MIDDLE TENNESSEE STATE UNIVERSITY

POLICIES AND PROCEDURES MANUAL

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SUBJECT:  Procurement Procedures

APPROVED:  Sidney A. McPhee, President

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1.0 University Procurement 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 have been centralized in the Procurement Services Office. The operation of Procurement 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 $10,000.00.

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.

In cases where the TBR policies and procedures do not address a specific procedure for purchase of a particular item or service, the Tennessee Code Annotated, Department of General Services' and Department of Finance & Administration statutes, rules, and regulations will govern, when and if applicable.

Special or unusual procurement problems should be brought to the attention of the Director of Procurement Services who is authorized to approve special exceptions or establish special procedures where necessary.

(b) The general responsibilities and functions of Procurement Services are as follows:

(1) To purchase supplies, material, 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 material to meet the requirements of the using Department (when so requested by the Department).

(3) To handle complaints, claims and adjustments, and to negotiate for the return of material or arrange for other settlements.

(4) To conduct all correspondence with suppliers relating to quotations and purchase orders.

(5) To set up standard specifications for materials and supplies commonly used on campus.

(6) To consolidate purchases wherever possible and thus obtain 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 persons in authority.
(8) To furnish upon request, prices or estimates of cost of materials and supplies to Departments.

(c) The President's designee herein referred to shall mean the Director of Procurement Services.

2.0 General Policy Regarding Procurement

2.1 General Requirements

(a) University policy concerning financial commitments provides that no employee of the University has the authority to make any purchase commitment, enter into any contract for materials or supplies, or otherwise take action with respect to third parties which may be construed as financially binding to the University except through the usual channels under the authority of Procurement Services. In the absence of special arrangements to the contrary, Procurement Services will receive all bids and enter into all negotiations with suppliers except as noted in Section 4.2.

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

**TCA 12-3-105 Unauthorized contracts void — Personal liability of officers.**

(a) Whenever any department, institution or agency required by this Title 12 chapter 3 to purchase supplies, materials, or equipment, or contract for services through the Procurement Department, shall contract for the purchase of such supplies, materials, or equipment, or for services contrary to provisions of this chapter or the rules and regulations made hereunder, such contract shall be void and of no effect.

(b) Whenever the Procurement Department shall contract for the purchase of any supplies, materials, or equipment, or for any services contrary to the provisions of this chapter or the rules and regulations made hereunder, such contract shall also be void and of no effect.

(c) If any such department, institution or agency, including the Procurement Department, purchases any supplies, materials, or equipment contrary to the provisions of this chapter or the rules and regulations made hereunder, the head of such department, institution or agency 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 moneys, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor.

b) Requisitioning through MT$ource

The University's purchasing 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 Services will supply names and addresses of vendors upon request. Such preliminary contacts are not to produce firm commitments as this is the function of Procurement Services. Copies of letter, estimates, and other information relative to desired purchases received by a Department from sources of supply should be forwarded to Procurement Services as an attachment when the requisition is submitted through MT$ource. No individual, company, or other entity involved in assisting with the development or drafting of an ITB/RFQ/RFP or the associated scope of service should have a financial interest in a potential contractor or have the appearance of a conflict of interest with regard to the ITB/RFQ/RFP or potential proposers. Furthermore, No RFP Coordinator, Proposal Evaluation Team member, or consultant in an evaluation process should have a financial interest in or have any other apparent conflict of interest with regard to an actual proposer. **Department MT$ource Requisition Form (APPENDIX #1)**

All institutions, in accordance with state and federal law, shall actively promote and encourage diversity participation with small, minority, and women owned businesses in order to obtain a fair proportion of goods and services from such businesses as further defined in Section #25.0 of this policy. Information regarding small, minority, and women-owned business solicitations and purchases will be filed with the Governor’s Office of Diversity Business Enterprise and the Department of General Services which will consolidate this information into reports to the Legislature.

**See APPENDIX #8: TBR Ethnicity Form**

2.2 Specifications for Competitive Bidding

All purchases shall be based upon the principle of competitive bidding except as herein provided. Required documentation related to competitive bidding shall be routed through the institution's procurement/contract office, prior to the purchase, to ensure compliance with applicable policies and guidelines. Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guideline B-095, and TCA §12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for proposals, or other solicitations electronically. Whenever possible, all specifications for materials, supplies, equipment and services shall be worded or designed so as to permit open and competitive bidding for the supplying of the article, commodities or services to which they apply. **For all RFP’s and ITB’s exceeding $100,000, written certification from the author or committee that the specifications, to the best of their knowledge, are not proprietary shall be documented in the bid file.** It is the responsibility of the procurement officer to ensure all competitive bidding is considered fair and open in a bid process. It will be
considered open and competitive bidding by utilizing one of the following purchasing techniques:

**A. Invitation to Bid or Request for Quotation**
Defined as a competitive process soliciting bids from registered possible suppliers for a one-time procurement of product(s), a contract source of supply, and/or service(s).

See APPENDIX #2: Invitation to Bid Form

(a) Specifications based on brand names and product numbers-reference to brand names, trade names, model numbers or other descriptions peculiar to specific brand products is made to establish a required level of quality and functional capabilities; it is not intended to exclude other products of that level. Comparable products of other manufacturers will be considered if proof of comparability is contained in the bid. Vendors are required to notify the Chief Procurement Officer whenever specification procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing by email to the buyer who will forward to the Chief Procurement Officer at least three (3) working days prior to the bid opening. It shall be the responsibility of the vendors, including vendors whose product is referenced; to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of a bid;

(b) Specifications based on standard specifications;

(c) Specifications based on qualified products list; or

(d) Specifications based on catalogs, price lists or price schedules;

(e) Specifications must be open and competitive; prior to sending out for bid any Invitation to Bid/Request for Proposal where goods/services total or exceed $100,000 the attached ‘Bid Specification Written Certification Form’ (APPENDIX #10) must be signed by requesting Department Head, Department Chair, or their designee

(f) For any contract that results from an RFQ or ITB, Institutions are not permitted to change the scope of the service(s) once a contract is awarded. (Department of General Services Purchasing Division, Agency Purchasing Procedures Manual, Revision Twelve, Approved by the Board of Standards, January 30, 2007).
B. Requests for Proposals
Defined as a competitive process in which bids are solicited from registered possible suppliers, with a source or sources of supply established for a specified period of time at agreed upon unit pricing for goods and/or services, where the award will be made to the best proposal considering organization, experience, reference, ability to perform, and cost.

See TBR (APPENDIX #3) Request for Proposal

(1) Request for Proposal - Under $50,000, sealed bid with cost and technical proposal submitted as one document (under $50,000 does not require sealed bids; can be sealed (written), fax, electronic, or telephone as provided in Section IV.B).

(2) Request for Proposal - $50,000 and above, sealed bid with separate sealed technical and cost proposals which must be submitted at the same time. Compliance with the mandatory RFP requirements shall be determined by the RFP Coordinator in consultation with the Chief Business Officer or designee. Evaluation of technical offers shall be determined by an evaluation team selected by the president or his/her designee. A Procurement Services representative shall review the proposals to ensure procurement procedures were followed and shall offer guidance to the evaluation team but shall not serve on the evaluation team and shall not score technical proposals received, except in instances where the RFP is directly related to a good/service needed by the Procurement Services. The Procurement Services Buyer shall act as RFP Coordinator and oversee all actions of the evaluation team, including all communication between the vendors and evaluation team. 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. Any technical offer submitted which contains any pricing information of any type shall be rejected. Technical offers not deemed acceptable will not proceed to the pricing phase. Cost proposals shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the institution. Technical and Cost Proposals shall not be made public until the inspection period following the evaluation of the cost proposals; or

(a) Additional procedures for Multi-step sealed bidding - the use of a multi-step sealed bidding process is required in the 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.

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

For any contract that results from an RFP, Institutions are not permitted to change the scope of the service(s) once a contract is awarded. (Department of
(b) Monitoring of Services

Institutions shall have a monitoring plan for all service contracts*, including grants and grant subcontracts, to ensure the following:

(1) that deliverables are received,
(2) financial obligation of the institution does not exceed the contract pricing, and
(3) services are in compliance with the terms and conditions of the contract.

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

Request for Proposal (APPENDIX #7): Contract Monitor Form

(c) Illegal Immigrants. No person may enter into a contract to supply goods or services to the state or other state entities without first attesting in writing that the person will not knowingly utilize the services of illegal immigrants in the performance of the contract, and will not knowingly utilizing the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. The procedures for implementing this Policy and the attestation form are provided in TBR Guideline G-030. Language to be included in bids/proposals is included in RFP APPENDIX #3, Minimum General Bid Conditions.

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

Purchase of materials or services, for which any TBR or UT institution or the State of Tennessee Department of General Services, Purchasing Division, has awarded a contract (SWC) to a vendor through the competitive bidding process may be made without adherence to Section IV, Minimum Notice and Number of Bids, provided the vendor meets the bid specifications. Note: the competitive bidding process of another entity (except the state Purchasing Division) must have specified that other institutions would be permitted to purchase under the bid. Institutions are strongly encouraged to include language in RFPs/ITBs/RFQs asking if the bid is open to other TBR and UT institutions. This Section does not preclude institutions from utilizing the SWC as a bid in accordance with the competitive bidding process outlined in Section 3.2, Minimum Notice and Number of Bids, if so desired. Also refer to (F&A Rule 0690-3-1-.01 (5) and Sections XVII of TBR policy.)
D. Procurement of Goods, Materials and Supplies /Services

I. Goods, materials, and supplies (cumulatively called "goods") should be awarded to the lowest responsive and responsible bidder pursuant to an Invitation to Bid or Request for Quotation.

"Responsive" means that the bid meets the requirements and criteria set forth in the Invitation to Bid or Request for Proposal. "Responsible" means that the bidder is capable of performing or is not otherwise disqualified. In the event a bid is not responsive and/or not responsible, then the bid/proposal is to be disqualified.

II. Goods and Services. Certain services or a combination of goods and services may be procured as a "good", based on an Invitation to Bid or Request for Quotation rather than a Request for Proposal, if the end product is more important than the service that goes toward its production or when the vendor has little discretion in determining its actual content or form.

(1) Examples of this type of service may include, but are not limited to: (a) pest control; (b) security services; (c) moving and hauling; (d) refuse collections; (e) charter services; (f) printing services, and (g) maintenance services.

(2) Mischaracterization of an item to be procured as a good or service shall not constitute an error in the procurement if the requirements of this policy are met, but it may be grounds for the Institution to terminate the procurement process. For competitive procurement of goods, an Invitation to Bid or Request for Quotation is appropriate, and in general, a purchase order may be used to finalize the purchase. For competitive procurement of services, a Request for Proposal is more appropriate, and a purchase order may not be sufficient to serve as the written contract for the services. For procurement of services which will require Central Office approval, the Request for Proposal format approved by the Central Office shall be used.

III. Services. A contract for personal, professional, or consulting service shall be used when the vendor's discretion or the form of the end product or service is critical to the performance. All purchases of personal, professional, and consultant services should be based, to the maximum extent practicable, on evaluation and consideration of vendor qualifications and cost. Detailed information regarding personal, professional, and consultant service contracts is provided in Guideline G-030.

See TBR (APPENDIX #3) Request for Proposal

A contract for consulting services hereunder which exceeds $25,000 shall not be allowed unless it is determined by the Chancellor, President or Director, in writing that the services are in fact needed and that they cannot be satisfactorily or economically performed by a state agency. TBR requires a cover form to be completed by the requisitioning Department, submitted to the institution's procurement office, certifying the need for the service(s) and that appropriate consideration has been given to the use of state resources.
IV. Outsourcing. Procurement Services will work with university Departments to determine whether some services can be delivered more economically by the private rather than the public sector. The following process is hereby permitted and encouraged:

(1) The state's cost of the service may be ascertained and kept confidential as part of the evaluation process. This cost must be finally determined and provided to the Procurement Services Department, as appropriate, in a sealed envelope prior to bid/proposal due date.

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

(3) The ITB/RFP may require that if the proposer's/bidder's price exceeds the MTSU's confidential cost, the proposal/bid may be rejected. The final determination for outsourcing will be made by the President of MTSU or designee.

E. Procurement of State Manufactured Articles and Services

MTSU Departments shall be required to purchase items (goods) and services from other State agencies, e.g., Department of Correction, Blind Services, Tennessee Rehabilitative Initiative in Correction (TRICOR), Community Rehabilitation Agencies (CMRA)/TRUST in Tennessee, whenever such items or services are available therefrom and meet the desired conditions and standards. (Refer General Services Rule 0690-3-1-.01 (7) (d).)

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

F. Procurement under Contracts with Group Purchasing Organizations (GPO's)

MTSU is permitted to make purchases of goods and services under a contract with a Group Purchasing Organization (GPO) program as provided in TCA 49-7-127 (The guidelines for purchase under GPO’s are listed on the Procurement Services Webpage). The statute specifically permits such purchases when the price for goods or services under a group purchasing program is lower than the price available on a state contract. A state contract is defined in this section as a TBR institution contract, a TBR system contract, a UT contract, or a General Services Purchasing Division (SWC) contract. Comparison pricing must have been obtained within twelve (12) months of the date of comparison.

G. Gifts do not require a procurement process subject to this policy.
(See TBR Policy 4:01:04:00 Solicitation and Acceptance of Gifts and TBR G-030 Section 3 for additional explanation)
For purposes of this policy, a gift to the institution shall be defined as a voluntary transfer of goods or services to the institution made gratuitously and without consideration. Essential elements of a gift are:

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

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

3.0 Requirements for Bidding: (Invitations to Bid and Request for Proposal)

3.1 Time to Allow for Bidding

Bids by their nature can be simple and/or low-cost and require very little time to process. The normal time to allow for bidding is approximately seven (7) days for less than $50,000 and fourteen (14) days over $50,000. Departments are requested to anticipate their needs as far in advance as possible to assure that deliveries can be made when needed. Copies of bids may be referred to the requisitioning Department for review and approval, before the award, if the requisitioner so requests by notation on their requisition.

Other more complicated bid processes may require extensive Invitations to Bid or Requests for Proposals be issued. Some RFP’s may take up to six (6) months from start to finish. For Request for Proposals and applicable Invitations to Bid (for example, those ITB’s 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-bidders questions/responses. Examples of types of bids which would need to allow at least six (6) weeks include, but are not limited to, banking and other financial services, bookstore and food services, custom software and or IT system services, advertising management services and any other bid for which the additional time is appropriate. Therefore anticipating a longer than normal turnaround is necessary when making such a request.

3.2 Number of Bids (Minimum)

The number of bids required and the notice to bidders for solicitation of bids shall be as follows:

(a) If the estimated amount of the purchase (or revenue) is at least $10,000 but less than $50,000, written, telephone, fax, or electronic (email) bids must be solicited from at least three (3) qualified vendors. When telephone bids are solicited, a written record of the bidders and amounts bid shall be maintained.
(b) If the estimated amount of the purchase (or revenue) is $50,000 or more, written sealed bids must be solicited from fifteen (15) vendors or the total number of vendors on the Vendors List--whichever is less and to all that request the specific ITB/RFP. (The Director of Procurement Services must approve the solicitation of less than 15 bids). An Invitation to Bid/RFP for goods must be mailed at least fourteen (14) days (ten (10) days when all vendors are local vendors) before the date that the bids are scheduled to be opened. A vendor's general or standing request for notice for all ITB's or all RFP's of a given type shall not suffice as a request for a specific ITB/RFP and shall create no obligation on the institution.

(c) Procurement Services shall notify vendors in such a way as to verify their participation in the procurement process when the estimated amount of the ITB/RFP is $100,000 or more.

(d) DEPARTMENT LOCAL PURCHASE AUTHORITY:
If the total estimated amount of any purchase is less than $10,000, the purchase may be negotiated. For any purchases less than $5,000 (Does not apply to Personal, Professional, or Consultant Contracts) MTSU Departments and employees will use a P-Card and use MTSource (when practical) to procure the supplies and/or services. All University Departments or employees must utilize State of Tennessee, MTSU, Tennessee Board of Regents (Including all TBR Institutions), and University of Tennessee (Including all UTK Institutions) contracts 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 P-Card purchases shall be made utilizing best bid prices. All documentation pertaining to purchases and/or services shall be available for review and audit by Procurement Services. A list of current State of Tennessee, MTSU, Tennessee Board of Regents (Including all TBR Institutions), and University of Tennessee (Including all UTK Institutions) contracts are available on the MTSU Procurement Services Website: http://www.mtsu.edu/procurement.

All purchases made for supplies and/or services under $5,000 shall be made with a MTSU P-Card and use MTSource (when practical) unless the vendor requires a University Purchase Order or in rare circumstances a "Check Enclosed". For these situations a Procurement Requisition will be completed utilizing MTSource eProcurement System and forwarded to Procurement Services with an explanation.

3.3 Information on Invitation to Bid and Requests for Proposal

A. Invitations to Bid and Requests for Proposal shall specify:

(a) The time and place that bids will be received and opened,
(b) Information describing the purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired,
(c) The amount or number of articles or services required,
(d) For all ITB's and RFP's exceeding $100,000, in estimated expenditure or revenue, a question/answer period and/or pre-bidders' conference, with all
questions and responses forwarded to all prospective bidders, (The larger or more complex an RFP is, the more likely a pre-bidders’ conference should be held, and the more likely it may be that two periods of questions and answers may be appropriate.):

(e) The time of delivery,

(f) The amount, if any, of any bid bond or certified check to accompany the bid/proposal,

(g) The amount, if any, of any performance bond which may be required if the vendor is the successful bidder,

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

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

(j) Date bid/proposals evaluations available for viewing,

(k) If applicable, whether other TBR and/or UTK institutions may purchase from the contract, and

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

B. Invitations to Bid and RFP's may specify any other requirements, conditions, or Information in reference to the purchase deemed necessary.

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

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

(2) A list of vendors for solicitation,

(3) The date vendors were sent the ITB or RFP,

(4) For RFP's and applicable ITB's, any pre-bid questions/responses or addendums to the RFP/ITB,

(5) For RFP's and applicable ITB's, all documentation relating to the composition of the evaluation team and the evaluation documentation used to make the award,

(6) As applicable, any documentation that warrants a re-bid of the ITB/RFP,

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

(8) As applicable, copies of intent to award letters, and

(9) The executed purchase order and/or contract.

3.4 Withdrawals, Revisions and Rejection of Bids

Before bid opening, a vendor may be permitted to withdraw a bid entirely and/or submit a substitute bid. The vendor making such a request must submit suitable identification.

After bid opening, a vendor will be permitted to withdraw a bid only where there is obvious clerical error in the bid such as a misplaced decimal point, or where enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Withdrawal will be considered only upon written request from the vendor.
In cases of errors in the extension of prices in the bid, the unit price will govern.

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

A bid may not be revised after bid opening.

However, after evaluation is complete and the successful bidder/proposer selected, Procurement Services may initiate negotiations which serve to alter the bid/proposal in a way favorable to the MTSU. For example, prices may be reduced, time requirements may be revised, the bid/proposal may be revised to supply omitted contract terms etc. In no event shall negotiations increase the cost or amend the proposal such that the apparent successful proposer no longer offers the best proposal.

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

When it becomes necessary to reject all bids, the reason for such rejection must be set out in complete detail and made available to all bidders who submitted a bid.

Action to reject all bids shall be taken only for unreasonably high prices, errors in the invitation to bid/RFP, cessation of need, unavailability of funds, failure of all proposals to meet technical specifications, lack of competition, a determination that the goods/services can be more economically delivered pursuant to an agreement with another TBR institution of other state agency, or a determination that proceeding with the procurement would be detrimental to the best interests of the institution, the reason for which must be documented and approved by the Chancellor or designee, President of MTSU or his or her designee.

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

### 3.5 Opening Public Bid

All ITB and RFP’s received shall be publicly opened and examined by a designated institutional representative at the time and place specified in the ITB/RFP, and all bids conforming to the ITB/RFP 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.

Inspection Prior to Award for ITB’s/RFQ’s: After bid evaluation, all data relating to the procurement shall be made available for inspection to each bidder on the procurement, upon request. Procurement Services shall award no contract without providing bidders a reasonable opportunity for such inspection [TCA 12-3-203 (e)].
Whenever RFP sealed bidding is utilized, bidders shall have no less than five (5) working days after the evaluation of all Technical and Financial Proposals are complete. The Institution shall specify within the ‘Intent to Award Letter’ the dates and times for all bidders to preview 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 (Exception: B-1 RFP's that are less than $50,000).

3.6 Acceptance of Bids/No Rights Created

Notwithstanding any provision contained herein or in any solicitation document, submission of a bid or a proposal shall not create rights, interests or claims of entitlement in any bidder or proposer, including the successful bidder or proposer. Notwithstanding any action or agreement to the contrary, no such right, interest, or claim shall exist unless and until a purchase order has been issued or a contract is fully executed.

For RFP's, a notice of intent to award shall be sent to all proposers when applicable.

All bids shall be subject to rejection by Chancellor or designee, the President of MTSU or his or her designee. If awarded, the contract for purchase shall be awarded to the lowest qualified and responsible bidder, taking into consideration quantifiable factors including but not limited to the apparent ability of the bidder to perform the proposed contract, the conformity of the articles or services to the specifications, any discount allowed for prompt payment or for any other reason, transportation charges, and the date of delivery specified in the Invitation to Bid/RFP.

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

A complete written record on all procedures and justifications shall be maintained on each procurement transaction in order to provide a clear audit trail on the purchase.

All ITB/RFP's must be received in the Procurement Services Office on or before the date and hour designated for bid opening, unless another location was designated in the ITB/RFP. All bids received must be date and time stamped to show compliance with the designated opening date and time. Late bids will not be considered in contract awards. All late bids received will remain property of the University and will be filed, unopened, in the appropriate folder. Telephone, Fax or other electronic informal bids (less than $50,000) may be accepted at the discretion of the Director of Procurement Services when it is in the 'best interests of the University'.

All bids received shall be publicly opened and examined by the Procurement Services Buyer at the time and place specified in the Invitation to Bid/RFP. All bids conforming to the Invitation to Bid/RFP specifications together with the name of the bidder shall be recorded, become a matter of public record, and shall be open to public inspection after award.
RFP Technical Offers over $50,000 will have only the responding company name read, whereas Financial Cost Proposals will be open and be read according to the 'Schedule of Events'. Whenever RFP sealed bidding is utilized, bidders shall have no less than five (5) working days after the evaluation of all Technical and Financial Proposals are complete. The Institution shall specify in the 'Intent to Award Letter' the dates and times for all bidders to preview all bid documents before a purchase order/contract may be awarded.

Each ITB/RFP should give the full name and business address of the bidder; if the vendor is a corporation, the name shall be stated as it is in the corporate charter. Each bid must be signed in ink by the Vendor's authorized agent. Unsigned and late bids will be rejected.

However, MTSU Procurement Services may conduct procurement electronically, and when the institution requests or permits electronic bidding, no bidder's signature shall be required (Refer to TCA § 12-3-704). Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guideline B-095, and TCA § 12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for proposals, or other solicitations electronically. (Telephone, Fax, or other electronic informal bids (less than $50,000) may be accepted at the discretion of the Director of Procurement Services when it is in the 'best interests of the University'.) The person signing the bid must show his or her title, and furnish satisfactory proof of his or her authority to bind his or her company in contract. Bids should be typewritten or in ink; otherwise, they may not be considered. The purchase order, if applicable, will be issued to the firm whose name appears on the bid/quotation/proposal.

Where more than one item is specified in the Invitation to Bid/RFP, the buyer may provide in the Invitation to Bid/RFP that MTSU has the right to determine the low vendor(s) either on the basis of each individual item, a group of items, or the total of all items.

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

All material, supplies, and equipment offered and furnished must be new unless the Invitation to Bid/RFP specifically permits offers of used, remanufactured, or reconditioned items. Invitations to Bid/RFP's which specifically permit offers of used, remanufactured, or reconditioned items shall require a warranty; however the Director of Procurement Services, shall have the authority to waive this requirement.
3.7 Protest of Bids

(a) Right to Protest

(i) Any actual proposer who claims to be aggrieved in connection with a specific solicitation process may submit a protest in writing to the Director of Procurement Services within seven (7) calendar days after he or she knows or should have known the facts giving rise to the protest.

All proposers should know and shall be deemed responsible for knowing the facts documented in the institution's procurement files on the day the institution opens the bid files for public inspection. Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest.

(ii) Signature on Protest Constitutes Certificate. The signature of an attorney or protesting party on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay, or needless increase in the cost of the procurement or of the litigation. If a request for consideration, protest, pleading, motion, or other document is signed in violation of this subsection before or after appeal to the Chancellor, the Chancellor upon motion or upon his/her own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties, including the affected institution, the amount of the reasonable expenses incurred because of the filing of the protest, a petition for a stay of award, pleading, motion, or other paper, including reasonable attorneys' fees.

(iii) Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond. The protesting party shall post, with the Director of Procurement Services, at the time of filing a notice of protest, a bond payable to the institution in the amount of five percent (5%) of the lowest cost proposal evaluated or five percent (5%) of the highest revenue proposal evaluated. Such protest bond shall be in form and substance acceptable to the institution and shall be immediately payable to the institution conditioned upon a decision by the Chancellor that:

1. A request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the Chancellor (Refer TBR VII A. (ii);
2. The protest has been brought or pursued in bad faith; or
3. The protest does not state on its face a valid basis for protest.

(iv) The institution shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by MTSU. If the protesting party appeals the determination in accordance with subdivision (vii), MTSU
shall hold such protest bond until instructed by the Chancellor to either keep
the bond or return it to the protesting party.

(v) At the time of filing notice of a protest of a procurement in which the lowest
evaluated cost proposal is less than one million dollars ($1,000,000), or in
which the highest evaluated revenue proposal is less than one hundred
thousand dollars ($100,000), a minority or small business protesting party
may submit a written petition to the Director of Procurement Services for
exemption from the protest bond requirement (iii). Such a petition must
include clear evidence of minority or small business status. On the day of
receipt, the petition shall be given (may be faxed) to the Chancellor or his or
her designee. The Chancellor has five (5) business days in which to make a
determination. If an exemption from the protest bond requirement is granted,
the protest shall proceed as though the bond were posted. Should the
Chancellor deny an exemption from the requirement, the protesting party
shall post the bond with the Director of Procurement Services as required
within three (3) business days of the determination. For the purposes of this
section, "minority business" is defined as solely owned or at least fifty-one
percent (51%) owned by a person or persons who control the daily operation
of such business and who is disabled (a person having a physical or mental
impairment that in the written opinion of the person's licensed physician,
substantially limits one (1) or more of the major life activities of such person,
including caring for oneself, and performing manual tasks, which include
writing, walking, seeing, hearing, speaking, and breathing); African
American (persons having origins in any of the Black racial groups of
Africa); Asian American (persons having origins in any of the original
peoples of the Far East, Southeast Asia and Asia, the subcontinent, or the
Pacific Islands); Hispanic American (persons of Cuban, Mexican, Puerto
Rican, Central or South American, or other Spanish or Portuguese origin,
culture, or descent, regardless of race,); or Native American (persons having
origins in any of the original peoples of North America). For purposes of this
section, "small business" is defined as one which is independently owned and
operated, has total gross receipts of no more than two million dollars
($2,000,000) for the most recently ended federal tax year, and employs no
more than thirty (30) persons on a full-time basis.

(b) Authority to Resolve Protest

(i) The Director of Procurement Services has the authority to resolve the protest.
If deemed necessary, the Director of Procurement Services may request a
meeting with the protesting party to seek clarification of the protest issues.

(ii) The final determination of the Director of Procurement Services shall be
given in writing and submitted to the protesting party.

(iii) The protesting party may request that the final determination of the Director
of Procurement Services be considered by the Senior Vice President. The
request for consideration shall be made in writing to the Senior Vice
President within seven (7) calendar days from the date of the final
determination by the Director of Procurement Services.
(iv) The Senior Vice President has the authority to review and resolve the protest. If deemed necessary, The Senior Vice President may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the Senior Vice President shall be given in writing and submitted to the protesting party.

(v) The protesting party may request that the final determination of the Senior Vice President be considered by the President of MTSU. The request for consideration shall be made in writing to the President within seven (7) calendar days from the date of the final determination by the Senior Vice President.

(vi) MTSU shall have no longer than sixty (60) calendar days from receipt of the protest to resolve the protest.

(vii) The protesting party may request that the final determination of the President be considered by the Chancellor. The request for consideration shall be made in writing to the Chancellor within seven (7) calendar days from the date of the final determination by the President. The determination of the Chancellor or his or her designee is final and shall be given in writing and submitted to the protestor.

(viii) In the event that the institution fails to acknowledge receipt of a protest within fifteen (15) days of receipt of a protest or fails to resolve the protest within sixty (60) calendar days, the protesting party may request that the Chancellor consider the protest at a meeting.

(c) Stay of Award

Prior to the award of a contract, a proposer who has protested may submit to the Senior Vice President a written petition for stay of award. Such stay shall become effective upon receipt by the Senior Vice President. The Director of Procurement Services shall not proceed further with the solicitation process or the award of the contract until the protest has been resolved in accordance with this section, unless the Chancellor makes a written determination that continuation of the solicitation process or the award of the contract without delay is necessary to protect substantial interests of the institution. It shall be the responsibility of the Senior Vice President to seek such determination by the Chancellor.

(d) Protest Subsequent to Award

Any protest made subsequent to award must be made to the Tennessee Claims Commission which has exclusive jurisdiction to determine all monetary claims against the State for the negligent deprivation of statutory rights.

(e) Appeal to Chancery Court

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

(f) **APPENDIX #6 (Protest Bond)**

A protest bond may be presented to MTSU in form and substance compliant with the Protest Bond format attached in APPENDIX #6. Any protest bond presented to MTSU that represents a deviation from the APPENDIX #6 format shall be considered for acceptability by the institution on a case by case basis.

3.8 **Tie Bids**

A. **Goods** - A tie bid exists when two or more bidders offer goods and/or services that meet all specifications, terms and conditions at identical prices, including cash discount offered. In such case, a tie bid will be broken by the following methods, in descending order of preference:

(a) Tennessee businesses will be given preference (TCA 12-4-121(c) (2)):

   (1) incorporated in this state;
   (2) that has its principal place of business in this state; or
   (3) that has an established physical presence in this state.

(b) Small, minority, and women-owned business will be given preference (Refer business classifications as part of *MTSource* web-page).

(c) Award of item(s) to vendor who was low bidder on other item(s) being bid per the same requisition.

(d) Best delivery.

(e) By lot or coin toss (properly witnessed and documented).

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

3.9 **Federal Excluded Parties List**

Purchases utilizing federal funding are to follow federal guidelines regarding such purchases. Prior to awarding any grant purchase (Index Codes beginning with 500000) Procurement Services will review the federal excluded parties list at [http://www.sam.gov/portal/public/SAM#1](http://www.sam.gov/portal/public/SAM#1). Purchases for goods or services shall not
be made from vendors on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

4.0 Types of Purchases

4.1 Resale Purchases (Bookstore)

Purchases for items for resale shall be made as follows:

(a) Textbooks and other course-related materials may be purchased without adherence to Section 3.2 of this Policy, Number of Bids (minimum). All textbook ordering lists and authorization forms must be maintained for audit purposes.

(b) Certain items for resale for which customers have expressed a preference, and/or new or promotional items procured under accepted retail merchandising practices, may be purchased without adherence to Section 3.2 of this Policy, Number of Bids (minimum). Appropriate documentation shall be maintained which supports the action taken.

4.2 Library Purchases, Excluding Materials and Supplies Identified for Consumption by the Library

Purchases of materials for additions to a library collection include cost of books, catalogs, periodicals, binding, audiovisual media and other general publications. These items are capital expenditures. These purchases may be made without formal bids or quotations, and appropriate documentation shall be maintained on these purchases to support sole source procurement.

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

(a) Where multiple vendors may be used for purchasing library collections Procurement Services may issue delegated purchase authority (DPA). The Library will attempt to secure bids and will be responsible for keeping those records for audit purposes.

4.3 Computer Hardware and Software Purchases (Routine)

MTSource Requisitions for computer hardware, peripherals, software and related maintenance or support requests of ($1,000 or more) shall include an attached "Explanation of Need" which includes the intended usage and, if hardware, the type of equipment to which it will be attached. Also the requisition will include the location, including building and room. The MTSource requisition is routed thru the
Information Technology Division Office for approval, prior to coming to Procurement Services.

Requisitions for purchases that exceed $249,999.99 will also require the Tennessee Board of Regents approval. These shall include (but are not limited to) the purchase or lease of real property, data processing equipment over $249,999.99, the purchase of insurance, or purchases for capital outlay projects from any fund source whatsoever.

4.4 Emergency Purchases

Purchases of specific material, supplies, equipment or services may be made in the open market for immediate delivery only to meet bona fide emergencies arising from any unforeseen cause. All bona fide emergency purchases must be approved by the President, or Chancellor (for the TBR Central Office), or his or her designee, and a written report on the circumstances of any such emergency justifying the purchase shall be prepared and maintained. All emergency purchases shall, if practical, be made on the basis of competitive bids.

4.5 Copy Machine Purchases

Departments requesting a copy machine for lease or purchase shall prepare a Department Requisition.

If applicable, Departments will send a letter or email requesting annual renewals to Procurement Services (Existing Multiyear Term Contracts may be found at http://www.mtsu.edu/procurement under 'Contracts'.

4.6 Sole Source and Proprietary Purchases

(a) Sole Source purchases may be allowed pursuant to the following:

Sole Source Procurement - Sole source purchases are made only when items are unique and possess specific characteristics that can be filled by only one source.

Only authorized sole source requests may be procured utilizing noncompetitive negotiation.

Whenever specifications are not so worded or designed to provide competitive bidding, or specify a single brand, the person responsible for the recommendation shall be required to justify the necessity for the specification in writing, and the request shall be approved as per the Sole Source Procurement Form. A letter from the vendor will accompany the Sole Source Form indicating that it is the sole source for the commodity/service and the letter must be signed by an authorized company representative.

The TBR Justification for Non-Competitive Purchases and Contracts Form must be completed and approved by the TBR Central Office for Contracts and purchases exceeding $249,999.99).
A noncompetitive, sole source procurement request shall specify in writing, as a minimum the following:

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

(b) **Proprietary Purchases** - A proprietary product is one that is manufactured and marketed by a person or persons having the exclusive right to manufacture and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is found that bids may be obtained from different franchises, bid invitations must be issued unless the estimated purchase is less than $10,000.00

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

(1) Whether the vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products.

(2) Whether the product or service is unique and easily established as one of a kind.

(3) Whether the program requirements can be modified so that competitive products or services may be used.

(4) Whether the product is available from only one source and not merchandised through wholesalers, jobbers or retailers.

(5) Whether items must be interchangeable or compatible with in-place items.

(6) Whether the cost of conversion, including but not limited to disruption, retraining and replacement, precludes bidding competitively.

(7) Whether the product is to be used in an instructional setting and the intent is to provide instruction on the specific product or diversity of products.

(8) For personal, professional and consultant services, whether the use of noncompetitive negotiation is in the best interests of the institution. (Refer F&A Rule 0620-3-3-.03)
(9) Other justifications as approved by the President or Chancellor (for the TBR Central Office) or his or her designee.

4.7 Contracts and Agreements

All contracts and agreements will be in conformance with TBR Policy 1:03:02:10 Approval of Agreements and TBR Guideline G-030, Contracts and Agreements.

(a) No agreement of any nature which requires the 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 institution shall have the right to terminate the agreement at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the agreement.

(b) All agreements, contracts and subcontracts shall contain all necessary affirmative action and nondiscrimination requirements provided by Federal or State laws and regulations.

(c) All agreements and contracts involving or related to the purchase or lease of real property or data processing equipment exceeding $249,999.99, and any purchases related to capital outlay projects, shall be expressly subject to the approval of the Chancellor.

(d) No contract for purchase of materials, supplies, equipment or services shall be awarded pursuant to these procedures unless funds have been appropriated and are available for the purchase. No contract shall be entered into in addition to the contract resulting from acceptance of a bid and issuance of a purchase order except pursuant to TBR Policy No. 1:03:02:10, Approval of Agreements.

(e) Contracts containing no financial consideration may be negotiated.

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

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

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

(h) Contract Limitations:

   No agreement of any nature shall be entered into which:
   (1) provides the institution shall indemnify or hold harmless any other party;
   (2) provides that the institution shall pay taxes of any nature;
(3) provides for the payment of interest, late charges or penalties of any nature by the institution;
(4) contains any provision concerning default by the institution, commencement of any legal proceeding or payment of attorney's fees; or
(5) provides for prepayment for any goods or services, except for books and publications, conferences and those necessary in the ordinary course of business.

(i) **Limitations of Liability – Personal, Professional and Consultant Service Contracts.** The provisions of this Section subsection (i), are not required to be followed for contracts of adhesion; for such contracts, the provisions of G030 Section 11 subsection Contract of Adhesion may be applied.

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

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

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

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

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

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

   Approval Process: The request made under this Section must be submitted in writing, with appropriate supporting information, to the approving authority and must be signed by the Chief Procurement Officer of the institution.
(j) **Limitations of Liability - Materials, Supplies, Equipment and Services.** The provisions of this Section subsection (j) are not required to be followed for contracts of adhesion; for such contracts, the provisions of G030 Section 11 subsection Contract of Adhesion may be applied.

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

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

**Approval Timeliness.** Any request to the approving authority under this Section (j) 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, MTSU may determine to request the approving authority’s approval under this Section (j) after receiving written comments from potential proposers. If the approving authority approves such request, an amendment to the ITB may be made. MTSU may request, and the approving authority may approve, initiation of a new procurement process, including a contractor's limitation of liability, at any stage of the procurement process and may authorize negotiation of a limitation on a contractor's liability in circumstances in which the applicable procurement process has failed to provide a qualified proposer or a responsive bid.

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

1. the text of the limitation of liability sought to be used;
2. the risks of liability to the state created by the information technology services and/or products to be purchased under the contract, and the impact on the state of allowing the limitation;
3. the conditions of the market which justify a limitation of liability;
4. the anticipated impact on the state's procurement if limitation of liability is not approved; and
5. the identification of one or more persons at MTSU institution familiar with the information set forth in the request.
The approving authority may deny or approve the request or may authorize limitation of liability under other language than that proposed in the request.

Notwithstanding the above, the approving authority may authorize, with respect to contracts for telecommunications and information technology goods and services, a limitation of liability of not less than two (2) times the value of the contract provided that the limitation of liability permitted under this paragraph shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. Any limitation beyond that permitted in this paragraph must be approved by the Chancellor (TCA 12-3-315 and General Services Rule 0690-3-2).

4.8  State Manufactured Articles and Services

All institutions and schools are required to purchase items and services from other State agencies, e.g., Department of Correction, Blind Services, whenever such items or services are available therefrom and meet the desired conditions and standards. The purchase of articles need not be from the Department however, if the Board of Standards determines that the articles so produced or manufactured by the Department do not meet the reasonable requirements of the University.

4.9  Departmental Contracts

(a) When a Department routinely uses a specific commodity or service, Procurement Services will request that a contract be established for the specific goods and/or services for up to twelve (12) months. A contract may be bid and extended on a fiscal year basis up to five years but is not to exceed a total of sixty (60) months.

Term 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.

When a term contract is established for a specific Department it may be used by another Department when such language was included in the original bid document. When the contract is a Multi-year Contract Department(s) must renew the contract annually by forwarding a letter or email notification to Procurement Services.

(b) Procurement Services will establish MTSU University Contracts for goods and/or services that are routinely used by MTSU Departments. Purchases may be made against a University Contract by sending through a requisition citing a specific University Contract. A Standing Departmental Contract Purchase Order may established by Procurement Services that will allow purchases to be made against a University Contract without a requisition for each purchase. The Departmental Contract shall run concurrently with the University Contract pertaining to price, length of contract, and contract terms and conditions.

(c) No contract agreement of any nature which requires the expenditure of funds shall extend beyond the end of fiscal year in which it is entered into unless expressly subject to the condition that MTSU shall have the right to cancel 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. Or in accordance with cancellation language as agreed upon by both
MTSU and contractor.

(d) **Delegated Purchase Authority**-- Upon Departmental request and with
Procurement Services’ approval, a **Delegated Purchase Authority Blanket
Purchase Order** (Refer TCA 12-3-210) may be done in cases where many
small dollar volume purchases are anticipated. No single purchase by any
Department shall exceed the approved DPA limit established by Procurement
Services. The MTSU Department will in all cases attempt to secure three bids
and be responsible for all documentation pertaining to the DPA which will be
kept by the Department and made available for Internal and State Audit for a
period not to exceed three (3) years. DPA orders must be submitted and renewed
each fiscal year. All DPA contract requests will include estimated volumes and
expenditures.

### 4.10 Utility Contracts

MTSU 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 it deems to be in the best interest
of the University and the State of Tennessee. Each such purchase or contract shall be
made on a competitive basis, whenever possible, in accordance with this policy,
unless it has been determined that such purchase is single source. If such purchase
has been determined to be single source, the purchase shall then be made pursuant to
Section 4.7 above **The Noncompetitive negotiation, Sole Source and Proprietary
Purchases of the MTSU Procurement Services Policy**.

### 4.11 Life-Cycle Costing

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

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

### 4.12 Energy Efficiency Standards

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

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

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

4.13 Coordination of Purchasing Functions among TBR System Institutions and Technology Centers and with the University of Tennessee System

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

4.14 Competitive Negotiation

A. Competitive Negotiation

A contract may be entered into by competitive negotiation only in cases when MTSU is unable to obtain needed goods and/or services by the competitive bid process. In addition, competitive negotiation may be appropriate for personal, professional and consultant service contracts when one of the following is true:

(1) public need will not permit the delay incident to the RFP process;
(2) no acceptable proposals have been received after an RFP process;
(3) rates payable for the services are regulated by law; or
(4) as provided in 3.2(a) of this Policy. (Refer F&A Rule 0620-3-3-.03)

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

B. Noncompetitive negotiation for sole source procurement - the negotiation of the terms of a contract with only one provider. The vendor must furnish a letter indicating that it is the sole supplier and the letter must be signed by an authorized company representative. Only authorized sole source procurements may be procured utilizing non-competitive negotiation combined with a completed sole source justification form. Reference APPENDIX #9 Sole Source Justification Form

Personal, Professional and Consultant service contracts may be obtained by noncompetitive negotiation when the contractor is a state agency, a political subdivision of the state, and any other public entity in Tennessee, or an entity of the federal government.

5.0 Restrictions and Limitations of Purchases

5.1 Gifts or Consignment of Equipment

If an MTSU Department is offered merchandise and/or equipment as an outright gift or on a consignment basis, permission to accept or receive such merchandise should be requested by letter to the Director of Procurement Services through the Department chairperson and/or dean. A complete description of the merchandise or equipment and a clear statement of the conditions under which the gift or consignment is being offered should be given. The Director of Procurement Services will secure administrative approval for acceptance. Acceptance should not be made until proper approval is received.

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

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

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

5.2 Restrictions on Certain Purchases

(a) No personal items shall be purchased from MTSU funds or from any employee of the institution or from any relative of any employee unless the relationship was disclosed in a competitive bid process and satisfies TCA § 12-4-103. No employee of MTSU responsible for initiating or approving requisitions shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future awards or compensation. Whenever any contract is awarded contrary to the provisions of these policies and procedures, the contract shall be void and of no
effect, and if the violation was intentional, the employee responsible for the purchase shall be liable for any state funds paid contrary to these policies and procedures. The Department or budgetary head is responsible for ensuring the legitimacy of the business purpose.

(b) Tennessee State Law prohibits the University from purchasing from its current employees, former employees or any State employee or former employee until six (6) months after the termination date.

(c) University letterheads should not be used for ordering personal items to be paid for by an employee.


6.0 Disposition of Surplus Items

6.1 Trade-in

Departments may trade in equipment toward the purchase of similar items. Inventory tag numbers shall be noted on the departmental requisition.

The University reserves the right to accept or reject trade-in pricing from any vendor.

6.2 Transfer Between Departments

Equipment may be transferred between departments. Transfers will be reported as a deletion by the Department which originally had the item by returning the inventory equipment card to the Receiving & Moving Services.

6.3 Sale of Surplus Property

Whenever a Department wishes to dispose of any University owned property, the Department must notify Receiving & Moving Services in writing, giving complete details. The equipment must be fully described by giving serial numbers, condition, age (if known), inventory number, etc. If the equipment cannot be used elsewhere on campus, it will be disposed of according to Tennessee Board of Regents' policy (4:02:20:00) which has been incorporated into the MTSU Policy Manual by Policy No. IV: 06:02.

6.4 Online Auction Surplus Property

MTSU may offer surplus items via an online auctioning company (http://www.govdeals.com/index.cfm?fa=Main.Item&itemid=2269&acctid=48) in accordance with the TCA code for online bid transactions.
7.0 Documents

7.1 MT$ource eProcurement

Departments requesting goods and services shall utilize MT$ource eProcurement system to prepare online requisitions.

A department purchase requisition is used in the following purchasing techniques:

(a) to request that a special or Department contract be established for a specific commodity or service;

(b) to request the purchase of commodities or services in a specific amount for delivery on a one-time basis;

Refer to the Instructions Link for Entering a Department Requisition into MT$ource at: http://www.mtsu.edu/procurement

7.2 Procurement Card

(a) The MTSU Purchasing Card (P-Card) will be used for buying supplies and services and use MT$ource (when practical) that do not conflict with/or violate Procurement or Contract Policies.

(b) For any purchases of supplies and/or services less than $5,000 (Does not apply to Personal, Professional, or Consultant Contracts) MTSU Departments and employees shall use a P-Card and use MT$ource (when practical) to procure the supplies and/or services.

(c) All University Departments and employees must utilize State of Tennessee, MTSU, Tennessee Board of Regents (Including all TBR Institutions), and University of Tennessee (Including all UTK Institutions) contracts as the primary sources to procure any needed supplies and/or services. A list of current State of Tennessee, MTSU, Tennessee Board of Regents (Including all TBR Institutions), and University of Tennessee (Including all UTK Institutions) contracts are available on the MTSU Procurement Services Website: http://www.mtsu.edu/procurement. If the item or service can be procured at a lower price or is unavailable on these contracts then the Department or employee may purchase it elsewhere, however all P-Card purchases shall be made utilizing best bid practices.

(d) All documentation pertaining to P-Card purchases of supplies and/or services shall be available for review and/or audit by the Office of Business and Finance, Audit and Consulting Services, and the Division of State Audit. The Procurement Services P-Card 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 P-Card Administrator shall provide education classes for MTSU Departments and any new and existing cardholders as required. All new MTSU Departments and employees will be required to attend a ‘mandatory’ training class prior to having their P-Card activated.

(f) All purchases made for supplies and/or services under $5,000 shall be made with an MTSU P-Card and use MT$ource (when practical) unless the vendor requires a University Purchase Order or in rare circumstances a "Check Enclosed". The MTSU eProcurement online ordering system MT$ource shall be utilized to procure P-Card purchases (when practical). Whenever a vendor will not accept a P-Card Purchase Order the order may be placed directly with the vendor.

(g) Failure by any MTSU employee to adhere to these P-Card policies may cause the violator to be held personally liable for all charges and temporary suspension of their P-Card. Continual abuse and/or misuse of University P-Card Policies shall result in forfeiture of all Procurement Card privileges and possible disciplinary action up to termination of your employment from the University.

Activities that are specifically prohibited are:

1. Absolutely **NO** alcohol or food EXCEPT prepackaged food items as per Policy IV:04:20, Section 6.c shall be purchased with a P-Card.
2. Absolutely **NO** Medical, Physician, and/or Pharmaceutical expenses shall be purchased with a P-Card.
3. Absolutely **NO** gift cards of any type may be purchased using a MTSU P-Card.
4. Procurement cards **MAY NOT** be used during actual travel except in instances of team/group travel, unless authorized by the President or his/her designee. Please refer to Section X of the Travel Policy (IV:04:09) for definition of group travel.
5. Advanced registrations and airline payments may be paid for with the P-Card.
6. Rebates, in any form (checks, debit cards, written credit vouchers) that are received as a result of a P-Card purchase shall be given to the Departmental P-Card 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 P-Card holder.

7.3 MT$ource eProcurement Purchase Order

**Purchase Orders:** (APPENDIX #4) will be processed through MT$ource and sent electronically online by the MTSU eProcurement system. All departments have access to MT$ource and should thoroughly compare the online purchase order against their online requisition, and any discrepancies should be reported to Procurement Services immediately. As soon as the articles/service are received by the Department on MT$ource (see APPENDIX #11) and a correct invoice received the Department should log on to MT$ource and Settle (receive) the Purchase Order online authorizing Accounts Payable to pay the invoice.
Departments must certify that the invoice for the supplies, materials or equipment received were equal in quality and quantity to those purchased.

7.4 MTSource eProcurement Purchase Change Order

A change order (APPENDIX #5) to an MTSU purchase order will be done through MTSource and Banner. Basic accounting changes will be done online. A change order shall be distributed in the same manner as a purchase order by Procurement Services when necessary to correct or cancel a purchase order. Procurement Services has exclusive authority to issue Purchase Change Orders. No change order may be issued for a purchase order that exceeds 10% of the original purchase order value UNLESS the purchase order was from a State Contract (State Contract as defined by the Tennessee Board of Regents) or an MTSU contract.

8.0 Exempt Commodities and Services

The following list of commodities and services are exempt from purchase through Procurement Services but may be governed by other procedures or laws: Also Reference APPENDIX #9 Sole Source Justification Form.

Purchases of supplies and/or services less than $10,000 are exempt from the bidding process and may be purchased by the Departments (Refer to 3.2 (d) and Procurement Card 7.2).

The following list of goods are exempt from the bid process; however, a Purchase Order issued through MTSource is required whenever possible.

a. Freight charges.
b. Postage charges, including the purchase of metered postage. Refer to MTSU Policy IV:04:06.
c. Testing services supplies or tests. Refer to MTSU Policy No.: III:04:02.
d. Films, videotapes, rental or purchase.
f. State surplus property.
g. Advertising. Should be reviewed and approved by Human Resources Services and the Affirmative Action/Equal Opportunity Office for all positions, or the Office of Marketing and Branding for all non-employment-related advertising. The exemption from the bid process does not apply to mass advertising.
h. Books or copyrighted course material, including electronic databases.
i. Charges on gasoline and aviation fuel credit cards.
j. Occasional charges for rooms for meetings and attendant expenses.
k. Purchase of artifacts for historical, commemorative or educational purposes.
l. Insurance policies (prior approval required by TBR).
m. Employer-directed training costs.
n. Accreditation Fees

The following items must have a contract if the cumulative amount for a fiscal year exceeds $500:
a. Fees for personal, consultant, and professional services.
b. Testing services.
c. Professional services provided by a medical professional.
d. Occasional charges for rooms for meetings and attendant expenses when the hotel requires a contract.
e. Honoraria and related expense payments greater than $500 require personal services contracts.

9.0  Food Purchases/Events

9.1  Procedure On and Off Campus

For details regarding food purchases, refer to MTSU Policies IV:04:13 Purchase of Meals and Refreshments for Both On and Off Campus, and IV:04:20 Food Service – Self-Catered or Off Campus Vendor/Application to Bring Food On Campus.

10.0  Follow-up Procedures for Purchase Orders

10.1  Follow-up

Procurement Services does not usually have knowledge of late delivery dates. Follow-up on orders is not routine, but Procurement Services will expedite delivery if requested to do so by the requisitioning department. However, the departments should also contact vendors themselves to expedite delivery or check on delivery status.

10.2  Delivery Information

In accepting delivery, whether directly, from Receiving and Moving Services or Distribution Services, it is the responsibility of the requisitioning department to inspect all purchases. Approval through MTS$ource eProcurement online of the Receiving Report, signifies receipt and acceptance of the items on the invoice. If the items received are not per specifications, such as color, model, size, etc., Procurement Services will contact the vendor after notification by the Department.

10.3  Receipt of Damaged Goods

If damages are discovered after signing the delivery receipt, the Department is to notify Procurement Services.

10.4  Vendor's Invoice

If a vendor erroneously sends an invoice directly to the Department concerned, the invoice is to be forwarded immediately to the Accounts Payable Office.

10.5  MaterialsReturned

The Department should contact Procurement Services to discuss the proper procedure in each case for returning materials, newly received or old, to a vendor.
11.0 Interdepartmental Purchases

11.1 University Printing Services

All University printing jobs will be produced by the University Printing Services unless they are unable to produce the job. The University Printing Services will stock the following supplies:

- Bond paper (small quantities)
- Color paper (small quantities)
- Campus mail envelopes
- Envelopes
- Memo paper
- Brown envelopes (various sizes)
- Index stock

Charges for University Printing Services will be deducted by the computer each month from each budget automatically without requisitions from the Department. Department chairpersons will receive a charge ticket for each purchase of supplies or services and each purchase will be separately identified on the monthly "Report of Transaction" (FBM091) described in Policy No. IV:04:03.

11.2 Bookstore

All University departmental charges made at the Bookstore will carry a 20 percent discount. All supplies, except those stocked at the University Printing Services, should be purchased at the Bookstore if the Bookstore stocks the supplies. Charges for Bookstore purchases will be deducted by the computer each month from each budget automatically without a requisition from the Department. Department chairpersons will receive a charge ticket for each purchase, and each purchase will be separately identified on the monthly "Report of Transactions" (FBM091) described in Policy No. IV:04:03.

11.3 Paper (Copy Machine)

Procurement Services stocks both 8-1/2 x 11 and 8-1/2 x 14 bond paper for copiers. Departments may call in or email their order and it will be charged to that Department's account from the signed receiving ticket.

12.0 End of Fiscal Year Procedures

12.1 Requisitions for Purchases

Instructions detailing year-end procedures and cut-off dates will be mailed to Departments no later than April 16 each year.
12.2  **Requisitions for Next Fiscal Year**

Departments will be notified by Procurement 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 Services will bid and award these contracts by July 1. This will ensure uninterrupted service on contracts.

13.0  **Registered Bidders List**

13.1  A Permanent Register of Bidders will be established and maintained by the Director of Procurement Services. The Register will be maintained by ©NIGP commodity code. A vendor may have its name added to the Register by making a request to the Procurement Office or online at [http://www.mtsu.edu/procurement](http://www.mtsu.edu/procurement). The vendor will remain on the Register so long as service and/or products are satisfactory.

MTSU actively utilizes the Governor’s Office of Diversity Business Enterprise Webpage [http://www.tennessee.gov/businessopp/regdivcomp.html](http://www.tennessee.gov/businessopp/regdivcomp.html) to obtain small, woman, and minority owned business participation in the procurement process.

13.2  Vendors will be removed from the Permanent Register of Bidders for any one or several of the following reasons:

(a) Delivery of commodities, equipment or services which do not comply with specifications.

(b) Failure to make delivery or to complete a construction project within the time specified in the contract or purchase order.

(c) Failure to keep offer/price firm for length of time specified.

(d) Failure to provide required performance or payment bonds.

(e) Collusion with other bidders or prospective bidders.

(f) Bankruptcy or other evidence of lack of responsibility.

(g) Failure to perform in accordance with an award.

(h) Failure to make equitable adjustments or replacement of damaged goods.

(i) Failure to honor warranties and/or guarantees.

(j) Unethical Practices

(k) Misrepresentation of Merchandise

(l) Failure to respond (either with a bid or an indication of "no bid") to Invitation to Bid for three consecutive requests.
(m) Any other facts causing substantial doubt as to whether the bidder can be relied upon to fulfill obligations under any contract awarded.

13.3 Reinstatement

After receipt of a notice of removal or suspension, a bidder may submit in writing an explanation of the circumstances which caused the removal or suspension order. If, in the opinion of the Director of Procurement Services and/or other University personnel, such circumstances have been corrected, the removal order may be rescinded.

14.0 Bidders Performance

A record will be established for each vendor doing business with MTSU. The vendor's record will contain the following information:

(a) Purchase order copies sent to firm.

(b) Any correspondence to the firm or about the firm.

(c) Late delivery records.

(d) Written complaints from Departmental chairpersons.

(e) Correspondence related to failures to conform to specifications or terms of delivery.

15.0 Funds Availability

(a) The responsibility for insuring that all expenditures remain within the amounts budgeted rests with the Department chairperson or other administrative head of the unit to which funds have been allocated.

(b) The over-expenditure of a budget account is never authorized. If additional funds are needed, a budget revision request must be submitted and approved before University funds are either obligated or expended.

(c) All purchase orders will be encumbered from each budgeted account.

16.0 Bid Opening Procedures

(a) All bids will be prepared in accordance with the preceding policies.

(b) All bids received will be either electronically through MTSource eProcurement system or by mail and will be date-stamped and documented at the time and date of receipt.

(c) At the bid opening:
(1) All attendees will sign a Bidders Attendance and Registration Form. Each Attendance and Registration Form will have the following printed on the form:

Note: Bid openings are held to meet the requirements of a Public Bid Opening and for information purposes only. NO award will be made at this time. Any award made as a result of this opening will be made after institutional review and in the form of a written institutional contract, usually a purchase order.

(2) All valid bids will be opened, read aloud, if appropriate, and properly recorded (RFP Technical and Cost proposals will be opened and available information will be read).

(3) Bids must be received electronically in MT$ource by the date and time listed in the ITB or RFP or by mail in the Procurement Services Office on or before the date and hour designated for the bid opening. Late bids will be rejected and will not be considered in contract awards. All late bids received will remain property of the University and will be filed unopened.

17.0 Receipt of Goods Procedures

(a) Before acknowledging receipt from Receiving & Moving Services or Distribution Services by signature on the bill of lading, freight bill or delivery ticket, the employee accepting delivery should check the shipment to see that the number of cartons or packages agrees with that specified on the document, and should also examine the shipment for possible damage in transit. Delivery tickets are made in duplicate and the duplicate copy should be retained by the employee signing the ticket. The original copy will be retained in Receiving and Moving Services or Distribution Services.

(b) Any visible damage or shortage should be noted on the delivery ticket and the delivery person's signature obtained thereto.

(c) The material received should be checked against the purchase order as soon as possible to determine conformity with quantity and quality specifications.

(d) Any damage, shortage or discrepancy between materials ordered and that received should be immediately reported by phone to Procurement Services, and subsequently confirmed by a detailed written report. Procurement Services will initiate the required follow-up for claim for damages, except in those instances where it may be desirable for Receiving & Moving or Distribution Services to conduct the follow-up with the permission of Procurement Services.

18.0 Bond, Bid and Performance Procedures

18.1 Bid Deposit and Bond

(a) **Bid deposit.** The bid information may require each bidder to file a bid deposit, the amount of which will not ordinarily exceed 5% of the bid amount, in the form of a certified check, bank draft or cashier's check. A bid bond will be acceptable in lieu of the foregoing if so specified in the bid information.
(b) **Retention or use of deposit.** This bid deposit will be considered as security for full performance of all obligations imposed on the bidder under the law and these regulations, including the obligation to keep the price or bid firm for the period specified in the bid information, and the obligation to file a performance or payment bond, if required, when a contract is awarded. If the bidder fails to perform any such obligations, then MTSU will negotiate his or her bid deposit and retain from the proceeds thereof an amount sufficient to compensate it for damages suffered. MTSU may retain the bid deposit as liquidated damages if the bid information so specifies.

(c) **Disposition of bid deposit.** If a bidder is not one of the three lowest qualified bidders, his/her bid deposit will be returned to him/her as soon as possible after the bid opening. The three lowest qualified bidders' deposits will be returned as soon as possible after the contract is awarded or, if a performance or payment bond should be required, as soon as the successful bidder has filed an acceptable bond.

### 18.2 Performance and Payment Bond

(a) **Performance Bond** may be required. MTSU shall have the right to require that the successful bidder file a Performance and Payment Bond in a designated amount and written by a surety company acceptable to the University. It may be required that the bond be filed within a specified number of days after the award is made, or the contract shall be canceled and the contractor shall be liable for any damages.

(b) **Amount.** Such Performance and Payment Bond may be required in any amount up to 100% of the amount of the contract, depending upon the nature of the transaction.

(c) **Surety required.** In addition to signing the bonds as principal, the successful bidder must have the bond signed by a surety company having a rating not less than "A", according to the current Best's Key Rating Guide, and authorized to do business in the State of Tennessee. If the surety on the bond has its authority to do business in this state revoked or if for any reason, it withdraws from doing business in this state, the bidder must promptly obtain another surety on the bond.

(d) **Condition of bond.** The bond shall be conditioned on full performance of all obligations imposed on the bidder by the contract with the University. It shall provide that, if the bidder fails to perform any of such obligations, the University may recover from the bidder and the surety (or either of them) any and all damages suffered because of the breach of contract or performance in accordance with terms of the contract.

(e) **Source of supply** may also be required to file bond. If the bidder does not have a stock of the commodity or equipment in question in the amount asked for nor facilities to produce the item in such amount, MTSU may, in addition, require the bidder to have the source of supply file a Performance and Payment Bond, with
qualified surety, conditioned on such source supplying the bidder as stated in the bid.

19.0 Invoice Payment Procedures

(a) MTSU will make payment for materials and services from outside sources only upon vendors' original itemized invoices, supported by receiving reports properly approved by authorized personnel. Payment will not be made on statements except in instances of daily or frequent deliveries where each amount appearing on the statement is supported by an itemized delivery ticket attached thereto. All statements received directly by the Department should be sent to Accounts Payable for follow-up of unpaid items.

(b) Receiving reports or receipts through MT$ource may not be approved for payment prior to receipt of the materials or services.

(c) Vendors expect MTSU to make prompt payment of its obligations. Departments, having received materials, have a responsibility to immediately process receiving through MT$ource to insure prompt payment of invoices. In certain instances state law provides for interest to be paid to vendors in cases of late payments.

(d) University purchase orders request vendors to render all invoices in duplicate to Middle Tennessee State University, Attention: Accounts Payable, Murfreesboro, TN 37132; therefore, Departments should not receive invoices from vendors. If this should happen, all copies of these invoices should be sent to Accounts Payable.

20.0 Reports

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

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

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

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

21.0 Exceptions

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

22.0 Council of Buyers

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

(a) Development of uniform procedures, forms, and general conditions governing procurement which may be feasible and practicable for use by all institutions and technology centers in the System, including affirmative action and equal opportunity provisions, for review and approval by the Chancellor. Uniform procedures, forms, and general conditions governing procurement developed by the Council of Buyers shall be posted at the TBR web site.

(b) Formulation of standard specifications for purchase of specific materials, supplies, equipment, and/or services which may be feasible and practicable for use by the institutions and technology centers, for review and approval by the Chancellor or his or her designee. Standard specifications for purchase of specific materials, supplies, equipment, and/or services developed by the Council of Buyers shall be posted at the TBR web site.

(c) Consideration of the feasibility and advantages of possible term contracts for the System, of designation of certain institutions or technology centers as responsible procurement agents for specific materials, supplies, equipment, and/or services for the System, and of the possibility of coordinating procurement functions among institutions and technology centers within geographic areas, with recommendations to be submitted to the Chancellor.

(d) Formulation of a uniform code of ethics for governing the professional conduct of employees responsible for procurement. (Refer to Section 24.0)

(e) Any other matters referred to the Council by the Chancellor or his or her designee (TBR Policy No. 4:02:10:00, 2005)."

23.0 Tennessee Board of Regents
Council of Buyers -- Minimum General Bid Specifications

"The following Minimum General Bid Conditions have been developed by the TBR Council of Buyers and approved by the TBR Chancellor".

1. ACCEPTANCE AND REJECTION. The Institution reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. Bids may be awarded based on low cost by item, low cost by group of items or low cost by total items accepted, whichever is in the best interests of the university.
2. PREPARATION AND SUBMISSION OF BID.

(a) Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.

(b) Each bid should give the full name and business address of the bidder. Unsigned bids will be rejected. The person signing the bid must show his title, and if requested by the Institution, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bids must be typewritten or in ink; otherwise they may not be considered. Purchase order will be issued to the firm name appearing on the bid.

(c) No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.

(d) Discounts, other than "Time" or "Cash", offered should be deducted from the unit price.

(e) Specifications: Reference to available specifications shall be sufficient to make the terms of the specifications binding on the bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the bidder to that manufacturer or specific article, unless specifically stated. The articles on which the bids/proposals are submitted must be equal or superior to that specified. Informative and Descriptive Literature: Bidders must furnish all information requested in the space provided in the bid form unless otherwise specified by the Institution. When applicable, bidders must submit for bid evaluation, cuts, sketches, descriptive literature and technical specifications covering the product(s) offered. References to literature submitted with a previous bid or on file with the Institution will not be sufficient.

(f) Samples: Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon request, be returned at the bidder's expense. Requests for the return of samples must be made within ten (10) days of bid opening. Each sample must be labeled with the bidder's name, manufacturer's brand name and number, bid number and item reference.

(g) Time of Acceptance. If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the Institution shall have sixty (60) days to accept.

(h) Time of Performance: The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, bidder agrees that delivery is to be made within two weeks (10 business days) of order.

(i) Transportation and delivery charges should be included in the price and be fully prepaid by the vendor to make delivery F.O.B. Institution, or another destination which may be specified in the bid.
(j) All items bid must be new unless otherwise specifically stated in the bid.

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

(l) Bond Requirements: Bond Requirements, if any, will be stated on the face of the Invitation to Bid/Request for Proposal (ITB/RFP). The Institution reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the Institution. The cost of the bond shall be separately identified in the bid. The Institution reserves the right to waive the bond requirement and delete the cost of the bond from the successful bid.

(m) Brand and Trade Names. The bidder must show brand or trade names of the articles bid, when applicable.

(n) Bids for purchases of $50,000 or more must be signed and sealed with the bid number or other identifying information listed on the outside of the envelope.

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

(p) Bids are to be submitted on bid forms furnished by the Institution, otherwise they may not be considered. The Institution reserves the right to consider telephone, e-mail or faxed bids for purchase under $50,000 if received by the deadline and confirmed in writing within five (5) days on Institution forms.

3. FAILURE TO BID / ERROR IN BID. Failure to bid without advising the Institution that future invitations for bids are desirable may result in removal from Institution's bidders' list covering this category of items. In case of errors in the extension of prices in the bid, the unit price will govern. No bid shall be altered or amended after the specified time for opening bids. After bid opening, a vendor will be permitted to withdraw a bid only where there is obvious clerical error in the bid such as a misplaced decimal point, or where enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Bid withdrawals will be considered only upon written request from the vendor.

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

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

6. DEFAULT OF SELECTED VENDOR. In case of default of the vendor, the Institution may procure the articles or services from other sources and hold the vendor responsible for any excess cost occasioned thereby.
7. TAXES. The Institution is tax exempt; do not include taxes in quotation. Appropriate exemption certificates will be furnished to the successful bidder upon request. Vendors making improvements to, additions to, or repair work on real property on behalf of the Institution are liable for any applicable sales or use tax on purchases of tangible personal property used in connection with the contract or furnished to vendors by the Institution for use under the contract.

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

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

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

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

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

12. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract.
If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

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

14. PURCHASING POLICIES / BID PROTESTS. This bid request and any award made hereunder are subject to the policies and guidelines of the Tennessee Board of Regents (TBR Policy No. 4:02:10:00, 2005).

24.0 Tennessee Board of Regents  
Code of Ethics in Procurement and Contracting

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

1. Statement of Policy

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

2. General Standards of Ethical Conduct

(a) Any attempt to realize personal gain through public employment, inconsistent with the responsible discharge of that public employment, is a breach of public trust.

(b) Employees shall base all purchases on the principle of competitive bidding consistent with policies of the Tennessee Board of Regents (TBR) and the institution or technology center.

(c) Employees shall grant all competitive bidders equal consideration, regard each transaction on its own merits, and foster and promote fair, ethical and legal trade practices.
(d) Employees shall avoid misrepresentation and sharp practices, and demand honesty in sales representations whether offered through the medium of a verbal or written statement, an advertisement, or a sample of a product.

(e) Employees shall be receptive to competent counsel from colleagues, and be willing to submit any major controversy through the appropriate appeals processes.

(f) Employees shall accord prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.

(g) Employees shall not use without consent the original designs developed by a vendor for competitive purposes.

3. Conflict of Interest

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

(a) he or she or any member of his or her immediate family has a substantial financial interest; or

(b) a business or organization in which he or she or any member of his or her immediate family has a substantial financial interest as an officer, director, trustee, partner or employee, is a party; or

(c) any other person, business, or organization with whom he or she or a member of his or her immediate family is negotiating or has an agreement concerning prospective employment is a party.

The determination of whether a substantial financial interest exists shall be based upon the criteria identified in TBR Policy No. 1:02:03:10, Conflict of Interest. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or in any other advisory capacity.

4. Gratuities

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

It shall be a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the particular governmental body by which the employee is employed (TBR Policy No. 4:02:10:00, 2005).

25.0 **Purchases From Small, Minority, and Women Owned Businesses**

**Code of Ethics in Procurement and Contracting**

**Objective:**

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

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

**Supporting Legislation:**

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

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

Executive Order Number 14 issued December 8, 2003.

**Definitions:**

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

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

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

1. TBR Institutions shall incorporate diversity language into the vendor application/registration process.

2. TBR Institutions shall ensure that minority owned, woman owned and small businesses are included when soliciting bids for awarding of contracts or purchasing goods or services, through the purchasing department, whenever practicable. These businesses are subject to and governed under the same policies and procedures applicable to all businesses in relationship to terms, price, conditions, and quality for participation in procurement activities with the State of Tennessee.

3. TBR Institutions will request diversity information for all bids and requests for proposals processed through Purchasing Departments.

4. The Governor’s Office of Diversity Business Enterprise has compiled a comprehensive directory of minority owned, woman owned and small businesses. This directory and TBR Institutional lists of qualified bidders will be used in locating potential sources for various products and services. The directory maintained by the State of Tennessee is located on the world-wide-web at: http://www.tn.gov/businessopportunity or intranet site at http://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215. The State of Tennessee’s database provides a listing of diversity businesses including industry capabilities for which these vendors are registered.

5. Vendor/bidder complaints that may lead to the cancellation or termination of contracts or purchase orders awarded to diversity businesses registered with the Governor’s Office of Diversity Business Enterprise, and will be shared with the Director of the Governor’s Office of Diversity Business Enterprise.

6. The Tennessee Board of Regents shall provide a report to the Governor’s Office of Diversity Business Enterprise, as requested.

26.0 APPENDICES 1 –11


Cross-references: TBR Policies 4:01:04:00, 1:03:02:10, 4:02:20:00, 4:02:10:00, 1:02:03:10, TBR Guideline G030, MTSU Policies IV:06:02, IV:04:20, IV:04:09, IV:04:06, III:04:02, IV:04:13, IV:04:03.