



Procurement and Contract
Manual

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Austin Peay State University
Procurement and Contract Services

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1. Introduction.

The purpose of this Procurement Procedures Manual ("Manual") is to provide guidance and detailed procedures concerning organizational structure, planning, solicitations, procurement methods, procurement administration, contract award and contract management to supplement the requirements of Tennessee procurement statutes, rules and regulations, and Austin Peay State University Policy. This Manual applies to Austin Peay State University when procuring goods or services that ensures fairness, transparency and the maximum amount of competition for University contracts.

2. Scope.

This Manual applies to all procurement transactions of the University. All University employees should consult this Manual with respect to all procurements. This Manual shall supplement the Tennessee Code, the Rules and the University Procurement Office Policy as the authority for the procurement of goods and services for the University.

3. Ethics and Conflicts of Interest.

Only the highest ethical principles are to be employed by all persons involved in the procurement process. It is the responsibility of each member of the University faculty/staff and staff of the Procurement Department to take all appropriate steps to assure that the University does not knowingly enter into a purchase commitment which could result in a conflict of interest situation. A conflict of interest exists when some factor (financial or personal interest in a supplier) interferes or appears to interfere with or influence a departmental requestor's ability and duty to be completely impartial and loyal to University's interests. (See Exhibit B)

A conflict of interest occurs when the personal interests, financial or otherwise, of a person who owes a duty to the University (all employees) actually or potential diverge with the person's professional obligations to and the best interests the University. It is the policy of the University that no employee shall use his/her employment for personal benefit. Any appearance of favoritism or influence in doing business is prohibited. All University employees are expected to follow the University [Conflict of Interest](#) policy, which is incorporated in these Procedures by reference.

4. Definitions, Abbreviations and Codes.

4.1. Definitions.

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

"Adequate Financial Resources" means a Respondent's ability to fully perform the financial terms and conditions of a contract entered into with the University. A Respondent that lacks Adequate Financial Resources may be considered non-responsible and not considered for contract award.

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

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

"Approval Process" means the process by which necessary approvals are obtained.

"Award" means a notice to a respondent of the acceptance of a response.

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

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

“Bidding” is a procurement initiative to acquire goods or services.

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

“Chief Procurement Officer” means the Director of Procurement and Contractor as defined by Tenn. Code Ann. § 4-56-104.

“Click-wrap Agreement” means an agreement appearing on a graphical user interface which presents a prospective licensee (i.e., the end user) with a message requiring the prospective licensee to manifest assent to any proposed terms and conditions by clicking a dialog box in order to proceed with an internet transaction. Although electronic, Click-wrap Agreements are considered “writings” because they are printable and storable.

“Competitive Negotiation Techniques” means those direct negotiation techniques used in connection with a competitive negotiation method of procurement.

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

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

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

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

“Contract Management Plan” means the University’s approved plan for managing its contracts.

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

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

“Debarment” means excluding a Respondent or Vendor from participation in procurements or contracts.

“Delegated Authority” means a written document, approved in accordance with Procurement Office Policy and Procedures, that authorizes the University to award a grant or procure goods or services on behalf of the University.

“Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

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

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

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

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

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

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

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

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

“Govs e-Shop” means the University’s e-procurement system for the procurement of goods and services.

“Immediate Family” – means an employee’s spouse, parent, sibling, or child.

“Immaterial Defect” means a defect in a response to a solicitation, which is of no substantial consequence, that is capable of correction through supplemental information or a clarifying response. A defect is immaterial when the effect on price, quantity, or delivery is negligible when contrasted with the total cost or scope of the goods or services being procured. Any defect, the correction of which gives a respondent a competitive advantage vis-à-vis other respondents or prejudicial to one or more respondents, shall not be deemed to be an immaterial defect.

“Invitation to Bid” means a procurement method where a contract is awarded to one or more bidders based on the lowest Responsive and Responsible bid which meets the required specifications, taking into consideration quantifiable factors including but not limited to the conformity of the goods and/or services to the specifications, and discount allowed for prompt payment or other reason(s), transportation charges, and the date of delivery specified in the solicitation.

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

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

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

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

“Parties” means the University and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.

“P-Card Program” means the program established by the University and managed by the Procurement Office whereby cardholder users make purchases on behalf of the University.

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

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

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

“Procurement Specialists” means the staff located in the Procurement and Contract office.

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

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

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

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

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

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

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

“Purchasing Card” or “P-Card” means a commercial card that allows organizations to take advantage of the existing credit card infrastructure to make electronic payments for goods or services. A P-Card is similar to a consumer credit card, but the University must pay the card issuer in full each month.

“Qualified Respondents” mean the Respondents that are selected to be within the Competitive Range.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

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

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

“Request for Quotation” means a procurement method where a contract is awarded to one or more bidders based on the lowest Responsive and Responsible bid which meets the required specifications, taking into consideration quantifiable factors including but not limited to the conformity of the goods and/or services to the specifications, and discount allowed for prompt payment or other reason(s), transportation charges, and the date of delivery specified in the solicitation

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

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

“Responsible” with respect to a respondent or a proposer means a person who has the capacity in all material respects to perform fully the Contract requirements, and the integrity and reliability that will assure good faith performance.

“Responsive” with respect to a respondent or a proposer means a person who has submitted a proposal, which conforms in all material respects, to the terms of the Solicitation.

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

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

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the University.

“Services” means all services and agreements procured by the University and formalized by contract.

“Small Dollar Purchases” means the procurements of goods or services totaling less than the amount required for competitive bids.

“Signature” or “signed” includes a mark, the name being written near the mark and witnessed, or any other symbol or methodology executed or adopted by a party with intention to authenticate a writing or record, regardless of being witnessed.

“Software as a Service” (‘SaaS’) means a method of software deployment whereby applications are owned, delivered, and managed remotely by one or more providers over the Internet or an intranet, and licensed to customers as an on-demand service through a usage-based model sometimes called a “subscription schedule.” SaaS, however, shall not be treated as a Subscription as that term is defined by the State.

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

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

“Solicitation Coordinator” means the procurement professionals within the Procurement Office who act as the primary points of contact and manage the procurement.

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

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

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

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

“Statewide Contract” means a contract for goods or services established by the State Chief Procurement Officer that may be utilize by the University.

“Subscription ” means expenditures, user fees, or other charges by departments, and entities the University for: (1) newspapers, magazines, periodicals, books, films, instructional videos, read-only data, or other publications (i.e., any publication printed, microfilmed, photocopied, or otherwise recorded for auditory or visual use), including trade, business, professional, or other technical periodicals; or (2) access to such publications in their online or digital form, including access by means of a vendor-provided application that is necessary for or facilitates use of publications or data. A Subscription does not include SaaS licenses or agreements, or any other service, even when the payment methodology is called a “subscription schedule.” A Subscription is not a limited-time license.

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

“Suspension” means a temporary or limited exclusion of a Respondent or Vendor from participation in procurements or contracts as a Respondent, contractor or subcontractor, pending completion of an

investigation.

“Travel Card” means a commercial card that allows organizations to take advantage of the existing credit card infrastructure to make electronic payments for travel. A T-Card is similar to a consumer credit card, but the University must pay the card issuer in full each month.

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

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

5. Procurement Process.

Procurement is a systematic process of obtaining goods and services with pricing and on terms and conditions in the University’s best interests. Competition should be involved in the procurement process to the maximum extent practicable, with the caveat that a non-competitive process (e.g., informal solicitations, emergency purchases, sole source, etc.) is sometimes necessary under the circumstances. The procedures set forth in this section shall apply to all procurements of goods or services, irrespective of procurement method involved. The foregoing notwithstanding, procurement professionals should use sound judgment in following the guidance contained in this Manual as not every procedure will fit every circumstance a procurement professional faces in procuring goods or services.

5.1. Procurement Personnel.

Procurement personnel responsible for procuring the State’s goods and services include the Chief Procurement Officer or his or her designee.

5.1.1. Electronic Signatures and Approvals

In accordance with the State’s Uniform Electronic Transactions Act, Tenn. Code Ann. § 47-10-102, et seq. and University policy, any State employee to sign procurement documents may provide an Electronic Signature or electronic approval in order to constitute a binding agreement. An electronic approval or Electronic Signature shall be permissible in the following situations:

For Requisitions:

An Electronic Signature or electronic approval shall be an acceptable form of approval for procurement documents at the following University workflow levels:

- Level 1 (\$0.00 to \$49,999.99)
- Level 2 (\$50,000.00 and above)

For Purchase Orders:

An Electronic Signature or electronic approval shall be an acceptable form of approval for procurement documents at the following workflow levels:

- Level 1 (\$0.00 to \$9,999.99)
- Level 2 (\$10,000.00 to \$49,999.99)
- Level 3 (\$50,000.00 to \$99,999.99)

- Level 4 (\$100,000 and \$249,999.99)
- Final Approval

For Contracts:

An Electronic Signature or electronic approval shall be an acceptable form of approval for procurement documents at the following workflow levels:

- Level 1 (\$0.00 to \$9,999.99)
- Level 2 (\$10,000.00 to \$49,999.99)
- Level 3 (\$50,000.00 to \$99,999.99)
- Level 4 (\$100,000 and \$249,999.99))
- Final Approval

5.1.2. Electronic Signatures

An Electronic Signature shall be a valid form of signature, provided that the signatory has authority for its affixation, for the following classes of documents:

- Any Govs e-Shop generated document that requires a signature;
- Any contract or amendment; and
- Any other document for which a signature is required.

5.2. Procurement and Information Gathering Methods Techniques.

All procurements shall utilize an approved procurement method in accordance with applicable statutes, the Rules or Procurement Office Policy. Allowable procurement methods and information gathering methods and techniques.'

5.2.1 Invitation to Bid (IBT) or Request for Quotations.

An ITB is a request, verbal or written, which is made to prospective suppliers of commodities or providers of services requesting the submission of a response for the purpose of awarding a contract or transmitting a purchase order. An ITB is generally an objective determination where the award is made to the responsive and responsible respondent who meets the minimum specifications and requirements at the lowest cost.

All ITBs shall require, at a minimum, that respondents:

- Provide a valid mailing or email address;
- Sign the response prior to opening;
- Provide a net price for the unit specified for each item;
- Initial in ink any corrections of a line item unit price made by the respondent;
- Provide the number of calendar days required for delivery after receipt of order; and
- State the length of time in which a proposed pricing is valid (failure to do so will result in pricing being valid for sixty (60) days).

Alternate items may be proposed in a response if allowed by the terms of the solicitation and if the alternate item or items meet the specifications in terms of quality, form and function. The procuring Agency may specify whether alternate items are allowed.

5.2.2. Request for Proposals (RFP).

A RFP is a formal invitation to potential respondents to submit a proposal to provide a good or service to the State or one or more of its Agencies. Additionally, a RFP is a procurement process whereby the State has the ability to judge if a respondent's qualifications, experience, and approach will result in an award of a contract to a respondent on terms and conditions in the best interests of the State.

Terms and conditions for a RFP are derived from the *pro forma* Contract (located on the Procurement Office website) developed during the RFP creation and attached to the solicitation. A RFP shall set forth specific provisions in accordance with Procurement Office Policy and include and meet the following:

- The description of the technical requirements for the goods or services to be procured by RFP shall provide sufficient detail to minimize the likelihood of respondent confusion;
- The technical requirements and scope in the RFP shall not contain features that unduly restrict competition;
- The RFP shall contain directions regarding the submittal of responses;
- State requirements and restrictions regarding the RFP should be detailed in the RFP;
- A description of the evaluation factors to be considered in evaluating the responses should be detailed in the RFP. Evaluation factors should include, by way of example only, respondent qualifications, experience, technical approach, and cost; A declaration of whether the contract award is subject to successful contract negotiation should be detailed in the RFP; and
- The RFP shall contain a schedule of events that specifies RFP deadlines. Respondents shall be given a reasonable time, as determined by the Procurement Officer, to consider the required scope and the response evaluation factors before responses are submitted. The schedule of events may contain the deadlines for events, which includes by way of example only:
 - o RFP Issuance Date;
 - o Disability Accommodation Request;
 - o Pre-Proposal Conference;
 - o Notice of Intent to Propose;
 - o Respondent Written "Questions and Comments" Submission;
 - o Response to Written "Questions and Comments";
 - o Oral Presentation;
 - o Site Visit;
 - o Performance Bond Submission;
 - o Response Submission;
 - o Completion of Technical Response Evaluations;
 - o Opening and Scoring of Cost Proposals;
 - o Evaluation Notice Released and RFP Files Opened for Public Inspection; and
 - o Contract Signing.

The Procurement Office shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.

The Procurement Office shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release.

A RFP or its revisions shall be approved based on the following:

- Application of the requirements of the Rules and Procurement Office Policy;
- Adequacy of the scope description; and
- Adequacy of the RFP's assurance of:
 - o Fairness to respondents;
 - o Clear and open competition;
 - o Achievement of procurement objectives; and
 - o Protection of the State's interests.

Upon approval, the Procurement Office shall send the RFP or a written or electronic notice that the specific RFP has been released to a documented list of potential providers.

5.2.3. *Emergency Purchases.*

“Emergency Purchases” are purchases made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

The Procurement Office may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause.

Emergency purchases shall be made by contract in accordance with Procurement Office Policy and the Rules and utilize competitive procurement methods or negotiations whenever practicable. The University shall maintain a procurement file that addresses the following:

- The circumstances leading to an emergency purchase;
- Procurement-related actions taken in response to the emergency, including procurement methods used; and
- A complete list of goods or services procured, including prices paid and total purchase amount.

5.2.3.1. *Conditions of Use for Emergency Purchase.*

Typical circumstances that warrant the use of an Emergency Purchase method include, by way of example only, natural disasters, e.g., tornadoes and floods, fire and oil or other hazardous material spill, mechanical failures, system outages, or unforeseen police action. An “emergency” does not require the declaration of a State of Emergency. Poor planning or the expiration of funds does not constitute an emergency. While these circumstances may require immediate action or may justify use of Non-Competitive Procurement methods, these circumstances do not warrant use of an Emergency Purchase method.

5.2.3.2. *Emergency Purchase Approval Process and Written Documentation.*

The Procurement Officer may delegate Emergency Purchase authority to a department to address emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated work volume, system or mechanical failures acts of God, or unforeseen police action. Departments may procure goods or services through the Emergency

Purchase method in accordance with applicable rules, policies, and procedures. Departments should make Emergency Purchases through the e-procurement system and submit in writing to the Procurement Office the following information:

- The circumstances leading to the Emergency Purchase;
- The procurement-related actions taken in response to the emergency, including procurement methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

5.2.4. *Competitive Negotiation.*

A competitive negotiation is a procurement method that involves direct discussions between the University and respondents who have been pre-qualified through a pre-qualification method and found to be responsive and responsible. The purpose of a competitive negotiation is to facilitate discussion between the University and the best evaluated respondent or respondents to ensure award of a contract or contracts on terms on conditions in the best interests of the State.

Competitive negotiation techniques may be used in conjunction with any procurement method. All negotiations shall be conducted by the Procurement Office. The University may elect to negotiate by requesting revised cost proposals from one or more responsive and responsible respondents. The University, however, reserves the right to award a contract on the basis of initial responses received. Accordingly, each response should contain the respondent's best terms from a price and technical standpoint.

The University reserves the right to conduct multiple negotiation rounds or limit negotiations to only respondents in the competitive range or to only the highest evaluated respondent. If the University exercises its right to enter into negotiations, it may identify areas of one or more proposals that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the University's specifications or requirements. The University may seek to clarify those identified issues during negotiations.

All responsive and responsible respondents the University has identified for further cost negotiation will receive equivalent information. All cost negotiations will be documented for the procurement file. Additionally, the University may conduct Target Pricing and other price or service level negotiations. Target Pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual respondent pricing. During Target Price negotiations, respondents are not obligated to meet or beat target prices, but respondents will not be allowed to increase prices they propose. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in proposal improvement. Note that each clarification sought by the University may be unique to an individual respondent.

The Procurement Office shall maintain, at a minimum, the following documentation for a competitive negotiation:

- A log of the date and time of each meeting with a respondent, including the identity of the respondent and its representative;

- A description of the nature or reason for all material communications with each respondent; and
- A copy of all written and electronic communications between the Procurement Office and each respondent

5.2.5. *Sole Source.*

Sole source procurements may be made when an item or service possesses specific characteristics that can only be filled by a single source or where exclusive rights exist. Sole source procurements shall require the department to provide advance justification to the Procurement Office. All sole source procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

- Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;
- Whether the product or service is unique and available from only one source;
- Whether the program requirements can be modified so that competitively procured goods or services may be used;
- Whether items must be interchangeable or compatible with in-place items;
- Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or
- Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

5.2.6 *Request for Information (RFI).*

A "Request for Information" or "RFI" is a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications. A RFI enables an equitable and simultaneous comparison of vendors. The University may use this tool to gather information about the availability of goods or services. A RFI should be utilized when:

- The department has a procurement need, but requires more information to fully understand the industry;
- The department desires to identify vendors who are available to supply the needed good or service; or
- When the University determines that a RFP process will benefit from a RFI.

5.2.7 *Request for Qualifications (RFQ).*

A "Request for Qualifications" or "RFQ" may only be utilized by the Procurement Office. A RFQ is a written solicitation, requiring written responses from potential respondents, containing a list of qualifications that must be met and another approved procurement method such as a Competitive Negotiation. A RFQ may also be used to select professional services providers based on recognized competence and integrity in accordance with Tenn. Code Ann. §§ 12-3-103 and 12-4-107. In such instances, cost shall not be considered in evaluating respondents. A RFQ may be used to gather information from potential respondents regarding qualifications of providers of goods and services within the market place.

5.2.8 Collaborative Value Development (“CVD”).

“Collaborative Value Development” is an additional event in the procurement process after the issuance of a RFQ, between the University and Qualified Respondents within the Competitive Range, prior to issuing a Solicitation for contract award.

CVD is an opportunity for Qualified Respondents and the University to hold one or more collaborative events to engage in an in-depth discussion concerning the needs of the University with regard to the scope or specifications of a contract to be awarded by the State through a subsequent Solicitation. This technique may be used where, by example, the University lacks specific knowledge of a given industry or unique services or technologies are involved. The goal of CVD is to develop innovative solutions that will ultimately reduce costs and improve Contractor performance.

If the Chief Procurement Officer determines that a CVD event is beneficial for a particular procurement, then the RFQ must clearly state that a CVD event will occur, how the Competitive Range of Qualified Respondents will be determined, and the scope of CVD in which the State and each Qualified Respondent will participate. A CVD may only be used by the Central Procurement Office and should be reserved for complex procurements that involve an elevated risk, high potential spend, unique industries, complex goods or services, emerging or developing technologies, or other factors that warrant the additional time investment by both the State and the vendor community.

Each Qualified Respondent will have an equal opportunity to provide representatives to participate in the CVD event. Participation in the CVD will be a mandatory prerequisite for submitting a Solicitation Response. Any mandatory requirements must be clearly stated in the RFQ. The goals and objectives of the CVD should also be clearly communicated to all Qualified Respondents who are selected to attend the CVD event. At the conclusion of the CVD event, the Solicitation Coordinator will then independently draft a Solicitation. The Solicitation will be released to Qualified Respondents in the Competitive Range selected pursuant to the RFQ.

5.3. Scope of Work and Specifications.

5.3.1. Scope of Work.

The scope of work is a very important part of the procurement process as it forms the basic framework for the resulting contract. The solicitation coordinator is primarily responsible, in consultation with, by way of example only, experts, end users, or University stakeholders, for managing the drafting of the scope of work. The scope of work is a detailed description of what is required of the contracting party to satisfactorily perform what is required under the contract. The success or failure of a procurement and the resulting contract can usually be linked to the adequacy of the planning, analysis and thoroughness of the scope of work. The time spent planning, analyzing, and drafting the scope of work will result in saving time, resources, money and will improve the quality of the goods or services procured by the University. It is very important that the scope of work achieve the following:

- Secure the best economic advantage to the University;
- Be clearly defined;
- Be contractually sound;
- Be unbiased and non-prejudicial toward respondents;
- Encourage innovative solutions to the requirements described, if appropriate; and
- Allow for free and open competition to the maximum extent reasonably practicable under the circumstances.

5.3.2. Specifications - Generally.

The term "specifications" is generally used to describe the specifications of the University's needs. Departments shall recommend to the Procurement Office specifications for all goods or services needed irrespective of whether the contract is a Statewide Contract or approved source. Specifications shall be functional or performance specifications, when practicable, and must be clear, unambiguous and written to promote open and fair competition.

With respect to goods, all brand and model numbers used, must be those in current production, and available in the market. The usage of brand and model names alone will not be permitted as a substitute for performance or functional specifications, unless providing performance or functional specifications is impracticable. When an item is specified by the use of brand names, the words "or equal" should be included.

Department recommended specifications may be approved as stated or modified by the Procurement Office to enhance competition. Changes to department's minimum specifications should be approved by the Procurement Office after consultation with the requisitioning department.

5.3.2.1 Descriptive Format.

A descriptive format consists of a conventional listing or paragraph text description of specification data. Recommended specifications in a descriptive format should, if practicable:

- With respect to goods, identify the product using general terminology in the description;
- List the characteristics that determine performance capability and identify those characteristics that are essential in order to meet performance requirements;
- With respect to goods, list the minimum or maximum acceptable performance requirements for each characteristic with as much tolerance and flexibility as practicable. Unnecessary characteristics or performance requirements may limit competition; and
- With respect to goods, identify two (2) or more items by manufacturer, brand or item number that will meet the minimum performance requirements.

5.3.3. Standard Specifications by Description.

The Procurement Office shall review all recommended specifications and develop and adopt standard specifications for any good or service that shall, insofar as practicable, fit the requirements of the majority of all department who utilize the same good or service.

5.3.4. Standard Specifications by Type.

The University utilizes different specification types to procure goods or services.

5.3.5. Specifications Based on Standard State Specifications.

Items must equal or exceed the specifications listed. The absence of detailed specifications or the omission of detailed descriptions shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used.

5.3.6. Specifications Based on Catalogs, Price List, or Price Schedules.

Responses are obtained requesting a plus (+) percentage (%), minus (-) percentage (%), or net cost offered as a discount or surcharge applying to the goods listed in the catalog, price list, or price schedule described within the solicitation. A single percentage for each catalog or price list is required, unless otherwise authorized by the Procurement Office.

5.3.7. Specifications Based on Qualified Goods List.

Specifications may include a list of brands and model numbers that meet the requirements. Goods which have been analytically tested and meet specifications receive Qualified Products List (QPL) approval.

5.3.8. Specifications Based on Brand Name.

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

5.3.9. Exceptions to Standard Specifications.

The Procurement Office shall make use of standard specifications when practicable. Goods and services purchased without standard specifications shall be made in accordance with rules or policies.

5.3.10. Exemptions to Standard Specifications.

The President or designee may designate certain materials, supplies, and equipment which are standard in manufacture and competitive in design that may be purchased without standard specifications.

5.3.11. Life Cycle Costing.

It is State policy to use the life cycle costs of goods, as developed and disseminated by the federal government, when feasible for State procurements.

5.3.12. Considerations in Determining Life Cycle Costs.

In determining life cycle costs, the Procurement Office may consider the cost of the good, the energy consumption, maintenance costs, the cost of upgrades over the life of the item the projected energy cost of energy over the useful life of the good, and the anticipated resale or salvage value of the product.

5.3.13. Energy Efficiency Standards.

Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that has established energy efficiency standards utilized by the federal government in its contracting for major energy-consuming goods. Pursuant to Executive Order 59, agencies shall use energy efficiency standards prescribed by Energy Star for the purchase of energy consuming goods. The Energy Star website, <http://www.energystar.gov/>, provides a qualified list of goods meeting Energy Star's minimum energy specifications, life cycle costing calculations, life cycle cost formula information, and qualified goods that meet Energy Star's rating for using less energy and helping to protect the environment. Currently, the Energy Star rating can be found on goods in more than 35 goods categories. Goods listed on the Energy Star website's list of qualified goods will be used as

“acceptable brands and models” on response documents. The minimal energy specifications for goods listed on the Energy Star Qualified Goods list must be included in the line item specifications on all response documents for the purchase of major energy consuming goods.

5.3.14. Product Testing and Demonstration.

Vendors often offer demonstrations of their goods to departments users. Departments are required to provide prior written notification of goods testing to the Senior Buyer or Purchasing Manager.

5.4. *Drafting the Solicitation.*

After the appropriate procurement method has been determined, the Procurement Office should prepare a solicitation document that meets the needs of the University. The procurement method selected for a given procurement should be in accordance with the Procurement Office’s Procurement Policy and Procedures and this manual. The public policy of the State is that the procurement of goods or services shall, whenever practicable, be accomplished through a competitive solicitation. In preparing the solicitation document, the solicitation coordinator shall review the relevant statutes, the Rules and Procurement Office Policy to identify each of the statutory, regulatory or policy and procedural requirements or considerations necessary to comply with applicable law before drafting a solicitation document. Employees involved in preparing a solicitation should have on file or sign and submit a conflict of interest and disclosure statement prior to beginning work on a solicitation.

5.4.1. *Planning.*

The Contract Management Plan should cover all the different steps in the process with the expected date of initiation of each milestone. When this is the case, the Contract Management Plan merges with the procurement schedule. And, ideally, it should then contemplate all the steps in the process, including contract administration and close-out.

5.4.1.1. Solicitation Event Planning.

Solicitation event planning requires extensive study on the good or service category, market trends, new goods, meetings with vendors. Solicitation coordinators should:

Establish baseline for the procurement, including running volume reports out of Govs e-Shop (and analyzing the same) to understand University spend and vendors.

Document queries that were run in Govs e-Shop.

- Identify prospective vendors.
- Gain an understanding of the unique seasonal or market conditions for the procurement at issue.
- Review specifications from previous contracts and speaking with user agencies on what is working well and what is not working well (e.g., revising past specifications when necessary; removing superfluous specifications to reduce respondent confusion or unnecessary conditions, etc.).
- Ask what would make the contract better (e.g., hold a stakeholder meeting).
- Review terms and conditions and make improvements where needed.
- Draft open specifications (e.g., consider finding at least two acceptable brands or models for each line item).
- Complete a spreadsheet to have item numbers assigned to new items and descriptions updated on terms you are keeping.
- Finalize procurement strategy and evaluation criteria:

- Are any of the items sole source or proprietary?
- Will the procurement be an “all or nothing” award?
- Does it make sense to group certain items and awards based on grouping factors?
- What terms and conditions are most advantageous for the University (e.g., what is a reasonable number of days for shipping once the vendor receives a purchase order)?

After event approval, the solicitation coordinator should be certain to adjust the end date to a reasonable amount of time for prospective respondents to complete their responses before dispatching.

5.4.1.2. Benchmarking and Estimates of Expected Costs.

Benchmarking and estimating contract costs are core functions of contract procurement. Benchmarking is the process of comparing an item, service or performance between competitors. Estimating contract costs is the process of determining the total cost of contract ownership. Price analysis and cost analysis are common tools used in benchmarking and estimating costs. Price analysis is a process of comparing proposed price with known indicators of fairness and reasonableness. Price analysis techniques include:

- Comparing “apples-to-apples” or in other words, the same or similar goods or services at similar units of measure.
- Comparing competitive prices received in response to a solicitation with one another.
- Comparing proposed prices with prices under existing contracts and with prices proposed in the past for the same or similar goods or services. Factor in market changes (e.g., commodity price changes) or other influences (e.g., inflation, raw material costs, and transportation costs).
- Comparing proposed prices with average market prices; competitive price lists such as with other states, cooperative agreements, and federal government prices; similar indices and discount or rebate arrangements.
- Comparing additional discounts offered (e.g., volume purchase discounts, prompt pay discounts).
- Comparing additional costs (e.g., payment term penalties, training, product/process conversions, and subcontractor arrangements).

Cost analysis is used to determine the estimated cost of the contract and whether or not the proposed pricing components as well as the total contract costs are fair and reasonable. It is the primary evaluation method used where price competition is lacking in sole source procurements and to evaluate professional, consulting and service related contracts that are comprised of multiple inter-related components such as the estimated total cost, labor, materials, overhead, and profit.

Cost analysis and estimating cost techniques include:

- Verifying and evaluating the total costs including allowances for contingencies. Proposed costs must be allowable, allocable (logically related to or required when performing the contract), and reasonable.

- Comparing the actual costs of the current contractor for the same product or similar work versus other states, cooperative contracts, or the federal government, using standard units of measure. (e.g., Unit Price x Planned Quantity x Time).
- Comparing the actual costs of the same good or service versus other states, cooperative contracts, or the federal government, using standard units of measure. (e.g., Unit Price x Planned Quantity x Time).
- Projection of proposed contractor's cost over the contract life (e.g., fixed, price dictated by federal government, through average market selling prices, raw material in short supply).
- Determining the potential effect of the contractor's current practices and incidentals on future costs (e.g., on-time delivery, product/resource shortage, training, cost-overruns).

Estimating costs is the culmination of the information obtained and formulated through price or cost analysis. Benchmarking and estimating contract costs are functions that should be conducted for every procurement, contract extension, contract renewal or contract change request.

5.4.1.3. Target Pricing.

Only the Procurement Office is authorized to use negotiation techniques. For example, the solicitation coordinator may review pricing from the previous contracts, if applicable, or benchmark pricing from other state contracts. The solicitation coordinator should make "apples-to-apples" comparisons with respect to contract terms and conditions, whenever possible to ensure that target price analysis roughly approximates pricing that contemplates the "principle of substitution." Industry standards should also be considered for establishing target pricing when available. The principle of substitution holds that a rational, informed buyer will only acquire a good or service at its lowest price in the market place provided that "substitutes" (e.g., similar quality, quantity or functionality) are available. Consistent with the principle of substitution, target pricing is a form of price negotiation that helps to ensure that the University is receiving the best value or the most cost-effective goods or services.

5.4.2. Identifying Prospective Respondents.

The University maintains a database that contains contact information for registered suppliers and current and former suppliers. There are circumstances where a solicitation coordinator is unable to identify qualified suppliers through the supplier database (e.g., because of the unique goods or services at issue, proprietary rights of parties, etc.). In such an event, a solicitation coordinator should perform due diligence or research to identify potential vendors, particularly if the good or service has not been purchased before, involves new technology or proprietary rights.

5.4.3. Standard Terms and Conditions - Solicitations.

The Procurement Office shall prescribe the standard terms and conditions to be used in all solicitations in accordance with the Rules or Procurement Office Policy. Changes to the standard terms and conditions may require additional approvals in accordance with Section 5.15.3. of this Manual.

5.4.4. Special Terms and Conditions - Solicitations.

The Procurement Office shall prescribe all special terms and conditions to be used in a solicitation in accordance with the Rules or Central Procurement Office Policy. Changes to the special terms and conditions may require additional State approvals in accordance with Section 5.15.3. of this Manual.

5.4.5. Evaluation Criteria.

Evaluation criteria (and the weighting to be applied to each criterion) shall be specified in solicitations (except ITBs) and made available to all prospective respondents. The solicitation coordinator should tailor the evaluation criteria to the particular project and contract terms to achieve the best possible response in terms of value for money. While not an exhaustive list, criteria that should be evaluated include qualifications, experience, technical approach, and cost in the evaluation of responses.

The response evaluation process (except ITBs) should be designed to award a contract on terms and conditions in the University's best interests and not necessarily to the respondent offering the lowest cost. The evaluation criteria should be designed to weight the relative importance of each criterion in a manner that corresponds to the importance to the University of each criterion. For example, if a respondent's technical approach is more valuable to the University than a respondent's experience, the evaluation criteria should be weighted to give greater importance or emphasis to the technical approach criterion.

5.4.6. Requisitions for Purchase.

To request procurement action by the Procurement Office, a requisition for purchase is required. Please note that a requisition for purchase may be required in other contexts, e.g., when buying from a Statewide Contract. A requisition for Purchase is used in the following purchase techniques, by way of example only:

- A requisition for purchase may be used request the procurement Office to procure a given good or service needed by the Department.
- All requisitions for purchase require quantity, description and costs. One-time purchases require the specific quantity to be purchased and detailed item descriptions. Term Contracts with direct purchase authority and Delegated Purchase Authority must state the goods or services to be procured, the term of the contract, the estimated usage and dollar amounts. When requested by the Procurement Office, a department shall provide information and statistics to support or clarify estimates for purchases and to verify use of goods or services by the department. .

5.5. *Solicitation Event Creation.*

Once the procurement planning phase has been completed, the solicitation coordinator is able to create a requisition in Govs e-Shop. The solicitation coordinator will prepare the terms and conditions and solicitation factors for the event. Solicitation factors are questions that the respondent must answer with regard to the solicitation. The terms and conditions contain not only a list of pre-specified terms that are to be contained in all responses, but also contain special terms and conditions that the solicitation coordinator has identified that are tailored to the specific good or service involved in the solicitation.

5.5.1. Terms and Conditions and Instructions.

The terms and conditions should be added as attachments to the requisition.

5.5.2. Title.

The title should be appropriately titled and descriptive of the bid and the purpose of the procurement. The bid name and number should appear in the subject line of the solicitation.

5.5.3. Date, Time and Location of Event.

Although not mandatory, the solicitation coordinator should identify a date, time and location for the pre-bid conference, if applicable. A conference room should be reserved for this meeting and included in the event details. The bid description will include the event name, date, time and location of pre-bid conference. If there are interested parties who are unable to attend the conference in person, arrangements should be made to allow such persons to attend telephonically.

5.5.4. Target Start Date.

The solicitation coordinator should also establish a target start of contract period and insert the proposed dates of the contract in Govs e-Shop. Please note that a contract start date cannot occur earlier than the date on which all party approvals have been obtained. Target start dates should contemplate the lag time needed for approvals. The solicitation coordinator should manage all contract beginning and expiration dates to avoid lapses in contract coverage (i.e., the period between when one contract ends and before the replacing contract begins, when one contract ends and the extension or renewal becomes effective, etc.) as these lapses compromise the University's legal rights and remedies, e.g., in the event of contract breach of *force majeure*.

5.5.5. Addenda, Amendments, and Clarifications to a Solicitation.

Prior to public release, all solicitations and subsequent addenda, amendments, and clarifications to a solicitation require the approval of the Procurement Office and all other entities that endorsed or approved the original solicitation. All solicitations, including any addenda, amendments, and clarifications to a solicitation, shall be approved based on the following:

- Application of the requirements of Procurement Office Policy and the Rules;
- Adequacy of the scope of service description; and
- Adequacy of the solicitation's assurance of:
 - o Fairness to potential providers of commodities or services;
 - o Clear and open competition;
 - o Achievement of procurement objectives; and
 - o Protection of the State's best interests.

5.5.6. Pre-response Conference.

The solicitation coordinator should conduct a pre-response conference with all prospective respondents to clarify the solicitation. These are commonly referred to as a "pre-bid" or "pre-proposal" conference, but are collectively referred as a "pre-response" conference to more universally apply to all solicitations.

The solicitation coordinator should have an agenda of all the items he or she would like to cover at the pre-response conference. The time of the pre-response conference with respondents should contemplate a prospective respondent's travel time to the place of the conference. The solicitation coordinator should encourage prospective respondents to bring all pertinent solicitation documents to the pre-response conference. The solicitation coordinator should place all pertinent solicitation documents (e.g., specifications, terms and conditions, line item list, factors, etc.) in an appropriate file or format for easy access during the pre-response conference. The solicitation coordinator should be in a position to make necessary changes to any pertinent solicitation documents as a result of the pre-response conference.

The pre-response conference notification should include the following information:

- Pre-response Conference Date: (Insert date).
- Time: (Insert time, including time zone and duration of the event).
- Location.
- Purpose for Conference.

5.6. *Communication with Respondents.*

Clear, concise and consistent communication while the solicitation has been introduced into the market place is essential for a harmonious, fair and transparent procurement. A solicitation coordinator should avoid even the appearance of favoritism towards a given respondent. Each solicitation should identify the solicitation coordinator who will act as the point of contact for the State. Communication should be reduced to writing, but may be orally given to prospective respondents, provided the oral communication is reduced to writing and provided to all prospective respondents. No solicitation may be modified or amended orally by a solicitation coordinator. Unless a communication with respondents is reduced to writing, no communication shall be deemed to be the official communication of the Procurement Office or the Procurement Officer.

5.7. *Question and Answer.*

After all pre-response agenda items have been covered, the solicitation coordinator should allow for a brief written question and answer period after the pre-response conference and share all questions and answers with all known prospective respondents. The solicitation coordinator should be sure to update any information, including additional potential respondents, from changes made at the pre-response conference.

5.8. *General Requirements of Solicitations and Response Evaluation.*

5.8.1. Technical Responses.

The technical response evaluation should include, but is not limited to, consideration of the following factors:

- Quality of the goods or reliability of the services;
- Experience and qualifications (e.g., pending litigation, years in business, utilization of diverse business enterprises as sub-consultants, subcontractors, or suppliers to assist in providing goods or services, partnering with or mentoring of diverse business programs associated with the delivery of goods or services, and customer references, etc.);
- Technical approach;
- Financial ability to perform;
- Delivery terms (e.g., number of days for product to be shipped or for job to be started, etc.);
- Past vendor performance, financial resources, and ability to perform to specification requirements;
- The effect of the purchase on productivity;
- Environmental options and resources (e.g., green, energy efficiency, earth-conscious considerations, recycle options, remanufactured/refurbished products or equipment, packaging, certificates, permits, awards, successful and ongoing programs, etc.); and
- Used products or equipment.

5.8.2. Tabulating Pricing or Analyzing Cost Proposal

5.8.2.1. The solicitation coordinator should evaluate the responses received to determine the low respondent for each line item or group and determine the respondent who will be recommended for award with respect to ITBs or Request for Quotations. Additional steps may include additional negotiation rounds.

5.8.2.2. The cost proposal should include, but not be limited to, the following considerations:

- Acquisition costs;
- Costs of implementation;
- Delivery costs;
- Discounts or Rebates;
- Cost of any University employee training associated with the purchase;
- Implementation and start-up costs, including installation costs, life cycle costs, trade-in value and warranty options;
- Discounts;

Once the evaluation team has completed the evaluation of the technical portion of the response, the cost proposal (e.g., single award, line item, or group award) will be calculated using a formula set forth in the solicitation. The relative scoring and weight between the technical response and the cost proposal shall be set forth in the solicitation. The evaluation team shall combine the technical response scores with the cost proposal scores for each respondent to determine the response that has the highest evaluated score. Technical responses and cost proposals may be contemporaneously evaluated or tabulated so long as the evaluation panel for the technical responses is independent of the persons tabulating or otherwise analyzing the cost proposals. In no event should the persons serving on the evaluation panel for the technical responses be influenced by the cost proposals and all safe guards must be in place to maintain a proper segregation of duties and responsibilities.

5.9. *Vendor References.*

Vendor reference checking is an essential part of an evaluation committee's or solicitation coordinator duties and responsibilities. Through reference checking, a determination can be made if the vendor is:

- Honest and trustworthy.
- Reliable.
- Competitively priced.
- Customer focused.
- Supportive.

Former clients of vendors are more likely to be more honest about their relationship with the vendor. The solicitation coordinator or evaluation committee should start the questions on a general level before proceeding to more specific questions concerning the goods or services at issue in the event. The solicitation coordinator should obtain as much detail as practicable given the solicitation at issue. Some key performance areas of inquiry include:

- Questions concerning the vendor's relationship with the reference;
- A description of how the vendor was selected (e.g., through competitive process, non-competitive process, etc.)
- Whether other vendors were under consideration and if so which vendors;
- A brief description of the evaluation and elimination process that selected the vendor at issue;

- The scope of work of the contract awarded to the vendor;
- Whether the vendor performed in accordance with the contract's scope of work;
- Whether there were any problems encountered with the vendor;
- Whether there were any limitations on vendor performance;
- Specifics as to what the vendor did well under the contract;
- Whether the vendor was easy to work with and how the vendor responded to the needs of the reference;
- Whether the goods or services were performed in accordance with the contract;
- Whether there are any results that have been realized from using the goods or services provided by the reference;
- With respect to goods, whether the goods are easy to use or require education and training to properly use;
- Whether there are things the reference would do differently if the reference was to re-procure the goods or services at issue;
- Whether the choice of the vendor was cost effective;
- Whether the reference would recommend the vendor to other prospective references;
- Whether the reference has other advice not covered by any of the foregoing areas of inquiry.

If training is involved, the solicitation coordinator may want to consider these areas of inquiry as well:

- Whether the vendor provides the training or subcontracts the training;
- Whether the trainer was properly qualified (e.g., through training, education, licensing or certification) to do the training;
- Whether the trainer was knowledgeable about the good or service at issue;
- Whether the training provided was sufficient;
- The length of time it took for an individual to become proficient;
- Whether additional indirect costs are involved the price of the good or service at issue.

If a prospective respondent has listed in his or her response similar state contracts to demonstrate experience or expertise, depending on the sensitivity and importance of the contract to be awarded, the solicitation coordinator should review each of the contracts identified by the respondent to ensure that the respondent's representations of experience are accurate.

5.10. *Evaluation Committee.*

The number of evaluation committee members of a solicitation may vary but should consist of at least three (3) members, each of whom should have the technical expertise in terms of education, training and experience to aid the evaluation committee with respect to the technical aspects of the solicitation. If necessary, the solicitation coordinator should seek out State employees or consultants who can attend presentations and provide meaningful technical expertise to evaluation committee members. Only state employees may serve as evaluation committee members, but non-state employees with technical expertise that is helpful to the evaluation committee should be included as consulting, *ex officio* or non-voting members. Before the commencement of the evaluation process, the evaluation committee should review and familiarize themselves with the solicitation, applicable statutes, rules and regulations, Procurement Office Policy and this *Manual*. All Evaluation Committee members should understand the general solicitation requirements and the specific requirements of the subject solicitation. Only Evaluation committee members are permitted to score responses.

No individual involved in evaluating a solicitation or the associated scope of service should have a financial interest in a prospective respondent or have the appearance of a conflict of interest with regard to the solicitation or prospective respondent. Ensuring the independence of each person involved in the evaluation of responses is the solicitation coordinator's responsibility. The solicitation coordinator shall follow the Procurement Office's *Code of Conduct*, which are incorporated in these Procedures by reference. *Appendix B* to the *Business Conduct and Ethics Policy and Procedures* contains all necessary conflict of interest disclosure forms for evaluation committee members.

5.11. Evaluation of Responses.

Evaluation committee members should be provided with copies of each solicitation before beginning their individual review of the responses.

5.11.1. Review all Responses.

Evaluation committee members should take notes, make comments, or prepare questions for discussion during oral presentations or any meetings with other evaluation committee members. It is not necessary for the evaluation committee member to score the responses at this point.

5.11.2. Determine status – Responsiveness and Responsibility.

If the solicitation requests financial information and the response raises concerns that the respondent may lack Adequate Financial Resources, the solicitation coordinator shall evaluate whether a respondent has Adequate Financial Resources by considering the following:

- The Respondent's financial health;
- Ratio of assets to liabilities;
- Working capital;
- Cash flow projections;
- Credit ratings;
- Profitability;
- Liquidity of assets;
- Bonding capacity;
- Liens or judgments;
- Delinquent taxes;
- Insurance coverages;
- Securities and Exchange Commission Form 10-K filings;
- Audited financial statements; or
- Bankruptcy or reorganization filings - a bankruptcy filing does not necessarily mean a lack of Adequate Financial Resources or that the Respondent is Non-responsive.

A respondent that appears, based on the response, to lack Adequate Financial Resources may nonetheless be deemed responsible if it demonstrates the ability to obtain Adequate Financial Resources. Evidence that a respondent has obtained Adequate Financial Resources may consist of a third-party commitment or explicit arrangement, such as a payment bond, performance bond, or a letter from a bank or financial institution evidencing a line of credit. Evidence of Adequate Financial Resources must be available upon request by the University and effective no later than the contract's effective date. If the University requests evidence of Adequate Financial Resources from a respondent, evaluation of that respondent's response will not continue until the respondent provides evidence of

Adequate Financial Resources. All evidence of a respondent's Adequate Financial Resources will be documented in the procurement file.

The solicitation coordinator, in consult with the evaluation committee if applicable, should determine whether each response is "responsive" or "non-responsive." A response that is "responsive" is one that conforms in all material respects to the solicitation and meets all mandatory requirements. A response may be deemed "non-responsive" if any of the required information is not provided, the submitted price is found to be excessive or inadequate as measured by criteria stated in the solicitation, or the response is clearly not within the scope of work or specifications described and required in the solicitation. The solicitation coordinator should exercise extreme care when making this determination because of the time and cost that a potential respondent has put into submitting a response and the fact that competition strengthens the results of a given procurement.

Responses capable of being determined responsive through clarification should not be deemed non-responsive. If a response is determined to be "non-responsive," the solicitation coordinator should document the justification for this determination. If a response fails to address one or more solicitation mandatory requirements or respond to them incompletely, the response should not be evaluated unless these areas can be clarified by the respondent. Documentation of any decision to bypass or determine a response "non-responsive" should be included in the procurement file. All respondents are deemed to know all facts documented in the University's procurement files on the first day of the open file period.

5.11.3. Scoring Technical Responses.

The evaluation committee should evaluate the responses and rank them based on the evaluation and weighting criteria contained in the solicitation. A good practice is for each committee member to initially or informally score responses independently from the other members. Responses must be evaluated solely on the stated criteria listed in the solicitation. An evaluation committee member's prior experience with the respondent or the good or service at issue cannot be considered in scoring the responses. The solicitation coordinator should use an evaluation criteria form, which will reduce subjectivity, and ensure that each member of the evaluation committee applies reasonably consistent and bias-free analysis to each response with respect to all other responses. Point assignments should be determined prior to the receipt of responses and will be made available in the evaluation criteria form.

5.11.4. Evaluation Committee Meetings.

Once the responses have been evaluated and scored by individual evaluation committee members, the full evaluation committee may meet to discuss the responses and arrive at the final scoring. Only Evaluation Committee members who are present in person or electronically during oral presentations may participate in scoring responses. The full Evaluation Committee should discuss all aspects of the responses so that there is a "unified understanding" of the criteria and corresponding responses. Only an individual Evaluation Committee member may adjust his or her individual score at this point. Respondent scoring should be based on the written responses and respondents' oral presentations. For example, ambiguous or unclear information provided in a response or during oral presentations or incapable of being clarified after attempts by the solicitation coordinator at seeking clarifications should be downgraded accordingly.

5.11.5. Clarification.

If the evaluation committee is unsure of certain items or issues included in a solicitation response, or needs clarification of a response, it may, at any time, request further clarification from the respondent through the solicitation coordinator. The solicitation coordinator will distribute the clarification questions

to the respondent. Responses will be returned to the solicitation coordinator and disseminated to the evaluation committee as appropriate. Solicitation coordinators should consult the Procurement Office's *Policy and Procedures on Negotiations* or appropriate legal counsel where the solicitation coordinator is uncertain whether a response can be clarified and to what extent.

5.11.6. Oral Presentations.

Oral presentations are not a mandatory requirement of a solicitation evaluation. If an oral presentation is deemed necessary, the solicitation coordinator shall include within the solicitation's schedule of events a date for oral presentations. The oral presentation is an opportunity for respondents to explain and clarify their responses. If an oral presentation is mandatory, it must be stated in the solicitation, as amended. Oral presentations must not allow respondents to materially alter the respondent's response, the requirements of the solicitation, the specifications, or the proposed scope of work.

The oral presentation typically highlights the added value, competitive advantage and unique ability each respondent can provide to deliver a good or service that meets the requirements of the solicitation. The presentation should include a demonstration that substantiates the approach, method, functionality, determination and cost effectiveness of the response. Although not mandatory, oral presentations are a valuable way to:

- Further assess a respondent's ability to deliver the proposed good or service that may not have been presented accurately or precisely in the written response;
- Provide a discussion and visual demonstration of the solution the respondent is proposing that could not be effectively conveyed or measured in writing due to its subjective content;
- Provide an additional method of evaluation of the responses offered by the highest scoring respondents to further differentiate them from other respondents, especially where the evaluation of the written responses is too close to make a clear award decision.
- Evaluate the respondent's proposed key personnel who will be primarily responsible for performing the contract awarded pursuant to the procurement.

Oral presentations typically focus on the business aspects of the response that require clarification as well as provide a technical solution overview. The presentation should allow the respondent to demonstrate to the evaluation committee the concept, basic functionality, usability and effectiveness of the respondent's good or service. Detailed aspects such as integration, scheduling, etc., should be held at a separate Statement of Work (SOW) meeting. Non-voting or *ex officio* members providing technical advice and counsel to the evaluation committee should attend each oral presentation and ask questions as appropriate. All pertinent dialogue between evaluation committee members, technical advisers and respondents shall be reduced to writing to memorialize the presentations. These written memorializing of presentations shall aid the evaluation committee in scoring responses.

5.11.7. Scoring Cost Proposals.

The cost proposal should be retained by the solicitation coordinator and kept confidential from the evaluation committee and other respondents until the technical evaluation is completed. The reason for this requirement is to prevent the evaluation committee from being unduly influenced by the cost proposals when evaluating the technical responses.

The solicitation coordinator will review the evaluation committee's technical scoring and justification for compliance to the solicitation. The solicitation coordinator will then open and provide the cost proposals

to the evaluation committee for review and determination so that an “apple-to-apple” comparison can be made.

The solicitation coordinator or the procurement professional assisting with cost proposal analysis and evaluation should take steps to ensure that there are no hidden or undisclosed costs associated with a response in the event of contract award. Cost proposals are scored according to the solicitation evaluation criteria, and the cost score will be added to the technical score to determine the award.

There are circumstances where it may become necessary for the solicitation coordinator to review, analyze and tabulate the cost proposal of respondents contemporaneously with the evaluation of the technical responses. In such an event, the Procurement Office shall maintain strict confidentiality between the procurement professionals or the evaluation committee members analyzing and evaluating the technical responses and those procurement professionals analyzing and evaluating the cost proposals.

5.12. *Negotiation.*

Each solicitation should include provisions governing negotiation with one or more respondents. Pre-award negotiations may be conducted with respondents who are within the competitive range. Negotiations should be conducted in a manner that is fair to the respondent or respondents selected for further negotiation. Negotiation rounds, including by way of example only, an initial round of target price negotiation, additional rounds of negotiation, culminating in a round of negotiation, may be had if it is beneficial to the University. Only the Procurement Office may engage in target price, additional rounds of negotiation, or negotiations. Neither target price, additional rounds of negotiation, nor responses can be requested until after responses are evaluated. Once target pricing, additional rounds of negotiation, or responses are received, with respect to a RFP or other solicitation method involving an evaluation committee, the evaluation committee should evaluate it in the same manner as the original response criteria. With respect to an ITB or other solicitation method not involving an evaluation committee, the solicitation coordinator is responsible for analyzing and tabulating all target pricing, additional negotiation responses, or responses.

Negotiations may be conducted with a select group of respondents based on an established competitive range or with just the apparent awarded respondent. The solicitation coordinator may conduct multiple negotiation rounds if doing so is in the University’s best interests. There is no minimum number of negotiation rounds and there are no limitations to how many rounds of negotiations must be conducted.

If the University exercises its right to enter into negotiations, it may identify areas of a proposal that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the University’s specifications or requirements. The University may seek to clarify those identified issues during negotiations. All responsive respondents or selected competitive range respondents will be given equivalent information with respect to cost negotiations. By their very nature, single respondent negotiations will not involve making all information as part of the negotiation available to other respondents who were not selected for further negotiation.

All cost negotiations will be documented for the procurement file. Additionally, the solicitation coordinator should conduct target pricing and other price or service level pricing, market considerations, benchmarks, budget availability, industry standards or other method that does not reveal individual respondent pricing. During negotiations rounds, respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each

clarification sought by the University may be unique to an individual Proposer.

5.12.1. Competitive Range.

Given the number of responses and the broad range of competitiveness of responses, it may not be practicable to engage in negotiations with each and every respondent. In the event of multiple responses and the University's needs for negotiating a contract on terms and conditions in the University's best interests, it may be necessary to shorten the list of respondents to a "competitive range" and only negotiate with one or more respondents within the competitive range. The competitive range should be established based on the following guiding principles:

- Price.
- Cost of Ownership.
- Responses that appear to provide the best value based on:
 - Evaluation criteria in the solicitation
 - Product specifications
 - Information provided by the vendors
- Responses most likely to provide greater value after negotiations based on the same criteria.
- Respondent scores.

The solicitation coordinator may wish to consider establishing in the solicitation a minimum score that a respondent must achieve before the respondent will be considered in the competitive range and thus eligible for additional negotiation.

5.12.1.1. Negotiation with Single Respondent versus Multi-party Negotiation.

Factors a solicitation coordinator should consider when electing to negotiate with just the highest evaluated respondent instead of engaging in multi-party negotiations include:

- The expected dollar value of the award and length of contract.
- The complexity of the acquisition and the variety and complexity of offered solutions, in terms of impact on the likely breadth and depth of the discussions.
- The resources available to conduct discussions vs. the expected variable administrative costs of discussions.
- The impact on lead-time for award vs. the need for timely delivery.
- The extent to which discussions with additional respondents would likely provide diminishing returns.
- The disparity in pricing between the lowest priced respondent and the other respondents, with respect to an ITB.
- The disparity in pricing between the highest rated respondent and the other respondents, with respect to all other solicitation methods.

5.12.2. Target Price Negotiations.

Target pricing gives responsive and responsible respondents an opportunity to improve upon their responses by offering more competitive pricing. Proposers are not obligated to meet or beat target prices but will not be allowed to increase overall prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in the proposal improvement and does not reveal individual respondent pricing.

The target price is reached by considering factors such as the current/last contract price paid for an item, benchmarks, industry standards, budgets, raw materials that influence the pricing of the product, or market trends.

Once the initial responses have been received, the solicitation coordinator should:

- Determine the lowest proposed cost for each line item as applicable.
- Compare the lowest proposed cost for each line item against current/past contract price and other benchmarks.
- Determine a unique target %, as opposed to a flat % off, for the least cost supplier that will guide proposer pricing towards the ideal purchase price.
- Calculate the target price for each line item in a spreadsheet.
- Evaluate whether or not there is a price reasonableness to the target price for each line item and for the total target price overall.
- Send standard language and target price bidding spreadsheet to respondents deemed responsible and responsive.
- Receive target cost proposals.
- Determine if target price negotiation resulted in improved cost proposals.

If the receipt of target price proposals did not result in one or more cost proposals at or below the State's target price, the solicitation coordinator should evaluate whether an additional round of target price negotiation will result in one or more cost proposals at or below the State's target price.

5.12.3. Best and Final Offer (BAFO) Negotiations.

The best and final offer (BAFO) negotiation is an optional step to help obtain improvements in the scope of work or the most cost effective pricing available. The BAFO process may be useful when:

- No single response addresses all the specifications.
- The cost submitted by all respondents is too high (e.g., exceeds the University's estimate of expected costs, budget, etc.).
- The scores of two or more respondents are very close after the initial evaluation.

- All respondents submitted responses that are unclear or deficient in one or more areas.

5.12.3.1. Procedures for the use of the BAFO process.

The following rules shall apply to BAFO negotiations:

- The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, should determine if the BAFO process will be conducted and which respondents are within the competitive range for receipt of the State's BAFO request.
- The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, may restrict the BAFO negotiations to a single respondent or engage in a multi-party BAFO negotiation.
- BAFO's are best conducted using only those respondents within the competitive range. Any respondent deemed non-responsive or non-responsible or not within the competitive range may be excluded from participation, which shall be documented in the solicitation file.
- The content of the BAFO request may come from questions proposed by the solicitation coordinator, with respect to an ITB, or the solicitation coordinator in consult with the evaluation committee, with respect to all other solicitation methods.
- The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, may request that a proposer readdress important aspects of the proposal such as but not limited to implementation schedule, level of support, amount of resources proposed, terms and conditions or cost.
- The solicitation coordinator will dispatch the BAFO request stating the elements to be covered and defining the date and time the BAFO must be returned.
- All communication to and from respondents regarding the BAFO solicitation shall be coordinated by the solicitation coordinator.
- All responses to the BAFO shall be returned to the solicitation coordinator.
- BAFO's submitted after the deadline shall not be considered. Only the original and most recently submitted responses may be considered for evaluation.

5.12.3.2. Content and structure of Solicitations utilizing a BAFO Process.

All solicitations utilizing a BAFO process shall contain the following:

- Best and final solicitations shall contain specific information on what is being requested. Enhanced core components of the solicitation may be solicited; however, the integrity of the scope of the original solicitation must be maintained. Respondents may be asked to provide additional clarification to specific sections of their response and to rework their proposal content or cost proposal.

- Best and final solicitations shall include submission requirements with time lines.
- Best and final solicitations shall contain specifics on how the offers will be evaluated and outline the process that will be used to determine the successful proposer.
- The solicitation coordinator with respect to an ITB or the evaluation committee with respect to all other solicitation methods will evaluate submissions of the BAFO and rescore the original response based entirely on the content of the BAFO submission.
- Respondents are not required to submit a BAFO and may submit a written response stating that their response remains as originally submitted.
- Requests for best and final offers shall not identify either the current rank of any of the respondents or the lowest costs currently proposed.
- Respondents may be requested to make an oral presentation regarding their BAFO.
- The solicitation coordinator with respect to an ITB or the evaluation committee with respect to all other solicitation methods will have full discretion to accept or reject any information submitted in a BAFO.

5.12.3.3. Scoring of BAFOs.

- The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, should score the responses after receipt of the BAFO responses.
- All scoring worksheets (e.g., original evaluation scores, best and final scores, etc.) should be retained for inclusion in the procurement file. Scores for the BAFO responses should be entered into a new score sheet/summary worksheet by the solicitation coordinator.

5.13. *Notice of Intent to Award.*

5.13.1. Recommendation and Award.

A Notice of Intent to Award shall be communicated in writing or by electronic transmission to all respondents. Each contract shall be awarded and let by the University with reasonable promptness to the apparent winning respondent, e.g., on the basis of highest evaluation score or lowest cost, whose response meets the requirements and criteria set forth in the solicitation. Where more than one item is specified in a solicitation, the University reserves the right to determine the winning respondent, or respondents in the case of a multiple award, either on the basis of each individual item, a group of items, or the total of all items, unless otherwise provided in the solicitation.

The Procurement Office shall document the evaluation team members' names, scores, and evaluation results and recommend an award to the respondent who has received the highest evaluation score or in the case of an ITB, an award to the responsive and responsible respondent with the lowest cost response.

Notwithstanding the foregoing, there are situations where it is in the best interests of the State to award a contract to a respondent other than the respondent with the lowest cost proposal. In such event, the

Procurement Officer, or his or her designee, shall document the reasons for awarding a contract to a respondent other than one with the lowest cost proposal. Justifications for such an award include, but are not limited to:

- The highest evaluated response, taken as a whole, falls outside the competitive range;
- The respondent is not capable of meeting the solicitation requirements;
- The respondent is not able to perform under the terms of the contract as awarded, e.g., in terms of quality, quantity or timeliness of performance; or
- Based on the totality of the above and other considerations, award to another respondent is in the best interests of the State, provided this determination is supported by sufficient documentation that will become part of the procurement file.

After the evaluation team completes the award recommendation process and notifies the respondents of the official award recommendation, the procurement file shall be open and available for public inspection for at least seven (7) calendar days prior to the actual award of the contract. Protests shall be governed by Tenn. Code Ann. § 4-56-101, *et seq.*, and the Rules of the Central Procurement Office.

5.13.2. Tied Responses – Resolution.

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

- First preference shall be given to a “Tennessee Respondent.” Pursuant to Tenn. Code Ann. § 12-3-1113(c)(2), a “Tennessee Respondent” means a business that is:
 - o Incorporated in this State;
 - o Has its principal place of business in this State; or
 - o Has an established physical presence in this State.
- Second preference shall be given to certified DBE respondents.
- Third preference shall be given to the respondent who was the low cost respondent on other items being bid for the same requisition.
- Fourth preference shall be given to the respondent who offers the best delivery.
- Fifth preference shall be given to further negotiations to break the tie.
- If a tie remains, it shall be broken by lot or coin toss.

5.13.3. Notification of Selected and Non-selected Respondents.

The solicitation coordinator shall notify the selected respondent and non-selected respondents of the intent to award by providing all respondents with a copy of the intent to award sent to the awarded respondent.

5.14. *The Open File Period.*

The solicitation coordinator should have a complete file available to the public before the notice of intent to award is sent out, which begins the open file period. The procurement file should contain, at a minimum:

- a copy of the solicitation;
- relevant correspondence between the solicitation coordinator and any respondents;
- responses to the solicitation, including clarifications and information gathered at oral presentations as applicable;
- score sheets;
- relevant spreadsheets used in analyzing the technical responses and cost proposals;
- all responses to target price or negotiations;
- the intent to award letter sent to the awarded respondent.

5.15. *Activities Required Before the Contract Effective Date*

All activities in this Section must be completed before a contract's effective date. A contract is not effective until all of the activities in this Section have been completed. If the activities in this Section are not completed before a contract's effective date, then the Procurement and Contract Services may request that the contract be resubmitted with a new effective date. In no event shall the procuring department request goods or services before the contract's effective date.

5.15.1. Contract Award.

Once the open file period has passed and no protests have been received, the solicitation coordinator may begin the award process. Awards of contracts shall be in accordance with the Rules, the Procurement Office Policy and this Manual.

5.15.2. Govs e-Shop.

The solicitation coordinator and/or contract specialist is responsible for all necessary uploading of contracts to be routed for approvals.

5.15.3. Contract Approval.

5.15.3.1. Approval by University Officials.

The solicitation coordinator and/or contract specialist is responsible for obtaining all necessary approvals prior to a contract's effective date.

(A) Contracts must be approved by the following:

- (i) awarded respondent;
- (ii) Chief Procurement Officer
- (iii) President or his or her designee.

Certain types of procurements and contracts require additional approvals, as specified in the chart below.

| Contract Subject Matter | Required Approval or Endorsement |
|--|--------------------------------------|
| Information technology | Information Technology |
| Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has an interest | State Architect |
| <p>All requests to procure goods or services by negotiation with a single service provider having a term of more than one (1) year or which contain term extension language authorizing a term of greater than one (1) year AND a cumulative value of \$250,000 or more; and</p> <ul style="list-style-type: none"> • All amendments to a contract, whether competitively or noncompetitively procured, meeting the above term and dollar threshold requirements where the amendment: 1) increases or decreases the maximum liability, 2) extends or shortens the contract term, 3) changes the entity or name of the entity with which the State is contracting, or 4) otherwise changes an original contract or amended contract in a substantive manner. | Fiscal Review Committee ¹ |

5.16.3.2. *Fiscal Review.*

Certain contracts or amendments to certain contracts requires the approval of the Fiscal Review Committee of the General Assembly for review. This includes, but is not limited to, the following:

- All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of \$250,000 or more;
- Any amendment to a contract described above, whether originally procured competitively or noncompetitively which:
 - Increases or decreases funding;
 - Extends or shortens the contract term;
 - Changes the entity or name of the entity with which the State is contracting; or
 - Otherwise changes an original or amended contract in a substantive manner.

¹ Under Tenn. Code Ann. § 4-56-107(b)(4), the Fiscal Review Committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other State contract or contract amendment regardless of whether the contract or contract amendment meets the requirements of § 4-56-107(b)(1).

5.15.3.3. Click-wrap Agreements.

For any and all purchases of goods and services of information technology by the University, no University employee shall have the actual authority or apparent authority to enter into any Click-wrap Agreements on behalf of the University without the approval of the Procurement Office and the Office of Information Technology ("OIT"). No University employee has the authority to modify, amend, or supplement a current contract through a Click-wrap Agreement. A current contract can only be modified, amended, or supplemented under its terms or through an amendment, reduced to writing, and approved in accordance with Procurement Office rules, policies, and procedures. A Click-wrap Agreement entered into contrary to this section shall be considered non-binding upon the University.

5.16. *Memoranda of Understanding*

If a contract allows for the addition of lines, items, or options through a Memorandum of Understanding ("MOU"), the Procurement Office will follow the process below.

- The Procurement Office writes specifications for the desired goods or services that are within the scope of the contract, but were not included in the original contract.
- The Procurement Office will research the department's request to determine if the lines, items, or options should be added to the contract. In making this determination, the Procurement Office considerations will include, but not be limited to:
 - Estimated purchase volume of the lines, items, or options;
 - Frequency of purchase of the lines, items, or options;
 - Contractor's ability to provide the lines, items, or options;
 - Anticipated spend related to the requested lines, items, or options; and
 - Whether the lines, items, or options currently on the contract meet the Department's needs.
- If the Procurement Office determines that the lines, items, or options should be added to the contract, he or she will benchmark pricing for the proposed lines, items, or options. After benchmarking the proposed lines, items, or options, the Procurement personnel will negotiate with the contractor to obtain competitive pricing.
- If unable to secure prices at or below fair market value pricing, he or she will consult the requesting Department to discuss alternate ways to meet the Department's need. If adding the lines, items, or options using a MOU is the best way to meet the need, the Procurement personnel shall include documentation of the decision in the business case.
- Whenever items, lines, or options are added to a contract through a MOU, the Procurement personnel must prepare a business case that:
 - Summarizes the steps taken to add the lines, items, or options;
 - Includes a justification for adding the lines, items, or options;
 - Describes the due diligence taken to ensure that obtaining the lines, items, or options through an MOU will result in terms, conditions, and pricing that are in the State's best interests and consistent with the marketplace; and

- Is reviewed, approved, and signed by a Procurement Office staff member who did not prepare the business case.

5.17. *Contract Amendments, Renewals, and Cancellations.*

Amendments and renewals must follow the same approval process as that of the original, or base, contract. The termination of a contract, for any reason, must be approved by the Director of Procurement and filed with the Contract Office.

5.18. *The Procurement File*

A procurement file shall be maintained for every solicitation. Such file shall include, but is not limited to, the following documentation, if applicable:

- A copy of the solicitation and any amendments or clarifications thereof;
- A copy of any approved Rule Exception Request;
- Any Conflict of Interest Disclosure documentation;
- Any evaluator attestations;
- A list of all vendors solicited to participate in the procurement;
- A copy of each evaluated response;
- A copy of each evaluation sheet;
- A copy of any clarifications sent to respondents;
- A copy of any negotiations (including BAFOs and Target Pricing);
- A copy of all correspondence between the vendor and the University regarding clarifications or negotiations;
- Any Cost Proposal and Scoring Guide or Bid Abstracts and Bid Analysis with the total evaluation cost amount and score for each evaluated response;
- Any completed Proposal Score Summary Matrix;
- A copy of all technical scores;
- A copy of all cost scores;
- The Evaluation Notice/File Open for Inspection letter;
- A copy of the protest procedures and the exact dollar amount of the Protest Bond;
- Documentation of any decision to determine a response bypassed or non-responsive;
- Any correspondence or documentation detailing the evaluation process, clarifications, and negotiations; and
- A copy of any pre-proposal conference and site-visit sign-in sheets.

6. Exceptions to Competitive Procurements.

6.1. *Emergency Purchases.*

The Director of Procurement must approve all non-competitive emergency purchases.

6.1.1. Description of Emergency Purchases.

An Emergency Purchase may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action; such action entails the need to secure goods or services to carry out an emergency response. In such situations, competition should be engaged when practicable, but this policy recognizes that some emergencies are such that the exigencies of the situation may not allow for a competitive procurement.

6.1.2. Conditions of Use for Emergency Purchases.

Conditions of use for an Emergency Purchase may include, by way of example only, natural disasters, hazardous material spill or systems failure. An Emergency Purchase does not require the declaration of a state of emergency. Poor planning (e.g., failure to manage contract beginning dates or expiration dates) or the expiration of funds (e.g., expiration of federal funding for a project), however, do not constitute an emergency. These circumstances may require immediate action and may justify use of another non-competitive procurement method, but not an emergency purchase.

6.1.3. Emergency Purchase Approval Process & Written Documentation.

Departments may procure goods or services via the emergency purchase method of procurement in accordance with the Rules Procurement Policy. Departments should make emergency purchases through the Govs e-Shop and attach the following information when requested by the Procurement Office:

- The circumstances leading to the emergency purchase;
- The Procurement-related actions taken in response to the emergency, including procurement methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

6.1.4. Emergency Purchase Authorization Procedure.

Prior authorization of the Director of Procurement is required for emergency purchases. The request for authorization may be approved in a true emergency or as the only method of payment for commodities and services ordered by the Department for reasons including improper planning, utilizing an improper purchasing method, and contract expiration. The procedure for obtaining an Emergency Purchase Authorization is as follows:

- The department shall enter a direct entry purchase in Govs e-Shop.
- The department shall document in Govs e-Shop justification for the emergency purchase.
- The department shall contact the Director of Procurement for emergency purchase authorization. In lieu of delegating the emergency purchase authority, the Director of Procurement may elect to procure the goods or services through the Emergency Purchase Procedure.
- The Procurement Office will secure three (3) competitive responses, if practicable, and record the bids in Govs e-Shop or provide justification for obtaining fewer than three (3) responses. If a sole source procurement, the department must provide the justification required for the use of a sole source method of procurement.

6.1.5. *Emergency Purchase Disapproval.*

If an emergency purchase authorization is denied, the Procurement Office will advise the Department as to the appropriate procedure to secure the goods or services requested.

6.1.6. *Emergency Purchases.*

A Govs e-Shop one-time Requisition or Emergency Purchase request entered by the department may be processed in compliance with the Rules, Procurement Office Policy or this Manual. Departments must provide the Procurement Office with information regarding the emergency circumstances. If approved, the Director of Procurement may utilize expedited purchase procedures including short closing dates, an informal emergency solicitation process or other authorized means.

6.1.7. *Extraordinary Emergency Purchase.*

Should emergencies affecting the health or safety of any person occur during periods when Procurement Office personnel are not available, a Department is authorized to contract for any commodity or service without prior Emergency Purchase Authorization. The Department shall report such purchases to the Procurement Office as soon as practicable. The procedure for "after the fact" authorization is the same as previously described for prior emergency authorization.

6.2. *Sole Source Procurements.*

6.2.1. *Written Justification Required.*

A sole source procurement is one where only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority. A sole source procurement must be approved by the Director of Procurement and the justification for awarding a sole source contract must be in writing. While not an exhaustive list, justifications for sole source procurements include:

- Only one company has the good or service that will meet the Institution's needs;
- Compatibility of existing equipment or products is at issue;
- The good or service is covered by one or more patents or copyrights;
- Continuity of results is absolutely dependent upon the specific good or service;
- The supplier possesses exclusive capabilities for the good or service at issue that are not obtainable from similar suppliers;
- An unusual or compelling urgency exists; or
- University users have extensive training or experience and use of similar goods or services would require significant reorientation and training.

6.2.2. *Sole Source Procurement Approval Process.*

A department that requests utilizing a sole source method of procurement must provide written justification to the Procurement Office prior to awarding a contract and beginning the contract approval process. Only the Director of Procurement can approve the use of a sole source method of procurement. Upon approval by the Director of Procurement, the sole source procurement may be made without following competitive procurement procedures. A written quote should be obtained from

the sole source vendor of goods or services and a purchase order will be issued without utilizing a competitive procurement method. The Procurement Office shall report approved Sole Source Procurements to the Comptroller of the Treasury in the form of a quarterly report. Sole source procurements shall be made by contract in accordance with the Rules, Procurement Office Policy, and this Manual. Competitive purchasing methods or negotiations to ensure competition should be used when practicable.

6.2.3. Chief Procurement Officer Approval of Sole Source Procurements.

The Director of Procurement in approving the use of a sole source method of procurement shall consider the following:

- Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;
- Whether the product or service is unique and available from only one source;
- Whether the program requirements can be modified so that competitive products or services may be used; and
- Whether items must be interchangeable or compatible with in-place items.

6.2.4. Required Department Documentation.

Any Department seeking to obtain goods or services through a sole source method of procurement must first obtain approval to do so from the Director of Procurement. The department, prior to using a sole source procurement, shall provide: (1) a Justification for Non-Competitive Purchases and Contracts using the template on the PACS website; (2) any documents supporting the request or responding to the PACS request for additional documentation; and (3) an annual signed and dated letter from the vendor stating that it has the exclusive rights to provide the goods or services if the basis for the sole source request is that the vendor has the exclusive rights to provide the goods or services. The vendor's letter must also include what makes the product unique, as required by the Procurement Office.

Only after the Director of Procurement's approval may a Department proceed with a sole source procurement.

6.3. *Proprietary Procurements.*

6.3.1. Description of Proprietary Procurements.

A Proprietary Procurement is a procurement where competition is restricted to authorized distributors of certain goods or services.

6.3.2. Conditions of Use for Proprietary Procurement.

The circumstances justifying a proprietary procurement include:

- Compatibility of existing equipment or products is at issue;
- The good or service is covered by one or more patents or copyrights;
- Continuity of results is absolutely dependent upon the proprietary good or service at issue; or

- State users have extensive training or experience and use of similar goods or services would require significant reorientation and training.

6.3.3. Proprietary Procurement Approval Process.

All Special Contract Requests for Proprietary Procurements, with accompanied justification and circumstances for limiting competition to a select group of distributors or suppliers, must be submitted annually to the Director of Procurement for approval prior to the draft or issuance of any associated procurement document. All other approvals for the selected procurement method still apply.

6.4. *Local Purchases.*

There are two types of Local Purchase authority: (1) Small Purchases; and (2) Informal Purchases. The limitations, requirements and procedures for each are set forth below.

6.4.1. Small Purchases.

6.4.1.1. Description and Conditions of Use for Small Purchase.

Small purchase authority may be used for goods or services not exceeding the bid threshold. It is important to note that no procurement shall be artificially divided or split in order to fall within such amounts approved for small purchases. Similarly, if purchases that fall within the small purchase authority are of a recurring nature and the aggregate total exceeds such amounts, the contract is presumed to exceed the small purchase authority and a competitive procurement method must be used (e.g., RFP, ITB or informal quotes).

6.4.1.2. Small Purchase Approval Process.

Small Purchases require a Purchase Order be issued prior to communication with a vendor for purchased of goods or services.

6.4.2. Informal Purchases

6.4.2.1. Description of Informal Purchase.

Procurement Office uses competitive methods and solicits quotes or proposals from at least three (3) vendors when the total value of a contract or a purchase will cost less than \$100,000 but at least \$50,000. Procurement shall also perform due diligence to ensure that the University is procuring goods and services on terms, conditions, and pricing that is in the University's best interests. All due diligence shall be documented and made a part of the procurement file. The exception is grant purchases. Any federal grant purchase \$10,000 or above requires a competitive process of at least three (3) quotes.

6.4.2.2. Conditions of Use for Informal Purchase Authority.

Local purchase authority may be used for goods or services not exceeding such amounts approved by the President. It is important to note that no procurements shall be artificially divided or split in order to fall within such amounts approved by the Procurement Commission. Similarly, if purchases that fall within the informal purchase authority are of a recurring nature and the aggregate total exceeds bid thresholds, the contract is presumed to exceed the informal purchase authority and a competitive procurement method must be used (e.g., RFP, ITB or informal quotes).

6.4.3. Small and Local Purchase Thresholds.

The President has approved the following small, informal purchase and formal authorities as follows:

| Requirement | Dollar Amount of Purchase | PO Required |
|-----------------------------|----------------------------------|--------------------|
| Payment Authorization Limit | \$0.00 to \$9,999.99 | No |
| Small Purchase Limit | \$10,000 to 49,999.999 | Yes |
| Informal Solicitation Limit | \$50,000 to 99,999.999 | Yes |
| Formal Solicitation Limit | \$100,000 and above | Yes |

6.5. *Utility Contracts.*

The Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority in such manner as the Director of Procurement deems to be in the best interests of the University. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with the Rules or Procurement Policy. If the Director of Procurement determines that such a purchase is only available from a single source, the use of a sole source method of procurement shall be utilized.

6.6. *Cooperative Purchase Agreements.*

6.6.1. Purpose.

The Procurement Office is authorized to procure, participate in, sponsor, conduct or administer, with other states, local governments or multistate or multi-governmental coalitions, a Cooperative Purchasing Agreement for purchase of goods or services. A Cooperative Purchase Agreement may include an option for other states or governmental entities that did not participate in the original Cooperative Purchasing Agreement procurement to participate in the Cooperative Purchasing Agreement.

6.6.2. Scope.

The Procurement Office may enter into an existing Cooperative Purchasing Agreement or may act as the lead state with respect to a Cooperative Purchasing Agreement procurement by issuing a solicitation, receiving and evaluating solicitation responses and awarding one or more contract to one or more respondents. The Cooperative Purchasing Agreement shall specify that each party is solely responsible for all purchases made under its terms. A participating addendum or other authorizing documents shall be used with the Cooperative Purchasing Agreement to resolve any conflicts with Tennessee law, rules or Procurement Office policies.

6.6.3. Procedure.

6.6.3.1. Participating in Existing Cooperative Purchasing Agreements.

Prior to entering into any contract awarded through a Cooperative Purchasing Agreement, the Procurement Office shall first determine whether the Cooperative Purchasing Agreement, or the

underlying contracts making up the Cooperative Purchasing Agreement, was procured consistent with applicable Tennessee law. If established by a competitive procurement process consistent with applicable Tennessee law, the Procurement Office will review the specifications and proposed terms and conditions of the contract to ensure that the Cooperative Purchasing Agreement does not contravene applicable Tennessee law. The Procurement Office will also conduct all necessary market research and analysis to ascertain whether the pricing and terms and conditions are equal to or more favorable than those that Tennessee could procure by engaging in a separate procurement.

6.6.3.2. Acting as Lead State.

The Procurement Office shall follow all policies and procedures as set forth in this Manual. Any Cooperative Purchasing Agreement procured by the Procurement Office shall be available to Tennessee agencies, local governments, Tennessee higher education institutions, and states and local governments outside of Tennessee, except as otherwise provided in the Cooperative Purchasing Agreement.

6.6.3.3. Decision Factors for Entering Into a Cooperative Purchasing Agreement.

The following factors may be considered when evaluating whether to utilize a Cooperative Purchasing Agreement versus procuring on the open market:

- The estimated volume of goods or services needed;
- Whether the Cooperative Purchasing Agreement provides standard specifications or scope of services;
- The potential for cost savings by using the Cooperative Purchasing Agreement;
- The time needed to establish the Cooperative Purchasing Agreement;
- Whether there is a history of poor quality or difficulty in developing specifications for the goods or services in Tennessee;
- If the Cooperative Purchasing Agreement was established by competitive sealed responses;
- If other state agencies, local governments or institutions of higher education in Tennessee will utilize the Cooperative Purchasing Agreement; and,
- If the terms and conditions of the Cooperative Purchasing Agreement are consistent with applicable Tennessee law.

6.6.3.4. Supporting Documents.

A request to have the University enter into a Cooperative Purchase Agreement should be submitted to the Chief Procurement Officer and supported by the following supporting documents as applicable:

- Details showing that the Cooperative Purchasing Agreement was a result of full and open competition;

- A copy of the Cooperative Purchasing Agreement;
- A form of Participating Addendum or other authorizing document in which the University is expected to sign; and
- A business case study that details why the Cooperative Purchasing Agreement is in the University's best interests (e.g., pricing on equal or better terms and conditions than if the University had procured the goods or services in the open market by itself, greater quality or source of supply, justifications for entering into the Cooperative Purchasing instead of an open market procurement, etc.).

7. Managing the Relationship with the Contracting Party.

Once a contract has been awarded and duly approved, a contractual relationship exists between the University and the awarded respondent. The professional responsible for managing the contract should do all of the following:

- Maintain a detailed, written audit trail of all discussions and agreements.
- When documenting contracting party tasks, the operative phrase is "the contracting party shall."
- Get a written commitment from contracting party team members, escalation, etc.
- Clearly define roles and responsibilities.
- The rules of engagement may include onsite attendance requirements if necessary, but if so, these requirements should be clearly communicated.
- Clearly define and communicate any implementation strategies.
- Reserve the right to review contracting party designs and request necessary changes.
- Request submittal of any project plans in advance for approval.
- Request submittal of test plans in advance for approval.
- Specify documentation required from the contracting party, including media and format.
- Specify support and maintenance to be provided the contracting party or the State.
- Prearrange change control processes and pricing to address scope creep.
- Specify that any training provided by the contracting party, the cost of which is not included in the contract price, must be preapproved by the appropriate University official.

8. Protest and Stay of Award.

8.1. Right to Protest.

8.1.1 Protest procedures shall be included, or a link thereto, in all ITBs/RFQs/RFPs.

8.1.2. An Aggrieved Respondent may protest, in writing, to the Chief Procurement Officer within seven (7) Calendar Days from the date of notice to award. Protests must be received by the Institution's Procurement Office no later than the close of business of the seventh Calendar Day.

8.1.3. Confirm statutory protest requirements have been met:

- The protesting party has filed a signed protest and bond within seven (7) calendar days after the earlier of the notice of the award or the intent to award the contract is issued.
- Review form of bond and insure that it is: at least five percent (5%) of the lowest bid or cost proposal evaluated; five percent (5%) of the maximum liability or estimated maximum liability provided in the solicitation; five percent (5%) of the estimated maximum revenue, if the solicitation, award or proposed award is for a contract in which the state receives revenue; or for no-cost contracts, an amount to be determined by the chief procurement officer; or
- The protesting party has made a timely request for bond waiver that meets all statutory requirements.

8.1.4. The following are the sole grounds for a protest:

- The contract award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the awarding entity;
- The procurement process violated a constitutional, statutory, or regulatory provision;
- The awarding entity failed to adhere to the rules of the procurement as set forth in the solicitation and this failure materially affected the contract award;
- The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; and
- The contract award resulted from a technical or mathematical error during the evaluation process.

Upon receipt of a protest of a solicitation, award, or proposed award of a contract, and a protest bond, a stay of the solicitation, award, or proposed award shall be in effect until the protest is resolved as provided under Tenn. Code Ann. § 12-3-514

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

8.1.6. Protests shall include the required bond, as specified below. Protests received which do not include the required bond shall not be considered.

8.2. Confirm Receipt of Protest/Stay of Contract Award.

Send letter to protesting party acknowledging receipt of protest.

8.3. *Signature on Protest Constitutes Certificate.*

8.3.1. A protest must be signed by an authorized company representative, who certifies that he/she has read such document, that to the best of his/her knowledge, it is well grounded in fact and that it is not submitted for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

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

8.4. *Protest Bond.*

8.4.1. The protesting party shall post, with the Director of Procurement, at the time of filing a notice of protest, a bond payable to the Institution in the amount of five percent (5%) of the lowest cost proposal evaluated or five percent (5%) of the highest revenue proposal evaluated. Calculation of the value of the bond shall be made based on the total value of the procurement, including any renewals thereof. Such protest bond shall be in form and substance acceptable to the Institution and shall be immediately payable to the Institution conditioned upon a decision by the Chief Financial Officer or designee that:

- A violation of Section 8.1.4;
- The protest has been brought or pursued in bad faith; or
- The protest does not state on its face a valid basis for protest.

8.4.2. The Institution shall hold such protest bond for at least eleven (11) Calendar Days after the date of the final determination by the Chief Financial Officer.

8.4.3. At the time of filing notice of a protest of a procurement in which the lowest evaluated cost proposal is less than one million dollars (\$1,000,000), or in which the highest evaluated revenue proposal is less than one hundred thousand dollars (\$100,000), a minority, women, small or service disabled veteran-owned business protesting party may submit a written petition to the Chief Financial Officer for exemption from the protest bond requirement.

8.4.4. Such a petition must include clear evidence of business classification which shall be validated with the ethnicity information supplied with the solicitation. The petition shall be submitted to the Chief Financial Officer who has seven (7) Calendar Days in which to make a determination.

8.4.5. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted.

8.4.6. Should the Chief Financial Officer deny an exemption from the requirement, the protesting party shall post the bond with the Chief Procurement Officer within five (5) Calendar Days of the determination.

8.4.7 *Protest Hearing Decision Letter*

A protest is resolved and subject to review by the Protest Committee when the Chief Procurement Officer or his or her designee has sent a written notice of decision. The Chief Procurement Officer has sixty (60) days to resolve a protest. A protest not resolved within sixty (60) days is deemed denied on the 60th day after the protest is filed. The protesting party, in such event, has seven (7) days to appeal the deemed denial of his or her appeal to the Protest Committee.

8.5. *Debarment and Suspension.*

8.5.1. Statement of Policy and Purpose.

It is the policy of the Procurement Office to solicit responses from Respondents who are responsive and responsible and contract with vendors who conduct their business with high ethical standards. Debarments or Suspensions may be imposed at the discretion of the Chief Procurement Officer in order to maintain the integrity of the procurement and contract management processes and to ensure public trust and confidence in the operations of the State. If a Respondent or a Vendor is debarred or suspended, the Respondent or Vendor is debarred or suspended from procurements with the State. The seriousness of the Respondent's or Vendor's acts or omissions and any remedial measures or mitigating factors should Procurement Office's authority, as specified by the Chief Procurement Officer. Notwithstanding the foregoing, the existence of a cause for debarment does not necessarily require that the Respondent or Vendor should be considered by the Chief Procurement Officer in making any debarment or suspension decision.

8.5.2. Grounds for Debarment or Suspension.

A Respondent or a Vendor may be debarred or suspended if the Respondent or Vendor:

- Is presently debarred, suspended, proposed for debarment, or voluntarily excluded from participation in solicitations conducted by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;
- Within a three (3) year period preceding the contract, has been convicted of, or had a civil judgment rendered against the Respondent or Vendor, from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Is presently indicted or otherwise criminally or civilly charged by a government entity with commission of any of the offenses detailed above; and has within a three (3) year period preceding the contract had one or more public transactions terminated for cause or default;
- Has been awarded a contract pursuant to a public procurement, but has repudiated the award made by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;
- Has willfully breached any contract with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government; or
- Has exhibited a history or pattern of failure to perform, or of unsatisfactory performance of one or more contracts with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.5.3. Debarment or Suspension Considerations.

Before arriving at any debarment or suspension decision, the Chief Procurement Officer should consider factors such as the following:

- Whether the Respondent or Vendor had effective standards of conduct and internal control systems in place at the time of the activity which gave rise to debarment or suspension or had adopted such procedures prior to any investigation of the activity cited as a cause for debarment or suspension.
- Whether the Respondent or Vendor brought the activity cited as a cause for debarment or suspension to the attention of the appropriate government official in a timely manner.
- Whether the Respondent or Vendor has fully investigated the circumstances surrounding the cause for debarment or suspension and, if so, made the results of the investigation available to the Chief Procurement Officer.
- Whether the Respondent or Vendor cooperated fully with the Procurement Office or State Agencies during any investigation or any court or administrative action.
- Whether the Respondent or Vendor has paid or has agreed to pay all criminal, civil, or administrative liability or damages for the activity, including any investigative or administrative costs incurred by the State, and has made or agreed to make full restitution.
- Whether the Respondent or Vendor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment or suspension.
- Whether the Respondent or Vendor has implemented or agreed to implement remedial measures, including any identified by the State.
- Whether the Respondent or Vendor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
- Whether the Respondent or Vendor has had adequate time to eliminate the circumstances within the Respondent's or Vendor's organization that led to the cause for debarment or suspension.
- Whether the Respondent's or Vendor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment or suspension and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this Section 8.4.3 is not determinative of a Respondent's or Vendor's present responsibility. Accordingly, if a cause for debarment or suspension exists, the Respondent or Vendor has the burden of demonstrating, to the satisfaction of the Chief Procurement Officer, its ability to fulfill its present responsibilities and that debarment or suspension is unnecessary.

8.5.4. Continuing Duty to Disclose.

Respondents, or Vendors to whom a contract has been awarded must provide immediate written notice to the State if at any time the Respondent or Vendor learns that it has failed to disclose information that its principals, affiliates or subcontractors are any of the following:

- excluded or disqualified from contracting with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;
- debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
- indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above;
- have had one or more public transactions (federal, state, or local) terminated for cause or default.

8.5.5. Written Notice.

If the Procurement Officer determines that a Respondent or a Vendor should be suspended or debarred from contracting with the State, the Procurement Officer shall provide the Respondent or Vendor with written notice of the grounds for which the Respondent or Vendor is debarred or suspended from participating in State solicitations. The notice shall also specify the period of time in which the Respondent or Vendor is debarred or suspended. The Respondent or Vendor may, within seven (7) calendar days from when the notice of debarment or suspension was sent, request an informal hearing and provide a response to the Procurement Officer why the Vendor should not be debarred or suspended. The decision of the Chief Procurement Officer will be final and shall not be subject to further administrative review.

8.5.6. Reinstatement or Reduction.

Respondents or Vendors who seek to be reinstated after being debarred or suspended may submit a letter to the Procurement Officer stating why the Respondent or Vendor should be reinstated. The Respondent's or Vendor's request for reinstatement should include the steps the Respondent or Vendor has taken to avoid the circumstances that gave rise to debarment or suspension and what action Respondent or Vendor has been taken to mitigate any harm caused by the Respondent's or the Vendor's actions. For good cause shown, the Procurement Officer, at his or her sole discretion, may reduce the period of debarment or suspension or rescind the debarment or suspension, thus reinstating the Respondent or the Vendor in good standing. The Procurement Officer may rescind or reduce the period or extent of debarment or suspension, upon the Respondent's or Vendor's request, supported by documentation, for the following reasons:

- Newly discovered material evidence;
- Reversal of the conviction, administrative findings or civil judgment upon which the debarment was based;
- Bona fide change in ownership or management;

- Elimination of other causes for which the debarment or suspension was imposed; or
- Other reasons the Procurement Officer deems appropriate.

9. Respondent Debriefing.

If requested by non-selected respondents, the Procurement Office should arrange a debriefing conference after the Open File Period and assuming no protests have been filed by the respondent requesting the debriefing. No debriefing of respondents shall occur while a protest is pending. Evaluation Committee members are encouraged to participate in the debriefing. Respondents are debriefed individually.

9.1. Information Provided at Debriefing.

Information given during these conferences must be factual and precise. No respondent cares to lose a contract, and will want good justification when it does. This is particularly true when proposal preparations were an extremely costly process. Therefore, the respondent has a right to know where its proposal failed and why another was chosen.

9.2. Written Comments.

It is strongly recommended the debriefing be written beforehand and read to the respondent during the debriefing conference. The respondent should not be compared to another respondent, nor be given any cost information other than the position of the proposal in relation to all other responses. It may be advisable to record all questions asked and responses given during the conference, particularly when the contract is one involving considerable effort and funds.

9.3. Commenting on Other Responses Prohibited.

Procurement professionals who attend respondent debriefings should avoid discussing responses or presentations of other respondents, including the selected respondent. The focus should be on the proposal and presentation of the respondent requesting a debriefing.

10. Miscellaneous.

10.1. Governor's Office of Diversity Business Enterprise.

All departments should actively solicit goods or services from minority-owned, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities, and small businesses. A current listing of active and certified diverse businesses can be found on the Governor's Office of Diversity Business Enterprise website at <http://www.tennessee.gov/generalservices/article/godbe-enterprise-directory>.

10.2. Site Visits Related to Procurements.

Site visits needed to properly evaluate goods or services for a pending or future solicitation are allowed subject to the following conditions:

- If site visits are required within the solicitation for evaluation purposes, the University, and not the respondent being evaluated, must pay for such visits.

- Exceptions to this policy may be made by the Procurement Officer or his or her designee. Any exception must be made on a case-by-case basis. If an exception is made, a written determination signed by the Procurement Officer or his or her designee shall be included in the contract file.
- State employees making such site visits will incur and recover travel costs from the University for which the procurement is being conducted in accordance with State travel regulations.
- No direct reimbursement of individuals by a respondent is permitted. The procuring agency will determine all costs incurred by University employees in connection with the site visit and bill the appropriate respondent for reimbursement of costs by means of a check payable to the University.

10.3. *Changes to Standard Terms and Conditions.*

The Procurement Officer is the official responsible for establishing standard terms and conditions for all solicitation documents or contracts procured by the Procurement Office. No changes may be made to the standard terms and conditions without the written approval of the Procurement Officer.

10.4. *Vendor Registration.*

All vendor registration application information received by the Procurement Office should be reviewed to ensure that the applicant meets all qualifications as a prospective respondent to a solicitation issued by the University.

The vendor registration application may be completed and submitted online or downloaded from the Procurement Office's website. Forms and instructions may be obtained in person from:

Procurement and Contract Services
505 York Street
Clarksville, TN 37040

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

10.5.1. Freight and Shipping.

The University will accept FOB Destination.

- Free On Board (FOB). "FOB" is an acronym for "free on board" when used in a sales contract. The seller agrees to deliver merchandise, free of all transportation expense, to the place specified by the contract. After delivery is complete, the title to all the goods and the risk of damage become the buyer's.
- FOB Destination. Under "FOB Destination", title and risk remain with the seller until it has delivered the goods to the location specified in the contract.

10.5.2. Receipt.

Upon receipt of supplies, materials, and equipment, the receiving department shall make a written certification that the items received were equal in quality and quantity to those purchased by entering the receipt information in Govs e-Shop.

10.5.3. Shipping Documents.

Upon delivery, the designated receiving department should do the following:

- Verify the Purchase Order and invoice; the department is the actual consignee; the corresponding agency Purchase Order in Edison; and that the number of cartons, crates, etc., listed on the freight bill is the same as the amount received.
- Examine containers for signs of external damage or pilferage. If signs of damage or pilferage are obvious or suspected, it must be noted on each copy of the freight bill and signed (not initialed) by the delivering driver.
- Sign the freight bill and retain a copy for agency records. The notation "SUBJECT TO FURTHER INSPECTION" shall accompany the receiving agent's signature.
- Count and inspect the internal contents of all boxes, crates or cartons to determine that the material received matches the description listed on the packing slip, Purchase Order, and receiving documents in regard to quantity, quality, size, color, model number, specifications, etc.
- If any discrepancies (i.e. overages, shortages, damages) exist, they must be noted on the packing slip and Purchase Order. These discrepancies must be reported immediately to the Procurement department to enable the appropriate corrective action to be taken.
- All receiving documents must indicate the quantity actually received, date received, vendor delivery, and document number.
- The material received must be retained and properly stored in the warehouse or sent to the proper department. Damaged goods deemed unacceptable are to be retained for further disposition.

10.5.4. Freight Collect/Collect on Delivery Shipment (C.O.D.).

- Freight charges will not be accepted unless prepaid by the shipper and added to the invoice. Freight charges must appear as a separate item on the Purchase Order.
- If the freight bill reads "Collect", the receiving agent must request that the shipper contact the driver to change the charges to read "Prepaid". If all parties are in agreement, the receiving agent must ensure the driver changes the charges to read "Prepaid" and signs both copies of the freight bill.
- Under no circumstances may the receiving agent sign a "Collect" freight bill that should be marked "Prepaid".
- The receiving agent shall not accept unauthorized "C.O.D." shipments.

10.5.5. Incorrect Items Shipped.

If the entire shipment contains merchandise that was not ordered or does not meet the specifications, the receiving department must refuse the items. The department must make arrangement to have the shipment returned at the *vendor's cost*.

10.5.6. Shortages/Overages.

A shortage is not to be confused with a partial delivery. A partial delivery means the vendor has acknowledged further shipments will be forthcoming. A shortage occurs when the actual count is less than the number of units ordered. An overage occurs when the actual count of a particular item is in excess of the number authorized on the Purchase Order.

- The receiving agent may accept a shipment with a shortage or overage. However, all discrepancies must be noted. A file copy should be retained, if possible. This information must be noted on all receiving documents and in Govs e-Shop.
- Contact the vendor for instructions to return the merchandise. Merchandise should be returned at the vendor's expense.
- If a shipment shortage occurs, advise the Procurement Office. Department representative will follow up for the shortage or cancel the outstanding balance for the particular item by doing a change order in Govs e-Shop.
- If an overage occurs, advise the Procurement Office. The procurement office will either accept the excess items or return the overage to the vendor.

10.5.7. Damaged Goods.

All deliveries should be inspected for damaged goods. The following rules should apply to inspecting a delivery of goods for damage:

- Immediately upon delivery, the receiving agent shall examine all packages for visible or audible damage. If the entire shipment or majority of the shipment is apparently damaged, the receiving agent may refuse the shipment.
- Any packages visibly damaged or suspected of concealed damages must be notated in the presence of the delivery driver.

Note: damages in detail on the freight bill and in Govs e-Shop. Sign and retain a copy of the freight bill and include the notation "SUBJECT TO FURTHER INSPECTION".

The delivery personnel must verify the notations and sign the agency copy with a full signature (no initials).

All deliveries must be inspected for concealed damages immediately.

- Freight on Board (FOB) means it is the vendor's responsibility to deliver procured items to the University's dock unspoiled, undamaged, and at no additional cost to the University, as stated in the contract. It is the vendor's responsibility to contact the vendor-selected carrier and request an Inspection Report whenever spoilage, pilferage, or damages occur.
- All damaged shipping containers must be kept for the carrier's claims examiner/adjuster.
- The procurement department shall call the vendor immediately to report damaged materials. The agency procurement representative must confirm this contact in writing to the vendor and in Edison.

10.5.8. When Carrier Inspects Damaged Items.

The following procedures should be followed with respect to inspections by the carrier's inspector:

- The receiving agent shall allow the carrier's inspector to physically examine the damaged items. Packing material for damaged items and the freight bill must be retained by the receiving agent.
- The receiving agent should read the carrier's Inspection Report before signing. The receiving agent should only sign the receiving agent is in agreement with the report's facts and conclusions.
- Unless repairs will be completely satisfactory, the receiving agent should request a replacement.
- The carrier's inspector will supply the receiving agent with a copy of the Inspection Report. The receiving agent shall retain a copy of the inspection report and attach a copy to the PO in Govs e-Shop.

10.5.9. After Carrier Inspection.

The receiving agent should follow the following procedure after carrier inspection:

- The University must retain the damaged item and packaging until written disposition is given by a carrier or vendor to use or dispose of them. A carrier may pick them up for salvage.
- If a carrier picks up damaged items, the University shall secure and retain a receipt for those damaged items.
- Do not return damaged items to the shipper without written authorization from the vendor, or unless specifically authorized by the Procurement Office. Under the directive of the vendor, the University must follow instructions as to returning procedures without cost to the University.

10.5.10. Duplicate Shipments.

The following procedure should apply when a receiving agent/department is in receipt of duplicate goods:

- If a duplicate shipment is received, the Department must contact the vendor for return instructions.
- If a vendor refuses to accept a return, the department must contact the Procurement Office for instructions and guidance.

10.5.11. Receipt of Unordered/Unidentified Parcels.

In the event goods are received that have not been ordered, the department should:

- Open the package to determine if a packing list or invoice is available and the details to the order information.
- If no identifying information is found, contact the vendor that sent the goods to determine who originated the order.

- If it cannot be determined who ordered the goods, then contact the Procurement Office.

Note: Beware of fraudulent telephone solicitors who may ship unordered merchandise (e.g. office supplies or office machine products) to unsuspecting agencies. Verify in Govs e-Shop that each incoming shipment has a legitimate Purchase Order number and was authorized prior to acceptance. If an unordered parcel is received, contact the Procurement Office. The acceptance and use of the material may result in the department having to pay the invoice. Report suspected fraudulent shipments to the Procurement Office.

10.5.12. Substitutions.

Without the University's prior, written approval, no contractor shall deliver a substitute item. The University reserves the right to refuse unauthorized substitutions. A substitution is defined as the manufacture or shipment of an item that materially conforms to or exceeds the scope or specifications, but may be technically different from the awarded item. No amendment to the PO/contract is necessary to add a substituted item, provided the substitute's cost does not exceed the cost of the item ordered. Delivered substitute items that do not meet the scope or specifications of the procurement may be returned to the contractor at the contractor's expense. When the University returns a delivered item, the contractor must replace, without delay, the returned item with one that the University deems acceptable. The brand name, model, or other identifying information must be listed on the contractor's invoice.

10.5.13. Miscellaneous Receiving Procedures.

Additional receiving procedures that a receiving agent/department should follow include:

- The receiving person is responsible for contacting the vendor to expedite an overdue shipment. If satisfactory service cannot be obtained, the receiving agent should contact the Procurement Office for assistance.
- The notation "SUBJECT TO FURTHER INSPECTION" shall accompany the receiving agent's signature on the freight bill/delivery document.
- Document and date all communications in Govs e-Shop.
- If the item received has a service or parts manual, record the applicable Purchase Order number, date of receipt, model number, serial number, and initial the cover.
- Warranty cards must be promptly completed and mailed to the manufacturer.
- For perishable items, the receiving person shall check spoilage and shelf-life dates. Advise the Procurement Office if a vendor is supplying expired merchandise or if it is near expiration. Do not accept any merchandise with expired dates. Perishable items must be date stamped upon receipt to ensure rotation of stock.
- The receiving agent must promptly prepare the receiving record in Edison to eliminate delay in payment of vendors.
- Report damaged or pilfered shipments immediately to the vendor.

- Report every shipment which does not meet or appear to meet the requirements of the Purchase Order.
- Report every shipment of inferior or substandard merchandise regardless of the provisions of the Purchase Order.

10.6. *Bonds.*

The University may require one or more of the following bonds: a proposal bond to secure a respondent's response to a solicitation, a performance bond after contract award to ensure completion of the contract, or a payment bond to ensure payment of contractor's subcontractors and material suppliers. Any bond required must be issued by a surety company licensed to do business in the State of Tennessee. When required, the amount of the proposal bond shall be stated as a percentage of the contractor's bid or cost proposal total, but not to exceed five percent (5%). The amount of the performance bond shall be stated as one hundred percent (100%) of the maximum liability or estimated liability of the contract, which may be reduced proportionately, in the State's sole discretion, after contract award or successful performance under the contract. The amount of the payment bond shall be the statutory requirement of twenty-five percent (25%) of the maximum liability or estimated liability of the contract. The awarded contractor shall provide the bond or evidence of any required bonding before the contract's effective date. Personal checks shall not be acceptable in the place of any bonds required by the State; however, bank cashier's checks shall be accepted. An irrevocable letter of credit or a certificate of deposit, which shall be held by the Procurement Office, from a State or national bank or a State or federal savings and loan association having a physical presence in Tennessee may be accepted by the Procurement Office in lieu of a bond, subject to approval of the terms and conditions of said irrevocable letter of credit or certificate of deposit.

10.7. *P-Card Purchases.*

The Procurement Office manages all Purchasing Card services contracts, which enable Departments to provide direct payment for goods or services. Departments must utilize these contracts when seeking Purchasing Card services.

Except for purchases of equipment that require tagging under the University's policies, Departments should use the P-Card as a payment method for purchases made under their small purchase authority. Under Tenn. Code Ann. § 12-3-503(b) a department may use its small purchase authority to make a purchase without soliciting quotes or proposals from multiple suppliers if the total value of the purchase is less than five thousand dollars (\$5,000). Departments shall not artificially divide transactions or accounts to avoid having to bid. Departments shall comply with Procurement Office Policy and all applicable procurement statutes, rules, policies, or procedures when using the P-Card. Purchases of goods or equipment that require tagging under the University's policies require the prior approval of the Procurement Office.

The Procurement Office will utilize electronic reporting and centralized payment for all vendors that accept P-Card payments. Employees shall be responsible for reconciling monthly payment card charges for transactions.

10.8. *Software as a Service.*

Software as a Service ("SaaS") shall be treated as a term license for software or services, not as a Subscription as defined in section 4.1 of this manual. A SaaS license may use a "subscription schedule" as payment methodology, but this does not make it a "Subscription" as defined by the State. All SaaS agreements shall comply with the rules, policies, and procedures of the Procurement Office..

10.9. *Subscriptions.*

Subscriptions are meant to be used for procurements that do not require standard contracting procedure. In distinguishing between a Subscription and SaaS, procurement professionals should use their best judgment. If in doubt, contact the Procurement Office for guidance. The use of a “subscription schedule” as the payment methodology is not determinative of a Subscription.

10.10. *State Security Confidential Information*

10.10.1. Purpose.

The Public Records Act includes numerous exceptions to the general proposition that all state records shall “be open for personal inspection by any citizen of this state,” as provided for in Tenn. Code Ann. § 10-7-503. One such exception is Tenn. Code Ann. § 10-7-504(i), which requires the state to keep as confidential “[i]nformation that would allow a person to obtain unauthorized access to confidential information or to government property.” Information that is confidential under subsection (i) includes but is not limited to: A.) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; B.) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; C.) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property; and D.) The identity of a vendor that provides goods and services used to electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information to the State. This section provides guidance as to the procedures a procurement professional should consider to comply with this requirement.

10.10.2. Process.

The STS Pre-Approval Endorsement includes, as part of the endorsement, an assessment as to whether the exception under Tenn. Code Ann. § 10-7-504(i), as it relates to information technology, applies to the solicitation or contract under review. If STS determines that the security exception applies, then a procurement professional should consider the following precautions to safeguard the confidential information.

- **Advertising the Solicitation:** A procurement professional should, after consultation with STS and Legal, publicly advertise a copy of the solicitation, in accordance with Tenn. Code Ann. § 12-3-502(a). Each procurement professional should review the STS endorsement before publicly advertising the solicitation to determine whether the solicitation contains confidential information. Confidential information should be redacted prior to publicly advertising the solicitation. Once redacted, the procurement professional should publicly advertise a copy of the solicitation without the confidential information. Only those respondents who sign a non-disclosure agreement will have access to the confidential information via secure URL or similar protected, limited access.

Notice of Intent to Award and Open File Period: During the open file period, the procurement professional must take appropriate safeguards to protect confidential information, including the respondents’ identities. This may be accomplished by randomly assigning a numeric value to reference the respondents’ names and identities. Note: “Documents concerning the cost of protecting government property or electronic information shall **not** be confidential.”

- **Contract Entry:** The procurement professional is responsible for making sure that the “Confidential” data field on the Additional Contract Info page in Edison is changed to “Yes,” to reflect the existence of confidential information.
- **Other:** If there is a Protest, a Public Records Request, or Report concerning the confidential information, the Solicitation Coordinator should consult with STS and CPO Legal concerning what information should be redacted consistent with Tenn. Code Ann. § 10-7-504(i). Similarly, if the subject contract is a Statewide Contract, then the information publicly available online should be limited accordingly. The Solicitation Coordinator will be the contact person for all requests.
- Procurement professionals who are unsure of what data is protected under the Tennessee Open Records Act should consult a member of the legal team prior to release of any records subject to the exception described in this section.

10.10.3. Permissible Disclosures.

Tenn. Code Ann. § 10-7-504(i)(3)(D) authorizes a governmental entity to “upon request, provide the identity of a vendor to the comptroller of the treasury and the fiscal review committee of the general assembly.” A procurement professional should notify the Fiscal Review Committee or the Comptroller of the Treasury that the confidential provision is applicable so they may exercise reasonable care in maintaining the confidentiality of the information, including the identity of the vendor.

10.11. *Federal Awards Procurement Standards.*

To the extent applicable, any contracts that include any federal awards, all non-Federal entities receiving such awards must comply with all requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.326.

10.12. *Professional Associations*

Membership in professional associations are vital to the operation of most university departments. Department heads are responsible for ensuring that these are procured in the most economical manner and that they directly relate to the department’s mission. While institutional or organizational memberships are preferred, individual membership fees can be considered for payment in cases when the university or department will clearly benefit from the membership. A letter of justification from the supervisor of the individual requesting the membership(s) with the business reason for this payment should accompany any request for payment of individual membership fees, and must be retained with the disbursement records.

11. Templates and Models.

11.1. General Information.

University employees should utilize applicable templates and models when drafting procurement documents generated outside of Govs e-Shop. When applicable, the templates must be utilized and deviations from the templates shall require an approved Rule Exception Request by the Procurement Office. When a Rule Exception Request is not applicable, a written explanation for the deviation shall be provided by the department head. The models are intended to be used as helpful guides or minimum standards that may be modified as needed, as long as any modifications are in compliance with any applicable statutory or regulatory requirements. All documents are available on the [Procurement Office website](#). Employees should refer to the website frequently to ensure that the most up-to-date template is being utilized and submitted for requisite approvals.

The website, models, and templates cited herein are incorporated by reference into this Procurement Procedures Manual as though set forth verbatim herein, and the below listing of available templates and models are for informational purposes only. Links to these templates and models are set forth below. Each of these templates and models is self-explanatory. All questions regarding use of these templates and models should be directed to the Procurement Office staff.

- **SOLICITATION TEMPLATES, MODELS & RELATED DOCUMENTS**
 - Minimum General Bids Conditions (Exhibit A)
 - Request for Information (RFI) Model
 - Request for Quotation Template
 - RFP & Related Documents:
 - Request for Proposals (RFP) Standard Template
 - Solicitation Evaluation Confidentiality and Conflict of Interest Disclosure Model

- **CONTRACT TEMPLATES**
 - Contract Templates
 - Monitoring Form
 - Impermissible Clauses
 - Mandatory Clauses

- **OTHER GENERAL MODELS & ADMINISTRATIVE DOCUMENTS**
 - Conflict of Interest – Annual Attestations
 - Ethics – Exhibit B

Minimum General Bid Conditions

A. ACCEPTANCE AND REJECTION.

1. 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.
2. Bids may be awarded based on low by item, low by group of items or low by total items accepted, as best suits the needs of the Institution.

B. PREPARATION AND SUBMISSION OF BID.

1. Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.
2. 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.
3. 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.
4. Discounts, other than "Time" or "Cash", offered should be deducted from the unit price.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. All items bid must be new unless otherwise specifically stated in the bid.
11. Alternate/multiple bids will not be considered unless specifically called for in the bid.

12. Bond Requirements: Bond Requirements, if any, will be stated on the face of the Request for Quotation/Proposal. 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.
 13. Brand and Trade Names. The bidder must show brand or trade names of the articles bid, when applicable.
 14. Bids for purchases of \$100,000 or more must be signed and sealed with the bid number or other identifying information listed on the outside of the envelope.
 15. 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.
 16. 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 \$100,000 if received by the deadline and confirmed in writing within five (5) days on Institution forms.
- C. 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.
- D. INSPECTION OF BIDS. All RFQs bids will be opened publicly and are subject to public inspection after completion of the bid evaluation. Bidders may be present at opening.
- E. 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.
- F. 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.
- G. 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.

- H. 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.
- I. NON-DISCRIMINATION. The parties agree to comply with Title VI and VII of the Civil Rights Act of 1964, as amended; 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, as amended, 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.
1. 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.
 2. 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.
- J. PROHIBITIONS / CONFLICT OF INTEREST. Acceptance of gifts from vendors is prohibited. T.C.A. § 12-3-106. Bidding by state employees is prohibited. T.C.A § 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.
- K. NO VENDOR CONTRACT FORM – TERMS / TENNESSEE LAW. The contract documents for purchase under the Bids request shall consist of the bid, 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.
- L. 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.
- M. PROHIBITION ON HIRING ILLEGAL IMMIGRANTS. T.C.A. § 12-4-124, requires that Contactor 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.

1. 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 the university or any other state entity for a period of one (1) year from the date of discovery of the breach.
 2. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.
- N. PURCHASING POLICIES / BID PROTESTS. This bid request and any award made hereunder are subject to the University and State of Tennessee policies and guidelines.

Code of Ethics in Procurement and Contracting

The code of ethics shall be applicable to all employees of the University who primarily are responsible for the purchase of goods or services for any institution or technology center in the system.

A. Statement of Policy

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

B. General Standards of Ethical Conduct

1. Any attempt to realize personal gain through public employment, inconsistent with the responsible discharge of that public employment, is a breach of public trust.
2. Employees shall base all purchases on the principle of competitive bidding consistent with policies of the institution.
3. 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.
4. Employees shall avoid misrepresentation and sharp practices, and demand honesty in sales representations whether offered through a verbal or written statement, an advertisement or a sample of a product.
5. Employees shall be receptive to competent counsel from colleagues, and be willing to submit any major controversy through the appropriate appeals processes.
6. Employees shall accord prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.
7. Employees shall not use without consent the original designs developed by a vendor for competitive purposes.

C. 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:

1. He or she or any member of his or her immediate family has a substantial financial interest; or
2. 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
3. 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, Institution policy [1:001 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.

D. 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.

E. 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.