

- C. The President's designee for Procurement herein referred to shall mean the Chief Procurement Officer of Procurement Logistic Services.

III. Contract Office

The Contract Office provides assistance and expertise in drafting and negotiating contracts that require an authorized University signature. The Contract Office [website](#) has numerous contract templates to assist departments in preparing contracts for processing through MT\$ource. All contracts requiring an authorized University signature will be submitted through MT\$ource using the Contract Office Requisition form. Instructions for correct submittal are located on the form. See Contract Office [website](#) for additional information and resources.

IV. Definitions

- A. Aggrieved Respondent. A respondent who has submitted a proposal response/bid, but was not awarded a contract and claims his/her rights were infringed in connection with a solicitation or award by Procurement Logistic Services.
- B. Award. The final step which completes the procurement process by issuance of a purchase order or execution of a contract.
- C. Bid. A response by a vendor to an invitation to bid.

- D. Bidding. A written formal or informal bid submittal. Informal bids may be either recorded as verbal, telephone quotations, or online electronic bids. Formal sealed bids are submitted in response to an Invitation to Bid or a Request for Proposal issued by Procurement Logistic Services. Formal bids must be submitted or mailed to the Procurement Logistic Services office in a sealed envelope and must arrive before the date and time indicated on the bid document. If a vendor is registered on the Procurement Registered Vendors List then the vendor shall submit the bid online as an electronic bid through the eProcurement bidding module, and the bid will be deposited into a lockbox which cannot be opened until the date and time indicated on the bid, except as otherwise provided herein.
- E. Calendar Day. All days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday, or other day that University offices are closed, the next business day shall be the final calendar day.
- F. Chief Procurement Officer. The University official delegated responsibility for conducting and entering into procurement contracts on behalf of the University.
- G. Competitive Sealed Proposal. A procurement method in which all proposals are submitted and reviewed at a predetermined time and place in accordance with the terms of a solicitation.
- H. Contract. A duly authorized and legally binding written agreement by and between the University and any person or entity with the independent legal capacity to contract. Whether a document is called an agreement, contract, memorandum of agreement, memorandum of understanding, terms and conditions, purchase order, or other name, it is subject to the requirements of this policy. A contract shall identify all parties and clearly and explicitly state the purpose of the agreement and the rights and duties of each party.
- I. Delegated Purchase Authority (DPA). A written document, approved in accordance with [Policy 630 Procurement and Contract Policy](#), that authorizes a department to procure goods or services, within specified parameters, on behalf of the University.
- J. Department. The departments or entities of the University which make requisitions for, or procure, goods, or services.
- K. Emergency Purchase. A purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- L. Fully Executed. A contract that has been duly approved as evidenced by the affixation of all signatures, including electronic signatures, necessary to make the contract legally binding.
- M. Goods. 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.
- N. Grant. Any grant of money awarded to the University, for the furnishing by the University of assistance, whether financial or otherwise, to any person or entity to support a program. 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.
- O. Grantee or Grant Recipient. The person or entity awarded a grant.
- P. Interagency Agreement. An agreement between two State entities 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 entities.
- Q. Invitation to Bid (ITB). A procurement method where an award is made to one or more bidders.

- R. MT\$ource. The University's eProcurement application designed to improve purchasing activities of the University community. MT\$ource provides online shoppers/requesters: access to numerous supplier electronic catalogs configured with contract pricing; offers shoppers/requesters an opportunity to do comparison shopping for competitive pricing; allows shoppers/requesters the ability to leverage their purchasing needs against bids, grants and contracts; helps expedite procurement activities by reducing paper-based transactions and replacing them with electronic requisitions and purchase orders.
- S. Minority-Owned Business. A continuing, independent, for-profit business which performs a commercially useful function and is at least fifty-one percent (51%) owned and controlled by one or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background in accordance with the provisions of T.C.A § 12-3-1102.
- T. Notice of Intent to Award. A written notice by Procurement Logistic Services to a respondent of a solicitation that the evaluation is complete, that names the apparently successful respondent for award, and states that the procurement file is open for public inspection.
- U. Non-responsive. A person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.
- V. Performance Bond. A surety bond issued by an insurance company or bank to secure a contracting party's performance of a contract.
- W. Procurement. The act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by this policy. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation, and award of a purchase order/contract.
- X. Procurement Card (PCard) Purchase. An acquisition of goods/supplies or services using a payment method whereby internal customers (requesters) are empowered to deal directly with suppliers for purchases using a credit card issued by a bank or major credit card provider. A pre-established credit limit is established for each card issued.
- Y. Procurement Logistic Services. The office established by the University and empowered by the President to conduct purchasing activities for the campus.
- Z. Proposal. A proposer's response to a solicitation for goods or services.
- AA. Proposal Bond. A surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into an award.
- BB. Proposer. Any person or legal entity with the legal capacity to enter into contracts who responds to a written solicitation for goods or services issued by Procurement Logistic Services.
- CC. Proprietary. 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.
- DD. Proprietary Procurement. 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.
- EE. Protest. A written complaint filed by an aggrieved party in connection with a solicitation or award of a purchase order/contract by the Procurement Logistic Services office.
- FF. Purchase Order. A written or electronic document issued by the Procurement Logistic Services 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 University and supplier. Delivery by the supplier constitutes acceptance of the purchase order.

- GG. Request for Information. 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 Proposal or a Request for Qualifications.
- HH. Request for Proposals. A written solicitation for written proposals to provide goods or services to the University.
- II. Response. A written response to a solicitation for goods or services.
- JJ. Responsible Proposer or Bidder. A person who has the capacity in all material respects to perform fully the bid requirements, and the integrity and reliability that will assure good faith performance.
- KK. Responsive Proposer or Bidder. A person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.
- LL. Revenue Contract. A written contract obligating the University to provide specific deliverable services for monetary compensation.
- MM. Sealed Proposal. A respondent's proposal, which is delivered to the Procurement Logistic Services office in a sealed envelope, in response to a solicitation.
- NN. Services. All personal, professional, and consulting services procured by the University and formalized by a contract.
- OO. Small Business. A business which is independently owned and operated, in accordance with the provisions of T.C.A § 12-3-1102, and is not dominant in its field of operation.
- PP. Sole Source Procurement. A procurement for which only one vendor possesses the unique and singularly available capability to meet the requirements of the solicitation, such as technical qualifications, or services from a public utility or a situation in which a particular supplier or person is identified as the only qualified source available to a requisitioning department.
- QQ. Solicitation. A written document that facilitates the award for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, and a Request for Proposals.
- RR. Specification. 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.
- SS. State. The State of Tennessee, including its departments, agencies, and entities that fall under its purview.
- TT. State Agency. The departments, agencies, and entities of the State of Tennessee.
- UU. State Architect. The person who oversees the Office of the State Architect.
- VV. Statewide Contract. A contract for goods or services established by the Chief Procurement Officer of the State of Tennessee that may be used by local governments, state agencies including higher education, and not-for-profit entities.
- WW. Tennessee Service Disabled Veteran. Any person who served honorably on active duty in the Armed Forces of the United States with at least a twenty percent (20%) disability that is service-connected, meaning that such disability was incurred or aggravated in the line of duty in the active military.

- XX. Tennessee Service Disabled Veteran Owned Business. A service-disabled veteran owned business that is a continuing, independent, for-profit business located in the State of Tennessee that performs a commercially useful function. T.C.A. §12-3-1102.
- YY. Term Contract. 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.
- ZZ. University. Middle Tennessee State University.
- AAA. Vendor. A person or legal entity with the legal capacity to enter into contracts, to sue and be sued, and who provides goods or services to the University through a purchase order/contract.
- BBB. Woman-Owned Business. A woman-owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one or more women and whose management and daily business operations are under the control of one or more women in accordance with the provisions of T.C.A § 12-3-1102.

V. General Standards Regarding Procurement

- A. Signature Requirements. University policy concerning signature authority ([Policy 600 Approval of Agreements - Delegation of Authority/Signature Authorization](#)) for financial commitments provides that no employee of the University has the authority to make any purchase commitment, enter into any contract for materials, supplies, or services or otherwise take action with respect to third parties which may be construed as financially binding the University except through specified University processes and procedures under the authority of the President or designee. In the absence of special arrangements to the contrary, Procurement Logistic Services will receive all bids and enter into all negotiations with suppliers except as noted in Section V.E.14. T.C.A. § 12-3-304.
- B. Unauthorized Contracts Void — Personal Liability of Officers. T.C.A. § 12-3-304.
1. Whenever any University department shall purchase supplies, materials, or equipment, or contract for services, any contract for the purchase of such supplies, materials, equipment, or services contrary to provisions of State law, University policy, or procedures, shall be void and of no effect.
 2. Whenever Procurement Logistic Services shall contract for the purchase of any supplies, materials, or equipment, or for any services contrary to the requirements of State law, University policy, or procedures, such contract shall also be void and of no effect.
 3. If any University department, including Procurement Logistic Services, purchases any supplies, materials, or equipment contrary to the requirements of State law, University policy, or procedures, the head of such department or of Procurement Logistic Services, as applicable, shall be personally liable for the costs thereof, and if such supplies, materials, or equipment are so unlawfully purchased and paid for out of State money, the amount thereof may be recovered in the name of the State in an appropriate action instituted by the State.

C. Purchases from Small/Minority/Women/Tennessee Service Disabled Veteran-Owned Businesses:

1. The University, in accordance with State and federal law, shall actively promote and encourage diversity participation with small, minority, women, and Tennessee service disabled veteran-owned businesses as further defined herein.
2. The University shall encourage businesses to seek certification by the Governor's Office of Diversity Business Enterprise (GoDBE), as applicable.
3. Information regarding small, minority, women, and Tennessee service disabled veteran-owned solicitations and purchases will be filed with the Governor's Office of Diversity Business Enterprise and the Central Procurement Office which will consolidate this information into reports to the Legislature.

The [Ethnicity Form](#) is available on the Procurement Logistic Services [website](#).

D. MT\$ource eProcurement

1. MT\$ource is an eProcurement application designed for meeting University shopping needs by providing users with electronic shopping cart technology. MT\$ource provides online shoppers/requesters, access to numerous supplier electronic catalogs configured with contract pricing; offers shoppers/requesters an opportunity to do comparison shopping for competitive pricing; allows shoppers/requesters the ability to leverage their purchasing needs against bids, grants and contracts; helps expedite procurement activities by reducing paper based transactions and replacing them with electronic requisitions and purchase orders. MT\$ource allows shoppers/requesters to track online order status, and provide instant feedback by email.
2. Training is required for MT\$ource use by employees. Training classes are offered as needed in the Procurement Logistic Services office, and on occasion, larger classrooms. An up-to-date listing of training classes will be on the Procurement Logistic Services [website](#) for easy registration. After training, employees will be given access to MT\$ource based upon their role.
3. MT\$ource roles are set up by Procurement Logistic Services to allow for easy shopping, purchase requisitioning, and approvals by University budget heads.
 - a. Shopper. Employee who is able to shop in MT\$ource but, because of department rules, is not allowed to place orders for supplies and services without approvals. Shoppers will assign a shopping cart to a departmental requester.
 - b. Requester. Employee who is also set up as a Banner Finance user and has been authorized by the department to enter purchase requisitions for buying supplies and services for their department. There may be several requesters within a department. Requesters will generally be responsible for entering purchase requisitions, receiving supplies or services, and monitoring the purchase activities for their department. Requesters will monitor department orders for delivery and accuracy. Requests for assistance from Procurement Logistic Services may be made by utilizing the unique MT\$ource comments tabs and document search features.

- c. Approver. Employee who has been assigned a budget and is required to approve all expenditures for that budget. When a purchase requisition is entered in MT\$ource, electronic approvals occur based upon predetermined workflows. A budget head will approve purchase requisitions according to their budgetary index code.
 - 4. Special Approvals have been established within MT\$ource workflows that route certain purchase requisitions for additional required approvals. These are Tech Access Funds (TAF), Grants (Office of Sponsored Programs and Research), Sole Source, and Contracts. Special Approvals may require approval by any of the following positions: the Principal Investigator (PI), TAF Accountant, Chair/Director/Dean, Office of Sponsored Programs (Pre-Award/Post-Award Requests), Information Technology (ITD), Vice-President/Provost, Contracts, Procurement Logistic Services. The workflows are established by Procurement Logistic Services.
- E. Procurement Methods. The following methods may be used to procure goods and/or services:
- 1. Small Dollar Purchases. Departments may make non-recurring purchases totaling less than Twenty-five thousand dollars (\$25,000.00), cumulatively in expense. The Department will insure appropriate steps, i.e., 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 University. Unless otherwise indicated in this policy, small-dollar purchases totaling five hundred dollars (\$500.00) or greater shall be entered on a purchase requisition through MT\$ource for payment.
 - 2. Local Purchase Authority. If the total estimated amount of any purchase is less than Twenty-five thousand dollars (\$25,000.00), the purchase may be negotiated, bid, or ordered from a University Contract. For any purchases less than five thousand dollars (\$5,000.00), departments may use a PCard and should use MT\$ource (when practical) to procure the supplies and/or services. The PCard may not be used for personal, professional, or consultant contracts. All departments should utilize contracts from the State, University, State institutions of higher education, or University approved consortiums as the primary sources to procure any needed goods and/or services. If the item or service can be procured at a lower price or is unavailable on these contracts, then the purchase may be made elsewhere; however, all purchases shall be made utilizing best-bid practices. All documentation pertaining to purchases and/or services shall be available for review and audit by University auditors and Procurement Logistic Services. Departments should actively solicit goods or services from minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses when possible. A list of current State of Tennessee, University Contracts, and other State institutions of higher contract are available on the Procurement Logistic Services MT\$ource home shopping page.
 - 3. No procurement shall be divided or split to circumvent the proper procurement process and should be obtained via a competitive process instead of multiple small dollar purchases. Similarly, if purchases that fall within the small dollar local purchase authority are of a recurring nature and the aggregate total is expected to exceed the amount allowable, the procurement is presumed to exceed the local purchase authority, and a competitive

procurement method shall be used (i.e., ITB/ informal quotes). If an estimate of total expenditures cannot be determined, but may exceed the bid threshold, a competitive bid process should be followed.

4. Informal Solicitations. Procurement Logistic Services may make purchases totaling less than One Hundred thousand dollars (\$100,000.00) in expense or revenue based upon written, telephone, or electronic bids. For purchases totaling Twenty-five thousand dollars (\$25,000.00) - less than one hundred thousand dollars (<\$100,000.00), bids must be solicited from at least three (3) registered suppliers from the Procurement Registered Vendors List and/or any vendor requesting a copy of the bid. Informal bids do not require an original signature, and bids may be written or electronically transmitted. Complete documentation shall be maintained as part of the procurement file.
5. Formal Solicitations. A formal solicitation process shall be used when the estimated aggregate total of the expense or revenue is One Hundred thousand dollars (\$100,000.00) or more, including renewal terms of multi-year awards. The number of Bidders/Proposers for written sealed bids will be determined by Procurement Logistic Services, and to all vendors that request the specific ITB/RFP. In addition, if the annual estimated aggregate total of the purchase is one hundred thousand dollars (\$100,000.00) or more, 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). Defined as a competitive process soliciting bids from possible suppliers from the Procurement Registered Vendors List for a one (1)-time procurement of product(s), a source of supply contract, and/or service(s).
 - (a) Goods, materials, and supplies (cumulatively called "goods") should be awarded to the lowest Responsive and Responsible Bidder pursuant to an ITB.
 - (b) An ITB may be used to procure services if the specifications for delivery of such services are defined quantitatively to a level of detail such that award can be made to the lowest Responsive and Responsible Bidder. Examples of this type of services may include, but are not limited to:
 - pest control;
 - security services;
 - moving and hauling;
 - refuse collections;
 - charter services;
 - printing services; and
 - maintenance services.
 - (3) Mischaracterization of an item to be procured as a good or service shall not constitute an error in the procurement if the requirements of this policy are met, but it may be grounds for the University to terminate the procurement process.

- (4) At a minimum, the University shall use the then current ITB Terms and Conditions on the Procurement Logistic Services [website](#).
- b. Request for Proposals (RFP)
- (1) Defined as a competitive process in which proposals are solicited from registered suppliers from Procurement Registered Vendors List, with a source or sources of supply established for a specified period of time at agreed upon unit pricing for goods and/or services, where the award will be made to the best proposal considering organization, experience, reference, ability to perform, and cost. Where cost is not the only determining factor for award, a [Request for Proposal](#) using the University's Standard RFP Template on the Procurement Logistic Services [website](#) should be used.
- (a) Request for Proposal under One Hundred thousand dollars (\$100,000.00) does not require sealed bids. A bid with cost and technical proposal may be submitted as one document and can be submitted as a sealed (written) proposal, or via fax, electronic, or telephone as provided the RFP directions.
- (b) Request for Proposal One Hundred thousand dollars (\$100,000.00) and above requires a sealed bid, with separate sealed technical and cost proposals, which must be submitted at the same time. Compliance with the mandatory RFP requirements shall be determined by the Procurement RFP Coordinator. The Procurement Logistic Services Buyer shall act as RFP Coordinator and oversee all actions of the evaluation team, including all communication between the vendors and evaluation team. Evaluation of technical offers shall be determined by an evaluation team selected by the requisitioning department and Procurement Logistic Services. Members of the evaluation team should be adequate and appropriate to the scope and nature of the RFP. All technical offers shall be evaluated based on the criteria of the RFP and other information learned during the technical evaluation process.
- NOTE: Any technical offer submitted which contains any pricing information of any type shall be rejected. Technical offers not deemed compliant or responsive to the RFP requirements 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 University. Technical and cost proposals shall not be made public until the inspection period following the evaluation of the cost proposals.
- (2) An RFP shall specify all steps and evaluation criteria as necessary to finalize selection of the successful proposer.
- (3) A multi-step RFP process should be used when additional steps are necessary to qualify and/or demonstrate the goods and/or services proposed.
- (a) Additional procedures for multi-step sealed bidding, the use of a multi-step sealed bidding process, may also be used for the procurement of other products and/or services, when it is not practical to prepare initially definitive specifications.
- (b) Multi-step sealed bidding is a two (2)-phase process consisting of a technical first phase composed of one (1) or more steps in which proposers submit unpriced

technical offers to be evaluated and a second phase in which those proposers whose technical offers are determined to be responsive during the first (1st) phase have their price proposals considered.

(4) Determining Type of Solicitation

- (a) For competitive procurement of goods, an ITB is appropriate, and in general, a purchase order may be used to finalize the purchase.
 - (b) Except as permitted under Section V.E.5.a.(2)(b) for competitive procurement of services, an RFP may be more appropriate, and a purchase order may not be sufficient to serve as the written contract for the services.
6. Reverse Auction. A reverse auction process allows for procurement of certain goods or services to be made electronically during a specified time period. When conditions are favorable, Procurement Logistic Services 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.
 7. Procurements Under Another State Entity's Bid Process. Procurement Logistic Services may purchase goods or services using the competitive procurement process of another State entity. Procurement Logistic Services will include language in competitive processes to allow extension of the bid process for use by other State institutions and agencies. This section does not preclude the use of a Statewide Contract as a bid in accordance with competitive bidding process. Purchase of goods and/or services, for which the State Central Procurement Office has awarded a contract (SWC) or any other State institution, or UT institution to a vendor through the competitive bid process, may be made without adherence to Section V.E.4. or V.E.5., provided the vendor meets the bid specifications. Note: the competitive bidding process of another entity must have specified that other State institutions would be permitted to purchase under the bid.
 8. General Services Administration (GSA) Contracts. When a vendor maintains a General Services Administration (GSA) agreement with the U.S., or any agency thereof, the Chief Procurement Officer 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.
 9. State Manufactured Goods and Services. Procurement is required to purchase goods and services from other State agencies, i.e., 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.
 10. Procurements under Cooperatives. Pursuant to the Tennessee Interlocal Cooperation Act, T.C.A. § 12-9-101, Procurement Logistic Services may purchase goods and services through approved cooperative purchasing organizations. The current approved list shall be listed on the MTSource home shopping page.
 11. Emergency Purchases. Procurement Logistic Services 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 President or designee, and the circumstances of any such emergency shall be maintained in the file documentation or electronically. When practical, emergency purchases will be made on a competitive basis and processed by Procurement Logistic Services.

12. Competitive Negotiation/Alternative Competitive Procurement Method.

- a. A competitive negotiation process may be used in cases when the University is unable to obtain needed goods and/or services by a traditional competitive bid process.
- b. Reasons to use a competitive negotiation process include:
 - (1) University need will not permit the delay incident to the competitive bid process;
 - (2) No acceptable proposals have been received after the competitive bid process;
 - (3) Rates payable for the services are regulated by law;
 - (4) Other circumstances as approved by the President or designee.
- c. The requesting department shall work with Procurement Logistic Services to define the process to ensure the safeguarding of the information and provide fairness to the vendors in the process.
- d. Use of the competitive negotiation process requires prior approval of the President or designee.
- e. Bid file documentation specific to each use of competitive negotiation shall be maintained.

13. 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 entity or any other state 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) For sole source procurements, the MT\$ource sole source justification form (located on MT\$ource home shopping page) must be completed and approved before any purchase occurs. Online written justification must be included for approval by the President or designee.
 - (3) Sole Source Campus Standards. The University may have State approved campus standards (including upgrades, additions, maintenance, and/or any other procurements based on this policy), and these may be procured as sole source/proprietary/non-competitive procurements, no-substitutions allowed.
 - (4) Copyrighted material. In general, copyrighted materials such as educational films, film strips, texts, instructional, and test material can only be purchased from the owner or licensed seller of the material. The prices are those set by the owner of the copyright or licensed seller, and the items cannot be bid. As a result, copyrighted items may be considered as sole source/proprietary, and a purchase order may be

used for procurement of copyrighted works rather than going through the formal bid process.

- (5) In addition to the sole source justification form, at least one (1) of the following types of additional documentation is also required as a part of the request:
 - (a) A letter from the supplier, which details the basis for the non-competitive procurement, based upon the factors listed in Section V.13.b.(6).
 - (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 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.
 - (6) Factors to be considered in determining a 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 (1) 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 (1) 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) Whether the use of non-competitive negotiation is in the best interest of the University;
 - (i) Other justification(s) as approved by the President or designee.
 - (7) Proprietary purchase requisitions entered through MT\$ource must include an online written justification as to why a particular brand, model, or any other product for purchase should be restricted to a select manufacturer including dealers/distributors. Online written justification for proprietary purchases must be included in MT\$ource for approval by President or designee. (See factors list immediately above.) A proprietary product is one that is manufactured and marketed by a person or persons having the exclusive right to manufacture and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is found that bids may be obtained from different franchises, invitations to bid must be issued unless the estimated purchase is less than Twenty-five thousand dollars (\$25,000.00).
- 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.

14. Special Purchase Categories

a. Purchases for Libraries.

- (1) Procurement Logistic Services shall be responsible for developing procurement procedures for the University 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 Procurement office in instances when a competitive process can be used.
- (4) In addition, any required electronic or written agreements to license journals, subscriptions, or databases shall be routed through the Information Technology Division and Procurement Logistic Services for review and approval prior to use.
- (5) Appropriate documentation must be maintained by library for all delegated purchases and for sole source purchases.
- (6) Library purchases for electronic media may be subject to University Accessibility Standards. See Section VIII.

b. Library purchases of materials for additions to a library collection include cost of books, catalogs, periodicals, binding, audio-visual media, and other general publications. These items are capital expenditures. Procurement Logistic Services shall be responsible for developing procurement procedures for the library acquisitions. Library purchases may be made without formal bids or quotations, and appropriate documentation shall be maintained for these purchases to support any sole source procurement. Procurement shall use various methods for the procurement of library collections including:

- (1) Use of other contracts from State, university, State institutions of higher education, or University approved consortiums,
- (2) Sole Source,
- (3) Competitive bids when applicable,
- (4) Chief Procurement Officer may grant Delegated Purchasing Authority (henceforth DPA) for Bids; however, Library shall obtain bids where applicable:
 - (a) DPA will be restricted to library purchases listed per the official written delegation.
 - (b) DPA will be restricted to the commodities listed.
 - (c) Purchases shall, whenever possible be based upon three (3) competitive bids.
 - (d) No single purchase shall exceed the single delegated dollar amount or the total dollar amount delegated.
 - (e) Library must maintain all bid records for each DPA purchase made for a minimum of three (3) years for audit purposes.

c. Grant Purchases

- (1) Purchases utilizing grant funding shall comply with the conditions of the grant and applicable State and federal guidelines.

- (2) State grant purchases for goods or services shall not be made from vendors on the State of Tennessee Debarred Vendors List.
 - (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.
- d. Delegated Purchase Authority (DPA). Upon departmental request and with Chief Procurement Officer's approval, delegated purchase authority (T.C.A. §12-3-401) may be authorized in cases where many small dollar volume purchases are anticipated. No single purchase by any department shall exceed the approved DPA limit established by the Chief Procurement Officer. The department will in all cases attempt to secure three competitive bids and be responsible for all documentation pertaining to the DPA which will be kept by the department and made available for Procurement Logistic Services, University Audit and Consulting Services, and State Audit for a period not to exceed three (3) years. DPA orders must be submitted in writing, approved by the Chief Procurement Officer, and be renewed each fiscal year. All DPA requests will include a written explanation to the Chief Procurement Officer with commodity and estimated volumes and expenditures. The Chief Procurement Officer may or may not approve the request. If the DPA is not approved, the department shall place orders per procurement policies and procedures.
 - (1) Departments receiving DPA shall file such documentation with the Chief Procurement Officer, with details for the request of DPA, and which includes authorized signatories.
 - (2) No changes shall be made to any DPA without a written request to amend the initial DPA, and all approvals shall be the same as required for the initial request.
 - (3) Records of the approval of the DPA request shall be maintained by Procurement Logistic Services.
- e. Utility Contracts
 - (1) The University 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 Chief Procurement Officer deems to be in the best interest of the State.
 - (2) Whenever practical, each such purchase/contract shall be made on a competitive basis, unless it has been determined that such purchase is sole source. If such purchase has been determined to be sole source, the purchase shall then be made pursuant to Section V.E.13.
- f. Computer Hardware, Maintenance, and Software Purchases. Purchase Requisitions entered in MT\$ource for computer hardware, peripherals, software, and related maintenance or support requests shall include a comment of "Explanation of Need" which includes the intended usage and, if hardware, the type of equipment to which it will be attached. The requisition will include the location, including building and room. The Purchase Requisition is routed through MT\$ource for online electronic approvals including approval by the Information Technology Division prior to being released as a purchase order and/or before coming to Procurement Logistic Services.
- g. Copier Renewals and Purchases. Departments under Print Management Services will not be required to submit a copier Purchase Requisition through MT\$ource. All copier

Purchase Requisitions for lease, purchase, and/or maintenance will go through ITD for review. Departments not participating in Print Management Services, requesting a copy machine for renewal, lease, or purchase shall prepare an MT\$ource Purchase Requisition using the Copier Order Requisition Form.

- h. Copier Paper. Procurement Logistic Services stocks letter size (8 ½ x 11) paper for printers/copiers in the Maintenance warehouse. By bidding and purchasing multi-truckloads of copy paper, Procurement Logistic Services is able to leverage volume purchases and maintain lower pricing. Departments shall order copy paper through MT\$ource using the Copy Paper Order Form. The current copy paper price is already assigned to the order form. The copy paper will be charged each month to the department budget and may be reviewed through Banner BDMS. Deliveries will be made by either Receiving and Moving Services or Distribution Services.
 - i. Gifts. Gifts do not require a procurement process subject to this policy. See [Policy 135 Solicitation and Acceptance of Gifts](#).
15. Outsourcing. Procurement Logistic Services will explore opportunities where some services can be delivered more economically by the private rather than the public sector. The following may be used for this analysis:
- a. The cost to the University of the service may be ascertained and kept confidential as part of the evaluation process. This cost must be finally determined and provided to the President or designee in a sealed envelope prior to the bid/proposal due date.
 - b. The service may be the subject of an ITB/RFP, as appropriate, which approximately describes the services to be provided to the University.
 - c. The ITB/RFP may require that if the Proposer's/Bidder's price exceeds the University's confidential cost, the proposal/bid may be rejected.

F. Procurement Processes

1. Initiating a Purchase. Requisitioning through MT\$ource. This policy does not preclude a Department from contacting sources of supply for preliminary information concerning price, quality or usage of equipment, supplies, etc., in which it is interested. Procurement Logistic Services will supply names and addresses of vendors upon request. Such preliminary contacts shall not produce firm commitments, as this is the function of Procurement Logistic Services. Copies of letters, emails, estimates, and other information relative to desired purchases received by a Department from sources of supply should be forwarded to Procurement Logistic Services as an (internal) attachment when the Purchase Requisition is submitted through MT\$ource. NOTE: No individual, company, or other entity involved in assisting with the development or drafting of an ITB/RFP or the associated scope of service should have a financial interest in a potential contractor or have the appearance of a conflict of interest with regard to the ITB/RFP or potential proposers. Furthermore, no RFP Coordinator, proposal evaluation team member, or consultant in an evaluation process should have a financial interest in or have any other apparent conflict of interest with regard to an actual proposer.
2. A Purchase Requisition shall be entered into MT\$ource to procure a given good and/or service. All Purchase Requisitions require sufficient detail to allow the correct processing of

the order and to acquire the good and/or service (i.e., quantity, description, vendor, delivery instructions, etc.).

- a. Except as herein provided, required documentation related to competitive bidding shall be routed through Procurement Logistic Services and/or Contract Office, prior to the purchase, to ensure compliance with applicable policies. Unless original signatures are otherwise required (i.e., easements, deeds, and other real property documents), electronic procurement is permitted for formal procurements when the requirements of [Policy 940 Use of Electronic Signatures](#) are followed, except that T.C.A. § 12-4-116 provides that State agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for proposals, or other solicitations electronically. Whenever possible, all specifications for materials, supplies, equipment and services shall be worded or designed so as to permit open and competitive bidding for the supplying of the article, commodities or services to which they apply. It is the responsibility of the Chief Procurement Officer to ensure all competitive bidding is considered fair and open in a bid process.
 - b. Purchase requisitions entered in MT\$ource will result in one of the following:
 - (1) Purchase Order
 - (2) Contract
 - (3) Procurement Card Purchase
 - (4) Competitive Solicitation
3. MT\$ource Purchase Order
- a. Purchase Orders will be processed through MT\$ource and sent electronically to the vendor. Departments have access to MT\$ource and should thoroughly compare the online purchase order against their online requisition, and any discrepancies should be reported to Procurement Logistic Services immediately. When the articles/service are receipted by the University department in MT\$ource, and a correct invoice received, this will authorize Accounting Services to pay the invoice.
 - b. By receipting in MT\$ource, departments are certifying the supplies, materials, or equipment received were equal in quality and quantity to those requested for purchase. Current Purchase Order Terms and Conditions can be found on the Procurement Logistic Services [website](#).
4. MT\$ource Purchase Change Order. A change order to a purchase order will be done through MT\$ource and Banner. Basic accounting changes will be done online. When necessary, a change order shall be distributed in the same manner as a purchase order by Procurement Logistic Services to correct or cancel a purchase order. Procurement Logistic Services has exclusive authority to issue Purchase Change Orders. No change to an issued purchase order shall occur that exceeds ten percent (10%) of the original purchase order total, unless the purchase order was ordered using a State Contract or University contract as defined in this policy ([Procurement Procedures Manual](#) of the Central Procurement Office of Tennessee Section 10.6.6. Shortage/Overages).
5. Contracts
- a. All contracts shall be in conformance with State and federal requirements, University policy, and this policy.

- (1) No agreement of any nature which requires the expenditure of funds shall extend beyond the end of the fiscal year in which it is entered into unless expressly subject to the condition that the University shall have the right to terminate the agreement at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly, and/or budgeted for continuation of the agreement.
 - (2) All agreements, contracts and subcontracts shall contain all necessary affirmative action and nondiscrimination requirements provided by Federal or State laws and regulations.
 - (3) All agreements and contracts involving or related to the purchase or lease of real property or data processing equipment exceeding two hundred forty-nine thousand, nine hundred ninety-nine dollars and ninety-nine cents (\$249,999.99) annually, and any purchases related to capital outlay projects, shall be expressly subject to the approval of the President or designee and such other approvals as may be required by State statutes, policies, or rules.
 - (4) No contract for professional services shall be awarded pursuant to these procedures unless funds have been appropriated and are available for the purchase.
 - (5) Every contract must provide a beginning and ending date or clear language as to how these dates will be determined. A contract shall be entered into for a contract term sufficient to adequately accomplish the University's procurement objectives.
 - (6) Contracts shall contain language permitting termination for convenience and for breach of contract, except as may be approved by the President or designee.
 - (7) Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months. Revenue contracts may not have a contract term for a period in excess of one hundred twenty (120) months.
 - (8) Contracts containing no financial consideration may be negotiated and do not require a competitive process.
 - (9) A revenue contract shall be used to formalize an agreement in which the University provides specific deliverable goods or services for monetary compensation. Revenue contracts shall conform to State and federal requirements and this policy.
 - (10) No agreement shall be entered which provides for the University to:
 - (a) hold harmless or indemnify another party
 - (b) pay taxes
 - (c) pay another party's attorneys' fees
 - (d) prepay for goods or services, except as may be required for the purchase of software, maintenance services, magazines and other subscription services, and as may be required in the ordinary course of business
 - (11) For claims arising from contracts, the University may be liable for actual damages only. T.C.A. § 9-8-301 et seq.
 - (12) Contracts in which the University is a party may not be subject to the governing law of another state.
- b. Limitations of Liability
- (1) The President or designee may authorize the procurement of goods and services with a limitation of a vendor's liability.

- (2) Unless authorized by the President or designee, no contract shall limit a vendor's liability to the University in an amount less than two (2) times the maximum cost, estimated cost, or maximum revenue of a contract.
- (3) A limitation of liability in a contract with the University shall not be permitted for the following:
 - (a) Liability for intellectual property or to 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 University 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.
- (4) A limitation of liability included in a contract with the University shall not waive or limit the University's legal rights, sovereign immunity, or any other immunity from suit provided by law.
- (5) Notwithstanding the above, the President or designee, may authorize:
 - (a) 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 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
 - (b) 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.
- (6) Approval Timeliness. Any request to the approving authority under this section must be made at an appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the State in competitive procurements. In a formal ITB process, Procurement/Contract Office may determine to request the approving authority's approval under this section after receiving written comments from potential proposers. If the approving authority approves such request, an amendment to the ITB may be made. Procurement Logistic Services 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.
- (7) 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:
 - (a) the text of the limitation of liability sought to be used;

- (b) 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;
 - (c) the conditions of the market which justify a limitation of liability;
 - (d) the anticipated impact on the State's procurement if limitation of liability is not approved; and
 - (e) the identification of one or more University employees familiar with the information set forth in the request.
 - (8) The approving authority may deny or approve the request or may authorize limitation of liability under other language than that proposed in the request.
 - (9) Notwithstanding the above, the approving authority may authorize, with respect to contracts for telecommunications and information technology goods and services, a limitation of liability of not less than two (2) times the value of the contract provided that the limitation of liability permitted under this paragraph shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. Any limitation beyond that permitted in this paragraph must be approved by the President or designee. T.C.A. § 12-3-701.
 - (10) The provisions of this Section V.F.5. are not required to be followed for contracts of adhesion; for such contracts, the provisions of Section V.F.5.c., Contracts of Adhesion, may be applied.
- c. Contract of Adhesion. A contract of adhesion exists when a contract contains impermissible language, but the good(s) and/or service(s) to be procured are necessary and cannot be obtained except by agreeing to the form contract.
- (1) An adhesion contract must meet the following criteria:
 - (a) A vendor-generated form contract or license;
 - (b) Offered to consumers on a "take it or leave it" basis;
 - (c) The University has no realistic opportunity to negotiate different terms; and
 - (d) The desired product or service cannot be obtained except by agreeing to the form contract.
 - (2) To obtain approval of a contract of adhesion, the following steps must be documented:
 - (a) Attempt to negotiate needed changes in the contract and the vendor's refusal to agree to any changes;
 - (b) The need for the product or service(s);
 - (c) The fact that the vendor is the sole source for that product or service (or that all vendors require the impermissible language); and
 - (d) A copy of a letter to the vendor stating that the University regards the agreement as a contract of adhesion.
 - (3) In appropriate instances, the President or designee may approve a contract as a contract of adhesion when the vendor has agreed to some changes(s), but the contract still contains impermissible language. Documentation as required above must be maintained.
6. Procurement Card (PCard) Purchase. All University policies and applicable State laws shall govern PCard purchases. See [Policy 632 Purchasing Card \(PCard\) Program](#).

- a. The PCard will be used for buying non-recurring small dollar supplies and services that do not conflict with/or violate Procurement/Contract policies.
 - b. For purchases of supplies and/or services for less than five thousand dollars (\$5,000.00), departments may use a PCard and request through MT\$ource, when practical. PCards may not be used for personal, professional, or consultant contracts.
 - c. Departments must utilize State, TBR Institutions, University of Tennessee (Including all UTK Institutions), and approved consortium contracts as the primary sources to procure any needed supplies and/or services. A list of current State, TBR Institutions, and University of Tennessee (Including all UTK Institutions) contracts is available on the MT\$ource home shopping page. If the item or service can be procured at a lower price or is unavailable under any of these contracts then the Department may purchase it elsewhere; however, all PCard purchases shall be made utilizing best bid practices.
 - d. The Procurement Logistic Services PCard Administrator shall manage the daily operations of the program. The Office of Business and Finance shall monitor program compliance through compliance reviews of departments and employee transactions.
 - e. The PCard Administrator shall provide education classes for departments and any new and existing cardholders as required. All new departments and employees will be required to attend a 'mandatory' training class prior to having their PCard activated.
 - f. MT\$ource shall be utilized to procure PCard purchases, when practical. Whenever a vendor will not accept a PCard Purchase Order, the order may be placed directly with the vendor.
 - g. Failure by any employee to adhere to these PCard policies may cause the violator to be held personally liable for all charges and temporary suspension of their PCard privileges. Repeated or egregious misuse of University PCard Policies shall result in forfeiture of all PCard privileges and possible disciplinary action up to termination of employment from the University.
 - h. Rebates, in any form (checks, debit cards, written credit vouchers), that are received as a result of a PCard purchase shall be given to the Departmental PCard reconciler where these rebates will be recorded and used to offset the cost of future departmental purchases. No rebates will be kept or used by the individual PCard holder.
7. Competitive Solicitations. Whenever a purchase requires a competitive solicitation, the solicitation may be a formal or informal process and may take the form of an 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 procurement of the goods/services. Such planning may include, but not be limited to, the following:
 - (1) Determine appropriate method of procurement, i.e., ITB/RFP, based upon nature and scope of product or service being purchased;
 - (2) Estimate total expenditure or revenue including all renewals;
 - (3) Departmental budget funds must be available for the expenditure;
 - (4) Evaluate historical spending trends in MT\$ource/Banner for the same or similar items;

- (5) Draft open and competitive specifications using available sources;
 - (6) For ITB/RFPs exceeding \$100,000, a written certification from the department to Procurement Logistic Services that the specifications, to the best of their knowledge, are not proprietary; this shall be documented in the bid file. [Bid Specification Written Certification Form](#) can be found on the Procurement Logistic Services [website](#).
 - (7) Identify trade-ins of existing equipment, if any;
 - (8) Define expected delivery timeline for receipt of deliverables;
 - (9) Procurement Logistic Services shall determine evaluation criteria (i.e., how an award will be made, lowest total cost, lowest cost per item or groups of items, lowest responsive and responsible Bidder, and any other required quantitative measurements or metrics);
 - (10) Procurement Logistic Services shall identify and include prospective vendors from Procurement Registered Vendors List, as well as any suggested suppliers from the requesting department.
- b. Scope of Work and Specifications. All purchases shall be based upon the principle of competitive bidding. Any scope of work and specifications for goods and services shall be worded or designed to permit open and competitive bids.
- (1) The scope of work should provide a clear and concise description of the desired goods and/or services so the vendor may satisfactorily perform or provide all deliverables required under the purchase order/contract.
 - (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:
- c. Descriptive Specifications. A descriptive format consists of a conventional listing or paragraph text description of specification data and should; if practicable:
- (1) Identify the product using generic terminology in the description;
 - (2) List any characteristics that determine performance capability and identify those characteristics that are essential in order to meet performance requirements; and
 - (3) Detail the minimum or maximum acceptable performance requirements for each characteristic with as much tolerance and flexibility as practicable.
- d. Specifications Based on Brand Name.
- (1) 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. At least two (2) or more acceptable brands or models should be provided for bid.
 - (2) References 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 products of comparable quality or functionality. Comparable goods of other manufacturers will be considered if proof of equality is provided in the bid response.

- (3) It shall be the responsibility of the bidders, 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 justification for rejection of the entire bid.
- e. Standard Specifications. Procurement Logistic Services may develop standard specifications for the procurement of goods and/or services which fit, insofar as possible, the requirements or needs of the majority of the University departments.
- f. Specifications Based on Catalogs, Price List, or Price Schedules. Specifications may require vendors to respond to a solicitation using a cost-plus (+) percentage (%), discount from list (-) percentage (%), or net cost offered as a discount or surcharge applying to the goods listed in a manufacturer's catalog, price list, or price schedule as described within the solicitation. Solicitations of this type shall include a specific list of items for competitive analysis, and vendor shall supply referenced catalog in electronic or hardcopy format.
- g. 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 Procurement Logistic Services for possible 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 Procurement Logistic Services and the requesting department. The decision 'for-or-against' adding the items will be final.
- h. 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 a bid evaluation:
 - (1) the acquisition cost of the product;
 - (2) the energy consumption and the projected energy cost of energy over the useful life of the product; and
 - (3) the anticipated resale or salvage value of the product.
- i. 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. Procurement Logistic Services 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/cooling products and systems purchased by University shall be Energy Star qualified; provided, that such Energy Star qualified products and systems are commercially available.

- j. Specifications to Permit Remanufactured/Recycled/Used Goods. All goods offered and furnished must be new unless the ITB/RFP specifically permits offers of used, remanufactured, or reconditioned. ITBs/RFPs which specifically permit offers of used, remanufactured, or reconditioned goods shall require a warranty; however, the Chief Procurement Officer shall have the authority to waive this requirement. For applicable procurements, specifications may be worded or designed so as to permit bidding of remanufactured/recycled/used goods. Such specifications shall be comparable in use and quality to new materials, supplies and equipment.
 - k. 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. Drafting the Solicitation. Procurement Logistic Services will prepare a bid solicitation 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 procurement solicitations sole point of contact;
 - b. The place and time that bids will be received and opened;
 - c. Information describing the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being procured;
 - d. The quantity of goods or services required;
 - e. When the estimated procurement or revenue exceeds one hundred thousand dollars (\$100,000.00) annually, Procurement Logistic Services may specify a question/answer period and/or a pre-bid conference, with a written record of questions and answers provided to all prospective bidders;
 - f. Time of delivery;
 - g. Required certificate of insurance, bid or performance bond, if any;
 - h. Pro-forma contract, when applicable, containing the State required terms and conditions;
 - i. Evaluation criteria to be used to evaluate bids/proposals;
 - j. Date bids/proposals will be available for compliant bidder public inspection;
 - k. Procurement Logistic Services shall provide all bidders an opportunity to allow other State institutions and/or State agencies to purchase from the final executed purchase order/contract; a negative response to this option will in no way invalidate the best, compliant bidder's response.
 - l. Provide appropriate terms and conditions applicable to the solicitation.
9. Number of Bidders and Minimum Notice. The minimum required notice and number of bids for competitive solicitations shall be as follows:
- a. If the estimated amount of the purchase is Twenty-five thousand dollars (\$25,000.00) but less than One Hundred thousand dollars (\$100,000.00), written or electronic bids shall be solicited from at least three (3) qualified vendors. A record of the bidders and amounts bid shall be maintained.

- b. If the estimated amount of the purchase (or revenue) is One Hundred thousand dollars (\$100,000.00) or more, Procurement Logistic Services will determine the appropriate number of Bidders/Proposers.
 - d. An ITB 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. The Chief Procurement Officer may approve a shorter number of days for electronic informal bids, as applicable.
 - e. For RFPs and complex ITBs (i.e., an ITB 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 delivery, bid specifications and pre-bid/proposal questions, comments, and responses. The Chief Procurement Officer may authorize a shorter or longer period in appropriate circumstances. Examples of solicitation processes which may need a minimum of at least six (6) weeks include, but are not limited to:
 - (1) Banking or other financial services;
 - (2) Bookstore or food services operations;
 - (3) Custom software and/or IT or telecom system services;
 - (4) Advertising or consultant management services, and
 - (5) 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 upon the University.
10. Communication with Bidders/Proposers. All bidders shall communicate only with the Procurement Buyer as the sole point of contact. Failure of the bidder to communicate as required 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.
11. Pre-Bid/Proposal Conference/Question and Answer Period. When applicable, 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 official responses is to be prepared and made available to all prospective bidders. 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 Procurement Buyer may elect to cancel the solicitation and reissue based upon revised bid requirements.
12. 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 Proposer/Bidder upon request. Whenever an unopened bid is returned to a vendor, a written record shall be maintained.

13. 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 on the bid.
14. Bid Format and Signature. Bids issued by Procurement Logistic Services will be sent in an electronic format to suppliers selected from Procurement Registered Vendors List and all who request to participate. The bids will be publicly posted and available to any vendor upon request. All formal bids must bear a signature, which may be electronic according to State and federal law. The signatory on the bid must have authority to bind his or her company in the contract.
15. Bid Withdrawal, Revision, and Rejection
 - a. Bid Withdrawal
 - (1) 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.
 - (2) After bid opening, a vendor will be permitted to withdraw a bid only when there is obvious clerical error in the bid such as a misplaced decimal point, or when enforcement of the bid would impose economic 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.
 - b. Bid Revision
 - (1) A bid may not be revised after bid opening; however, after evaluation is completed and the successful bidder/proposer is selected, the University may initiate negotiations which serve to alter the bid/proposal in a way favorable to the University. For example, prices may be reduced, time requirements may be revised, the bid/proposal may be revised to supply omitted contract terms, etc.
 - (2) In no event shall negotiations increase the cost or amend the proposal such that the apparent successful proposer no longer offers the lowest or best proposal.
 - c. Bid Rejection
 - (1) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.
 - (2) All bids shall be subject to rejection by the Chief Procurement Officer.
 - (3) Any bid/proposal that restricts the rights of the University or otherwise qualifies or limits the bid/proposal may be considered to be non-responsive, and the entire bid/proposal may be rejected.
 - (4) When Procurement Logistic Services 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 bid/proposal may be determined to be non-responsive and may be rejected, and the bidder/proposer may be excluded from the solicitation and suspended from future bid opportunities.

- (5) Action to reject all bids shall be taken by the Chief Procurement Officer for the following reasons:
 - (a) Unreasonably high prices or failure of all proposals to meet technical specifications,
 - (b) Error or defect in the ITB/RFP,
 - (c) Cessation of need,
 - (d) Unavailability of funds,
 - (e) Lack of competition; or
 - (f) A determination that the goods/services can be more economically delivered pursuant to an agreement with another State institution, other State agency, or a determination that proceeding with the procurement would be detrimental to the best interests of the University, the reason for which must be documented and included in the bid or proposal file.
- (6) 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 compliant bidders who submitted a bid/proposal.
- (7) If another solicitation document is to be issued, all prior bids/proposals shall remain closed to public inspection until the evaluation of the re-bid is complete.
- d. Public Bid Opening. All ITB's and RFP's received shall be publicly opened and examined by a designated Procurement official at the time and place specified in the ITB/RFP, and all compliant bids together with the name of the bidder shall be recorded. Only after the completion of evaluation shall the complete procurement files become a matter of public record and open to public inspection.
- e. Inspection Prior to Award for ITB's: After bid evaluation, all data relating to the procurement shall be made available for inspection to each compliant bidder, upon request. Procurement Logistic Services shall award no contract without providing bidders a reasonable opportunity for such inspection. T.C.A. § 12-3-502. Whenever an RFP is utilized, bidders shall have no less than seven (7) calendar days after the evaluation of all Technical and Financial Proposals are complete to review the file. Procurement shall specify within the 'Intent to Award Letter' the dates and times for all bidders to review all bid documents before the purchase order/contract is awarded. RFP Technical Offers shall be opened and recorded with Financial Proposals being opened after evaluation of the Technical Proposals have been completed.
- f. 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 Proposer/Bidder, including the successful Proposer/Bidder. Notwithstanding any action or agreement to the contrary, no such right, interest, or claim shall exist unless and until an executed purchase order and/or contract has been issued.
- g. Evaluation of Bids Received in Response to an ITB.
 - (1) When more than one item is specified in the bid, the University may specify in the bid document that it shall have the right to determine the low bidders(s) either on the basis of each individual item, a group of items, or the low total of all items.

- (2) The award shall be made to the lowest Responsive and Responsible Bidder which meets the bid/proposal requirements, 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 (thirty [30] days or more) or other reason(s), transportation charges, and the date of delivery specified in the solicitation.
- h. Evaluation of Bids Received in Response to an RFP
- (1) An RFP includes quantitative as well as qualitative evaluation criteria. Evaluation of proposals submitted in response to an RFP shall be 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 stakeholders without considering the cost factor.
 - (3) Compliance with the mandatory RFP requirements shall be determined by the Procurement solicitation coordinator.
 - (4) Review of technical offers shall be determined by an evaluation team. Members of the evaluation team shall be State employees that are essential, adequate and appropriate to the scope and nature of the RFP. Non-state employees with technical expertise that is helpful to the evaluation may serve as consultant, ex officio or non-voting members. All members of the evaluation team must complete the RFP Evaluator Conflict of Interest/Confidentiality Form which can be found on the Procurement Logistic Services [website](#).
 - (5) The RFP Procurement solicitation coordinator shall review the proposals to ensure procurement procedures were followed and shall offer guidance to the evaluation team and may not score technical proposals received, except in instances in which the RFP is directly related to a good/service needed by Procurement Logistic Services.
 - (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 proposals are opened and scored separately prior to financial proposals. Once technical scores are finalized, the Procurement solicitation coordinator will open and score the cost proposals based upon the criteria as set out in the RFP, with the lowest financial proposal receiving the highest score and remaining proposers receiving a pro-rated score thereafter.
 - (8) Technical proposals will not include any cost or financial information. Inclusion of cost information in a technical proposal will result in automatic disqualification of the proposal without further consideration. A restatement in a proposal of financial information given in the RFP itself shall not constitute cost or financial information which would disqualify the proposal.
 - (9) Rejected technical offers deemed non-compliant will not proceed to the pricing phase. The vendor's non-responsive technical proposal will result in their entire financial proposal being rejected and not opened. Rejected proposals shall have no further standing, and all additional RFP communication or information shall cease.

i. Vendor References

- (1) Vendor reference checking is an essential part of the Procurement solicitation coordinator's duties and responsibilities.
- (2) Former clients of vendors should be consulted about their experience with the vendor. The Procurement solicitation coordinator should ask specific questions concerning the goods or services that are the subject of the bid.

Some key areas of inquiry include:

- (a) Questions concerning the reference's experience with the vendor;
- (b) A description of how the vendor was selected (i.e., through competitive process, non-competitive process, etc.)
- (c) Whether other vendors were under consideration, and if so, which vendors;
- (d) A brief description of the evaluation and elimination process that led to the selection of the vendor;
- (e) The scope of work of the contract awarded to the vendor;
- (f) Whether the vendor performed in accordance with the contract's scope of work;
- (g) Whether there were any problems encountered with the vendor;
- (h) Whether there were any limitations on vendor performance;
- (i) Specifics as to what the vendor did well under the contract;
- (j) Whether the vendor was easy to work with and how the vendor responded to the needs of the reference;
- (k) Whether the goods or services were performed in accordance with the contract;
- (l) Whether there are any results that have been realized from using the goods or services provided to the reference;
- (m) With respect to goods, whether the goods are easy to use or require education and training to properly use;
- (n) Whether there are things the reference would do differently if the reference were to re-procure the goods or services;
- (o) Whether the choice of the vendor was cost effective;
- (p) Whether the reference would recommend the vendor to other prospective references; and
- (q) Whether the reference has other advice not covered by any of the foregoing areas of inquiry.

- j. Vendor Site Visits and Presentations. A solicitation may provide for site visits by evaluators to proposer/bidder locations and/or presentations by proposers/bidders 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.
- k. Tied Responses and Resolution. A tie exists when two (2) or more responses 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:
 - (1) First (1st) preference shall be given to a "Tennessee respondent". Pursuant to T.C.A. § 12-3-1113(c)(2), a "Tennessee respondent" means a business:
 - (a) Incorporated in this State;

- (b) That has its principal place of business in this State; or
 - (c) That has an established physical presence in this State.
 - (2) Second (2nd) preference shall be given to certified Disadvantaged Business Enterprise (DBE) Respondents.
 - (3) Third (3rd) preference shall be given to the Respondent who was the low bidder on other items being bid for the same requisition.
 - (4) Fourth (4th) preference shall be given to the Respondent who offers the best delivery.
 - (5) If a tie remains, it shall be broken by lot or coin toss.
- G. Notice of Intent to Award. For RFPs and applicable ITBs, a notice of intent to award shall be sent to all responsive and responsible proposer/bidder by Procurement Logistic Services.
- 1. Alternate Bids. Alternate bids will not be considered unless specifically called for in the bid.
 - 2. The scope of the good(s)/service(s), as defined in the solicitation, shall form the basis of the resulting purchase order and/or contract and cannot be expanded beyond the scope of the final solicitation document.
 - 3. In order to provide a clear audit trail, the ITB/RFP file (hard-copy or electronic) shall contain, at a minimum, the following:
 - a. Documentation from the requesting department,
 - b. A copy of the ITB/RFP issued (including specifications),
 - c. A list of vendors for the solicitation, including the date vendors were sent the ITB/RFP,
 - d. For RFPs and applicable ITBs, any pre-bid questions/answers or addendums to the ITB/RFP,
 - e. Any vendor correspondence (i.e. point of contact, intent to propose letters, questions, etc.),
 - f. For RFPs and applicable ITBs, documentation relating to the composition of the evaluation team and any documentation used to make the award,
 - g. As applicable, any documentation that warrants a re-bid of the ITB/RFP,
 - h. Any informal bid complaints and the respective responses/actions,
 - i. Any formal bid protests,
 - j. As applicable, copies of intent to award letters,
 - k. Purchase order and/or contract,
 - l. Any other documentation relevant to the procurement.
 - 4. Exemptions. Certain procurements/payments, as specified by the University, may be exempted from these processes/procedures. These include, but are not limited to, the following:
 - a. Telephone bills
 - b. Utility bills, including connection fees
 - c. Internet Connection Fees
 - d. Freight charges
 - e. Postage charges, including the purchase of metered postage.
 - f. Notary fees
 - g. Testing services supplies or tests
 - h. Food purchases. For details regarding food purchases, see [Policy 661 Food and Beverages](#).

- i. State surplus property
- j. Advertising. Should be reviewed and approved by Human Resource Services and the Office of Institutional Equity and Compliance for all positions, or the Division of Marketing and Communications for all non-employment-related advertising. The exemption from the bid process does not apply to mass advertising.
- k. Books or copyrighted course material, including electronic databases
- l. Charges on gasoline and aviation fuel credit cards
- m. Fees in connection with titles or title searches
- n. Vehicle rental while on approved travel
- o. Tuition, fees, and supplies for State employees
- p. Emergency medical expenses
- q. All University printing jobs will be produced by University Printing Services unless they are unable to produce the job. See [Policy 154 Publications](#).

H. Protested Bids

1. Right to Protest
 - a. Protest procedures shall be included, or a link thereto, in all ITBs/RFPs.
 - b. An aggrieved respondent may protest, in writing, to the Chief Procurement Officer within seven (7) calendar days from the date of notice of intent to award. Protests must be received by the Procurement Logistic Services office no later than the close of business of the seventh (7th) calendar day.
 - c. The following are the sole grounds for a protest:
 - (1) The award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the Chief Procurement Officer or University;
 - (2) The procurement process violated a constitutional, statutory, or regulatory provision;
 - (3) The Chief Procurement Officer/University failed to adhere to the rules of the procurement as set forth in the solicitation, and this failure materially affected the contract award;
 - (4) The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; or
 - (5) The award resulted from a technical or mathematical error during the evaluation process.
 - d. Any issues not raised by the protesting party after the expiration of the seven (7) calendar day period shall not be considered as part of the protest.
 - e. Protests shall include the required bond, as specified in Section V.H.3. Protests received which do not include the required bond shall not be considered. A sample protest bond can be found on the Procurement Logistic Services [website](#).
2. Signature on Protest Constitutes Certificate
 - a. A protest must be signed by an authorized company representative, who certifies that he/she has read such document, that to the best of his/her 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.

- b. If the protest is submitted in violation of any provisions of this Section V.H.1., appropriate sanctions, which may include removal from future bid opportunities and forfeiture of the protest bond, may be imposed.

3. Protest Bond

- a. The protesting party shall post, with the Chief Procurement Officer, at the time of filing a notice of protest, a bond payable to the University in the amount of five percent (5%) of the lowest financial 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 University and shall be immediately payable to the University conditioned upon a decision by the chief business officer of the University or designee that:
 - (1) There is a violation of Section V.H.;
 - (2) The protest has been brought or pursued in bad faith; or
 - (3) The protest does not state on its face a valid basis for protest.
- b. The University shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by the chief business officer.
- c. At the time of filing notice of a protest, against a procurement, in which the lowest evaluated financial proposal is less than one million dollars (\$1,000,000.00), or in which the highest evaluated revenue proposal is less than one hundred thousand dollars (\$100,000.00), a minority, women, small, or Tennessee service disabled veteran-owned business protesting party may submit a written petition to the chief business officer for exemption from the protest bond requirement.
 - (1) 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 business officer who has seven (7) calendar days in which to make a determination.
 - (2) If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted.
 - (3) Should the chief business officer deny an exemption from the requirement, the protesting party shall post the bond with the Chief Procurement Officer of the University as required in Section V.H.3. within five (5) calendar days of the determination.
- d. Authority to Resolve Protest
 - (1) The Chief Procurement Officer has the authority to resolve the protest. If deemed necessary, the Chief Procurement Officer may request a meeting with the protesting party to seek clarification of the protest issues.
 - (2) The final determination of the Chief Procurement Officer shall be given in writing and submitted to the protesting party.
 - (3) The protesting party may request that the final determination of the Chief Procurement Officer be considered by the chief business officer. The request for consideration shall be made in writing to, and received by, the chief business officer

within seven (7) calendar days from the date of the final determination by the Chief Procurement Officer.

- (4) The University's Chief Business Officer has the authority to review and resolve the protest. If deemed necessary, the chief business officer may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the chief business officer shall be given in writing and submitted to the protesting party.
 - (5) The protesting party may request that the final determination of the chief business officer be considered by the President or designee. The request for consideration shall be made in writing to, and received by, the President or designee within seven (7) calendar days from the date of the final determination by the Chief Business Officer.
 - (6) The determination of the President or designee is final and shall be given in writing and submitted to the protestor.
 - (7) The University shall have no longer than sixty (60) Calendar Days from receipt of the protest to resolve the protest.
- e. Stay of Award
- (1) Prior to the award of a purchase order and/or contract, a proposer who has protested may submit to the Chief Procurement Officer a written petition for stay of award. Such stay shall become effective upon receipt by the Chief Procurement Officer.
 - (2) The 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 chief business officer makes a written determination that continuation of the solicitation process, or the award, without delay is necessary to protect substantial interests of the University.

I. Vendors

1. Vendor Registration. Procurement Logistic Services shall maintain an online registration process by which prospective vendors may register to conduct business with the University.
 - a. The Procurement Registered Vendors List shall be an online vendor registration system to generate a bid list of vendors who have registered to provide products or services based upon specific commodity classes.
 - b. The Procurement Logistic Services office may require the vendor to provide and maintain their online information which demonstrates their ability to provide certain goods or services prior to inclusion on the list of vendors.
2. Tennessee Statutory Vendor Requirements/Registration
 - a. Illegal Immigrants. No person may enter into a contract to supply goods or services to the University 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.
 - b. Sales and Use Tax. No person may enter into a contract to supply goods or services to an entity without first registering or receiving an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. T.C.A. § 67-6-601 et seq. The

University accepts certification of compliance in Purchase Order/Contract Terms and Conditions.

3. Tennessee Contractor's License

- a. Pursuant to T.C.A § 62-6-101 et seq., construction bids with an estimated total of twenty-five thousand dollars (\$25,000.00) or greater require bidders to provide Tennessee contractor's licensure information, including classification and date of expiration with bid response.
- b. A Tennessee contractor's license is required before bidding or offering a price, for projects twenty-five thousand dollars (\$25,000.00) and up (includes materials and labor), as a prime (general) contractor; subcontractors performing electrical, mechanical, plumbing, HVAC, roofing and masonry are also required to be licensed as a contractor, when the total portion on the project is twenty-five thousand dollars (\$25,000.00) or more; masonry, when one hundred thousand dollars (\$100,000.00) or more. In addition, a sub to a sub would need to be licensed whenever there are more than one (1) subcontractors on the project. Reciprocal agreements do not allow using another state's license in Tennessee, but provide a trade exam waiver, only. License issuance takes four (4) to six (6) weeks and must be approved by the [State Board for Licensing Contractors](#) during regularly scheduled meetings.
- c. The definition of contractor is found at T.C.A. § 62-6-102 and includes, but is not limited to, construction, installation, movement, repair, etc. All contractor licenses are assigned a monetary limit and also a classification, such as: Building (Residential, Commercial and Industrial); Electrical; Mechanical (Plumbing and HVAC); Heavy Construction; Highway, Railroad & Airport; Masonry; Municipal Utility; Environmental; and Specialties (landscaping, excavation, roofing, cell towers, solar panels, audio visual, etc.). Contractors must bid/contract in the exact name as licensed.

4. Removal from Procurement Registered Vendors List

- a. Vendors who fail to provide adequate goods and/or services may be removed, or depending upon the severity of the infraction, suspended from Procurement Registered Vendors List.
- b. Reported failure to comply with bids, awards, and/or orders, etc. shall be documented and maintained by Procurement Logistic Services.
- c. Examples of failure to comply include, but are not limited to:
 - (1) Over, under and/or late shipments; failure to ship;
 - (2) Damaged and/or defective products;
 - (3) Shipments not in conformance with specifications; and
 - (4) Unauthorized substitutions.
- d. Other principal causes for removal or suspension from Procurement Registered Vendor bid list are:
 - (1) Billing Errors;
 - (2) Service Deficiencies;
 - (3) Unethical Practices;
 - (4) Misrepresentation of Merchandise;
 - (5) Unwillingness to amend impermissible clauses;
 - (6) State or federal debarment status; and

- (7) Failure to provide required bid submittals such as, but not limited to:
 - (a) Certificate of Insurance with University listed as a 'joint-insured'
 - (b) Tennessee Sales and Use Tax number
 - (c) Failure to provide requested bid documents or submittals in a timely manner
 - (d) Failure of a vendor to perform satisfactorily in any of the above areas may result in a vendor's liability for damages to the University.
- 5. Vendor Reinstatement. After receipt of a notice of removal or suspension, a bidder may submit in writing to the Chief Procurement Officer a petition for reinstatement with an explanation of the circumstances which caused the removal or suspension order. If, in the opinion of the Chief Procurement Officer, such circumstances have been corrected, the removal order may be rescinded and the vendor reinstated.
- J. Receiving - Freight, Shipping, Receipt, Storage and Inspection of Goods
 - 1. Freight and Shipping. There are two (2) types of shipping: FOB Destination and FOB Origin. 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.
 - 2. 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 University shipments.
 - 3. 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 the University shall provide shipment protection for the University's interest.
 - 4. Receipt. Upon receipt of supplies, materials, and equipment, Receiving and Moving Services shall promptly make a written certification of the shipment, inspect for visible damages, and notate any discrepancies.
 - 5. Shipping Documents - Upon delivery. The University shall:
 - a. 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.
 - b. Verify that the shipping documentation names the University as the actual consignee and that the number of cartons, crates, etc. listed is the same as the amount received.
 - c. Sign the freight bill and retain a copy for University records. The notation "subject to further inspection" may accompany the Receiving and Moving Services signature.
 - d. If Receiving and Moving Services finds any discrepancies (i.e. wrong item(s), overages, shortages, or damages) exist, they will be noted on the packing slip, receiving report, and/or purchase order. Appropriate corrective action shall be taken for all discrepancies.
 - e. The material received must be retained or sent to the proper department. Damaged goods deemed unacceptable are to be refused or if concealed then retained for further disposition.
 - f. All receiving records should indicate the quantity and date received and any other information pertinent to the receiving process.

- g. Receiving and Moving Services will deliver to the department ordering the items who will verify the items received were equal in quality and quantity to those requested on the Purchase Order by entering receipt verification as part of MT\$ource online eProcurement documents.
- h. The department will 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 create a receipt in MT\$ource.

K. Monitoring of Services - Service Contracts

1. All personal, professional, and consultant service contracts shall contain a provision that states that the contractor's activities shall be subject to monitoring by the University. These contract types include, but are not limited to:
 - a. Personal Service
 - b. Professional Service
 - c. Consultant Service
 - d. Software Related Agreements
 - e. Grants, including subcontracts
 - f. Memorandums of Understanding
2. Monitoring Plan. University shall maintain a monitoring plan found on the Procurement Logistic Services [website](#), 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 University 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 sub-recipient monitoring, if applicable; and
 - g. Evaluation of contract results in terms of the achievement of organizational objectives.
3. Source of Supply term contracts for Goods, Materials and Supplies. Procurement of goods, materials, and supplies shall not require a monitoring plan, but shall comply with internal controls and audit procedures.
 - a. Departmental Term Contracts. Term contracts for specific goods or services. The resulting contract shall contain a maximum liability dollar amount that represents the estimated dollar volume as prescribed in the solicitation.
 - b. University Term Contract. Procurement Logistic Services may establish term contracts that all University departments shall utilize.
4. Term Contract-General
 - a. A term contract for more than a period of twelve (12) months should provide that the University has the right to cancel at any time for convenience by providing written notice to the contractor.

- b. All term contracts shall contain a provision that provides for the termination of the contract at the end of any fiscal year in the event funds are not available.
 - c. The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these procedures and shall not be for a period longer than sixty (60) months, or revenue contracts may be up to one hundred twenty (120) months.
 - d. The Chief Procurement Officer may approve a period of extension of the term of a contract as appropriate and in the best interests of the University. The justification for the contract term exceeding sixty (60) months shall be maintained in the records of the Procurement Logistic Services Office.
 - e. There shall be no pricing agreement other than in a contract between the University and the contractor.
5. Revenue Term Contracts. A “Revenue Term Contract” is a written contract in which a department/University provides specific deliverable services for monetary compensation. The requirement of a multi-year revenue contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these procedures and shall not be for a period longer than one hundred twenty (120) months.

VI. Surplus Property

- A. Surplus property is personal property which has been determined to be obsolete, outmoded, unusable or, no longer usable by the University, 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 State law and [Policy 685 Disposal of Surplus Property](#).

VII. Accessibility

- A. University 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. University shall include language in applicable procurements that the products/services, including any updates, provided to the University 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.
- C. When the University requires a vendor’s signature to demonstrate that the vendor’s product complies with the aforementioned accessibility standards, the vendor shall verify accessibility by completing the Vendor Product Accessibility Statement found on the Procurement Logistic Services [website](#).

VIII. Fiscal Review

- A. Procurements/Contracts that meet all of the following criteria must also be filed with and reviewed by the State's Fiscal Review Committee (Committee).
 - 1. Procurements/Contracts that are non-competitive; and
 - 2. That are for a period of more than one year; and
 - 3. That exceed two hundred fifty thousand dollars (\$250,000.00) in total value (including all potential renewals).

- B. For Procurements/Contracts for services between the University and a private party in excess of two and one-half million dollars (\$2,500,000.00) and that result in the layoff or furlough of one (1) or more state employees, the following conditions apply:
 - 1. Prior to procurement, the University shall produce an economic impact statement using professionally accepted methodologies to the Committee.
 - 2. The economic impact statement shall include all the following information:
 - a. A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action; and
 - b. A determination that the action is the least-cost method for achieving the stated purpose; and
 - c. A comparison of the cost-benefit relation of the action to non-action; and
 - d. A determination that the action represents the most efficient allocation of public and private resources; and
 - e. A determination of the effect of the action on competition; and
 - f. A determination of the effect of the action on the cost of living in the geographical area in which the action would occur; and
 - g. A determination of the effect of the action on employment in the geographical area in which the action would occur; and
 - h. The source of revenue to be used for the action; and
 - i. A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.
 - 3. The economic impact statement must be submitted to the Committee for dissemination to the members of the general assembly no less than forty-five (45) days prior to the execution of the contract.
 - 4. Upon receipt of an economic impact statement, the Committee chair may schedule a hearing to review the economic impact statement.
 - 5. Upon compliance with these conditions, nothing within T.C.A. § 12-3-312 prohibits the University from executing a proposed contract for services that is subject to the provisions of T.C.A. § 12-3-312.

- C. For Procurements/Contracts that meet the above-stated criteria, the University shall produce and assemble the documentation required for Committee submittal and review, provided that the University is not required to produce privileged information or any record that is not open for public inspection pursuant to state law.

IX. Bonds

A. Performance Bonds

1. Procurement Logistic Services may require a performance bond to secure a contracting party's performance of a purchase order/contract.
2. When required, the amount of the bond shall be stated as a percentage of the purchase order/contract liability (but may not exceed one hundred percent [100%] of the total purchase price), and the amount may be reduced proportionately after contract award if performance under the purchase order/contract moves forward successfully.
3. All bonds must be filed with Procurement Logistic Services within ten (10) 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 Procurement Logistic Services office 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 Procurement Logistic Services office in lieu of a performance bond, subject to approval of the terms and conditions of the irrevocable letter of credit or certificate of deposit.
5. The Chief Procurement Officer may waive the performance bond requirement in appropriate circumstances.

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 purchase/contract liability. In no event shall the bid bond amount exceed five percent (5%) of the estimated value of the purchase/contract liability.
3. Bid bonds submitted by unsuccessful bidders shall be returned upon issuance of a purchase order or signed contract.
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, a certificate of deposit or cashier's check from a State or national bank, 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 Procurement Logistic Services office before they are accepted as security for the bidder'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 the 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/proposal 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 project 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 University shall award any contract in excess of one hundred thousand dollars (\$100,000.00) for public work until a payment bond of no less than twenty-five percent (25%) of the contract price is provided by the contractor to the University.
3. When advertisement is made, the solicitation shall include the bond requirement. T.C.A. § 12-4-201.

D. Protest Bond - See Section V.H.3.

X. Prohibited Transactions

- A. No personal items shall be purchased through the University or from funds of the University for any employee or family of any employee. No personal items shall be purchased from University funds or from any employee of the University or from any relative of any employee unless the relationship was disclosed in a competitive bid process and satisfies T.C.A. § 12-4-103.
- B. No University employee responsible for initiating or approving purchase requisitions shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any purchase order/contract may be awarded, by rebate, gift or otherwise, any money, or any promise, obligation, or purchase/contract for future awards or compensation.
- C. Whenever any purchase order/contract is awarded contrary to the provisions of this standard, the purchase order/contract may be void and of no effect, and if the violation was intentional, the employee responsible for the purchase order/contract may be subject to disciplinary proceedings under [Policy 12 Conflict of Interest](#).
- D. State law prohibits the University from purchasing from any current employee, former employee or any State employee or former employee until six (6) months after the termination date.
- E. University letterheads or other official documents should not be used for ordering personal items to be paid for by an employee.

XI. End of Fiscal Year Procedures

- A. MTSource Purchase Requisitions Current Fiscal Year. Instructions detailing Procurement year-end procedures and cut-off dates will be emailed to departments no later than April 16 each year.
- B. MTSource Purchase Requisitions for Next Fiscal Year. Departments will be notified by Procurement Logistic Services each year by May 1, regarding requisitions to be submitted pertaining to contracts for goods, services and/or maintenance for the next fiscal year. Procurement Logistic Services will make every attempt to bid and award these contracts by July 1 to ensure uninterrupted service on contracts.

XII. Exceptions

Any exceptions to this policy shall be requested in writing and be subject to the approval of 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 President or designee shall be included in the procurement file.

Forms:

[Bid Specification Written Certification Form](#)

[Contract Office Requisition](#)

[Ethnicity Form](#)

[Request for Proposal](#)

Revisions: June 12, 2018 (original) which became effective July 1, 2018; October 19, 2018; October 22, 2019.

Last Reviewed: July 2023.

References: Policies 12 Conflict of Interest; 135 Solicitation and Acceptance of Gifts; 154 Publications; 600 Approval of Agreements - Delegation of Authority/Signature Authorization; 630 Procurement and Contract Policy; 632 Purchasing Card (PCard) Program; 661 Food and Beverages; 685 Disposal of Surplus Property; 940 Use of Electronic Signatures; T.C.A. § 12-3-312.