

## **IV 02 01 PURCHASING**

### **1.0 Purchasing & Contracts Department**

- (a) For purposes of efficiency in administration and management, the responsibilities for the purchasing of supplies, materials, and equipment from outside vendors for all college departments have been centralized in the Purchasing & Contracts Department. The operation of the Purchasing & Contracts Department is designed to relieve the faculty, administration, and other staff of most of the details connected with procurement except in instances of low cost items (less than \$10,000).

The procedures set forth herein are applicable in all cases where the expenditure is from funds administered by the College regardless of whether the funds arise from State or Federal appropriations, student fees, gifts, grants, endowments, contracts, agency funds or other sources of funds.

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

- (b) The general responsibilities and functions of the Purchasing & Contracts Department are as follows:
- (1) To purchase supplies, materials, equipment, and services related thereto for the various departments of the College in such a manner that maximum value is obtained for every dollar spent, and to insure that qualified suppliers are given equal opportunity to participate in furnishing College requirements.
  - (2) To expedite the delivery of materials to meet the requirements of the requisitioning department (when so requested by the department).
  - (3) To handle complaints, claims and adjustments, and to negotiate the return of material or arrange other settlements.
  - (4) To conduct all correspondence with suppliers relating to quotations and purchase orders.
  - (5) To set up standard specifications for materials and supplies commonly used on campus.
  - (6) To consolidate purchases wherever possible and thus obtain quantity discounts for such volume purchases.
  - (7) To furnish upon request, prices, or estimates of cost of materials and supplies to departments.

- (c) The President's designee herein referred to shall mean the Vice President for Business and Finance.

## **2.0 General Policy Regarding Procurement:**

### **2.1 General**

- (a) College policy concerning financial commitments provides that no employee of the College has the authority to make any purchase commitment, enter into any contract for materials or supplies, or otherwise take action with respect to third parties which may be construed as financially binding to the authority of the Purchasing & Contracts Department. In the absence of special arrangements to the contrary, the Purchasing & Contracts Department will receive all bids and enter into all negotiations with suppliers except as noted in Section 4.1 and 4.2.
- (b) The College's Purchasing Policy does not preclude a department from contacting sources of supply for preliminary information concerning price, quality, or usage of equipment, supplies, etc., in which it is interested. The Purchasing & Contracts Department will supply names and addresses of vendors upon request. Such preliminary contacts are not to produce firm commitments as this is the function of the Purchasing & Contracts Department. Copies of letter estimates and other information relative to desired purchases received by a department from sources of supply should be forwarded to the Purchasing & Contracts Department to support a requisition for purchase.
- (c) These policies and procedures shall not include the purchase or lease of real property, purchase of data processing equipment over \$249,999.99, the purchase of insurance, or purchases for capital outlay project from any fund source whatsoever.
- (d) Goods and services may be procured without competitive bidding only if such purchases are justified in writing and approved by the Chancellor or President as required by TBR policies and guidelines.

### **2.2 Specifications for Competitive Bidding:**

All purchasing shall be based upon the principle of competitive bidding except as herein provided. Whenever possible, all specifications for materials, supplies, equipment, and services shall be worded or designed so as to permit open and competitive bidding for the supplying of the article, commodities, or services to which they apply. It will be considered open and competitive bidding by utilizing one to the following purchasing techniques:

- (a) Request for Quotation (RFQ)/Invitation to Bid (ITB) – a competitive process soliciting bids from possible suppliers for a one-time procurement of product(s) and/or service(s). (A sample Request for Quotation is available at the TBR web site, [www.tbr.edu](http://www.tbr.edu), Office of Business & Finance.)

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

Specifications based on standard specifications;

Specifications based on qualified products list;

Specifications based on catalogs, price lists, or price schedules;

- (b) Requests for Proposals (RFP) – a competitive process in which bids are solicited from possible suppliers, with a source or sources of supply established for a specified period of time at agreed upon unit pricing for goods and/or services.
- (1) Request for Proposal – Under \$50,000, bid with cost and technical proposal submitted as one document (under \$50,000 does not require sealed bids; can be written, telephone or electronic).
  - (2) Request for Proposal – \$50,000 and over, sealed bid with separate sealed technical and cost proposals which must be submitted at the same time. Acceptability of technical offers shall be determined by an evaluation team selected by the President or designee. Members of the evaluation team should be adequate and appropriate to the scope and nature of the RFP. All technical offers shall be evaluated based on the criteria of the RFP and other information learned during the technical evaluation process. Any technical offer submitted which contains pricing information shall be rejected. Technical offers not deemed acceptable will not proceed to the pricing phase. Cost proposals shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the College. Technical and cost proposals shall not be made public until the inspection period following the evaluation of the cost proposals;
  - (3) Additional Procedures for Multi-step Sealed Bidding – the use of a multi-step sealed bidding process is required in the bidding process for the procurement of products and/or services when it is not practical to prepare initially definitive specifications.

Multi-step sealed bidding is a two-phase process consisting of a technical

first phase composed of one or more steps in which proposers submit unpriced technical offers to be evaluated and a second phase in which those proposers whose technical offers are determined to be responsive during the first phase have their price proposals considered.

- (4) For any contract that results from an RFP, the College is not permitted to change the scope of the service(s) once a contract is awarded.
- (c) In all contracts and other bids processes, the College should give consideration to such wording that would allow member institutions and schools to purchasing under the terms and conditions of the contract awarded.
- (d) The College is required to purchase items and services from other state agencies, (e.g., Department of Correction, Blind Services, etc...), whenever such items or services are available there from and meet the desired conditions and standards. The request to purchase from other state agencies must be submitted on a requisition.

In addition, for personal, professional and consultant service contracts only, no competitive process is required when the contractor is a state agency (as provided in the immediately preceding paragraph), a political subdivision of the state, any other public entity in Tennessee, or an entity of the federal government.

### **3.0 Procurement of Goods, Materials, and Supplies/Services**

- (a) Goods. Goods, materials, and supplies (cumulatively called “goods”) should be awarded to the lowest responsive and responsible\* bidder pursuant to the ITB or RFQ.
  - \*”Responsive” means that the bid meets the requirements and criteria set forth in the RFQ or RFP. “Responsible” means that the bidder is capable of performing or is not otherwise disqualified. In the event a bidder is not either responsive and/or responsible, then the bid is to be disqualified.
- (b) Goods and Services. Certain services or a combination of goods and services may be procured as a “good”, based on a RFQ or RFP, if the end product is more important than the service that goes toward its production or where the vendor has little discretion in determining its actual content or form.
  - (1) Examples of this type of service include, but are not limited to: (a) pest control; (b) security services; (c) moving and hauling; (d) refuse collections; (e) charter services; (f) printing services, and (g) maintenance services.
  - (2) Mischaracterization of an item to be procured as a good or service shall not constitute an error in the procurement if the requirements of this policy are met, but it may be grounds for the College to terminate the procurement process. For competitive procurement of goods, an ITB or

RFQ is appropriate, and in general, a purchase order may be used to finalize the purchase. For competitive procurement of services, a RFP is more appropriate, a purchase order is generally not sufficient to serve as the written contract for the services.

- (c) **Services.** A contract for personal, professional, or consulting services shall be used when the vendor's discretion or the form of the end product or service is critical to the performance. All purchases of personal, professional, and consultant services should be based, to the maximum extent practicable, on evaluation and consideration of vendor qualifications and cost. Detailed information regarding service contracts is provided in TBR Guideline G-030.
- (d) **Outsourcing.** The College is encouraged to determine whether some services can be delivered more economically by the private rather than the public sector. The following process is hereby permitted and encouraged:
  - (1) The state's cost of the service may be ascertained and kept confidential as part of the evaluation process. This cost must be finally determined and provided to the Director of Purchasing & Contracts in a sealed envelope prior to bid/proposal due date.
  - (2) The service may be the subject of a RFP, as appropriate, which approximately describes the services heretofore provided by the College.
  - (3) The RFP/RFQ may require that if the proposer /bidder's price exceeds the state's confidential cost, the bid may be rejected.
- (e) **Monitoring of Services.** The College shall have a monitoring plan for all service contracts, including grants and grant subcontracts, to ensure the following:
  - (1) that deliverables are received,
  - (2) financial obligation of the College does not exceed the contract pricing, and
  - (3) services are in compliance with the terms and conditions of the contract.

Procurement of goods under this policy shall not require a monitoring plan, but shall comply with TBR and College internal controls and audit procedures.
- (f) **Illegal Immigrants.** No person may enter into a contract to supply goods or services to the College without first attesting in writing that the person will not knowingly utilize the services of illegal immigrants in the performance of the contract, and will not knowingly utilizing the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract.

### **3.1 Requests for Quotation and Requests for Proposal:**

- I. Requests for Quotation (RFQ) and Requests for Proposal (RFP) shall specify:
- (a) the time and place that bids will be received and opened,
  - (b) information describing the purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired,
  - (c) the articles or services for which such bids are to be submitted and the specifications for such articles or services,
  - (d) the amount or number of articles or services required,
  - (e) the time of delivery,
  - (f) for all RFP's and RFQ's exceeding \$100,000, in estimated expenditure or revenue, a question/answer period and/or pre-bidders' conference, with all questions and responses forwarded to all prospective bidders,
  - (g) a declaration of the contract terms and conditions which shall be required,
  - (h) a description of the factors to be considered in evaluating bids/proposals, if applicable,
  - (i) the amount, if any, of bid bond or certified check to accompany the bid,
  - (j) the amount, if any, of any performance bond which will be required if the vendor is the successful bidder,
  - (k) date bid evaluations will be available for viewing,
  - (l) if applicable, whether other TBR Institutions and/or UT Institutions may purchase from the contract,
  - (m) the period of time during which each bidder/proposer will hold its bid open and the period during which the contract awarded will be available to other institutions, if applicable
  - (n) and any other requirements, conditions or information in reference to the purchase deemed necessary.
- II. RFQ/RFP files (hard copy or electronic) shall contain, at a minimum, the following:
- (a) a copy of the RFQ/RFP issued (including specifications),
  - (b) a list of vendors for solicitation,
  - (c) the date vendors were sent the RFQ/RFP,

- (d) for RFPs and applicable RFQs, any pre-bid questions/responses or addendums to the RFQ/RFP,
- (e) for RFPs and applicable RFQs, all documentation relating to the composition of the evaluation team and the evaluation documentation used to make the award,
- (f) as applicable, any documentation that warrants a re-bid of the RFQ/RFP,
- (g) any informal bid complaints and the respective responses/actions,
- (h) as applicable, copies of intent to award letters, and
- (i) the executed purchase order and/or contract.

### **3.2 Minimum Notice and Number of Bids**

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

- (a) If the estimated amount of the purchase (or revenue) is \$50,000 or more, written sealed bids must be solicited from fifteen (15) vendors or the number of vendors on the Vendors List--whichever is less and to all that request the specific RFQ/RFP. (The Director of Purchasing & Contracts must approve the solicitation of less than 15 bids). If the estimated amount of the purchase is \$100,000 or more, solicitations must be sent in a manner that verifies proof of delivery. The RFQ/RFP must be sent at least fourteen (14) days (ten (10) days when all vendors are local vendors) before the date that the bids are scheduled to be opened. For RFPs and applicable RFQs, additional time should be allowed when fourteen (14) days is not sufficient for vendors to adequately prepare a competitive proposal based on the method of RFP or RFQ delivery, bid specifications and pre-bidders questions/responses. A vendor's general or standing request for notice for all RFQs/RFPs or all RFQs/RFPs of a given type shall not suffice as a request for a specific RFQ/RFP and shall create no obligation on the College.
- (b) If the estimated amount of the purchase (or revenue) is at least \$10,000 but less than \$50,000, written, telephone or electronic bids must be solicited from at least three (3) qualified vendors. When telephone bids are solicited, a written record of the bidders and amounts bid shall be maintained.
- (c) If the estimated amount of the purchase is less than \$10,000, the purchase may be acquired by the department utilizing the check request form (see Section 102).
- (d) If the estimated amount of purchase is less than \$5,000, the purchase may be acquired by the department utilizing the procurement card (see VSCC Policy IV:02:02)

### **3.3 Withdrawals, Revisions and Rejections of Bids**

Before bid opening, a vendor may be permitted to withdraw a bid entirely and/or submit a substitute bid. The vendor making such a request must submit suitable identification. After bid opening, a vendor will be permitted to withdraw a bid only where there is obvious clerical error in the bid such as a misplaced decimal point, or where enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Withdrawal will be considered only upon written request by the vendor and approved by the Director of Purchasing & Contracts.

In case of errors in the extension of prices in the bid, the unit price will govern.

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

A bid may not be revised after bid opening.

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

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

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

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

Bids must be received in the specified location on or before the date and hour designated for bid opening. Late bids will be marked “unacceptable” and not considered in the award of that particular bid. All late bids received will remain property of the College and will be filed, unopened, in the appropriate folder.



### **3.4 Acceptance of Bids/No Rights Created:**

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

For RFP's and applicable RFQ's, a notice of intent to award shall be sent to all proposers containing, at a minimum, the content provided by the TBR.

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

A bond for the faithful performance of any contract may be required at the discretion of the College. A complete written record on all procedures and justifications shall be maintained on each purchasing transaction in order to provide a clear audit trail of the purchase.

Bids must be received in the specified location on or before the date and hour designated for bid opening. All bids received must be date and time stamped to show compliance with the designated opening date and time. Late bids will not be considered in the contract award.

All bids received shall be publicly opened and examined by the Director of Purchasing & Contracts at the time and place specified in the RFP/RFQ. All bids conforming to the invitation, together with the name of the bidder, shall be recorded, become a matter of public record, and shall be open to public inspection after award. Where protected by the Public Records statutes, a vendor's financial information disclosed in his bidder's qualifications shall not be disclosed to the public.

Each bid should give the full name, if vendor is a corporation, the name shall be as stated as it is in the corporate charter, and business address of the bidder. Each bid must be signed in ink by the vendor's authorized agent. Unsigned bids will be rejected. The person signing the bid must show his/her title, and furnish satisfactory proof of his/her authority to bind his/her company in contract. Bids must be typewritten or in ink; otherwise, they may not be considered. However, informal procurement may be conducted electronically, and the College may request or permit electronic bidding, no bidder's signature shall be required. TCA §12-3-704. Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guidelines B-095 and TCA §12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for

proposals, or other solicitations electronically. The purchase order will be issued to the firm name appearing on the bid. Alternate bids will not be considered unless specifically called for in the bid.

When more than one item is specified in the RFQ/RFP, the College shall provide in the RFQ/RFP that it has the right to determine the low vendor(s) either on the basis of each individual item, a group of items, or the total of all items.

All material, supplies, and equipment offered and furnished must be new unless the RFQ/RFP specifically permits offers of used or reconditioned items. RFQ/RFP which specifically permits offers of used or reconditioned items shall require a warranty, except that the President, or his designee, shall have the authority to waive this requirement.

### **3.5 Protest of Bids:**

#### **I. Right to Protest:**

- (a) Any actual bidder who claims to be aggrieved in connection with a specific solicitation process may submit a protest in writing to the Director of Purchasing & Contracts within seven (7) calendar days after he/she knows or should have known the facts giving rise to the protest. Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest.
- (b) *Signature on Protest Constitutes Certificate.* The signature of an attorney or protesting party on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay, or needless increase in the cost of the procurement or of the litigation. If a request for consideration, protest, pleading, motion, or other document is signed in violation of this subsection before or after appeal to the Chancellor, the Chancellor upon motion or upon his/her own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties, including the affected Institution, the amount of the reasonable expenses incurred because of the filing of the protest, a petition for a stay of award, pleading, motion, or other paper, including reasonable attorneys' fees.
- (c) Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond. The protesting party shall post, with the Director of Purchasing & Contracts of the College, at the time of filing a notice of protest, a bond payable to the College in the amount of five percent (5%) of the lowest cost proposal evaluated or five percent (5%) of the highest revenue proposal evaluated. Such protest bond shall be in form

and substance acceptable to the College and shall be immediately payable to the College conditioned upon a decision by the Chancellor that:

- (1) A request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the Chancellor, is a violation.
  - (2) The protest has been brought or pursued in bad faith; or
  - (3) The protest does not state on its face a valid basis for protest.
- (d) The College shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by the Vice President for Business and Finance/Director of Purchasing & Contracts of the College. If the protesting party appeals the determination, the Vice President for Business and Finance/Director of Purchasing & Contracts of the College shall hold such protest bond until instructed by the Chancellor to either keep the bond or return it to the protesting party.
- (e) 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 (\$1,000,000.00), or in which the highest evaluated revenue proposal is less than one hundred thousand dollars (\$100,000.00), a minority-owned or small business protesting party may submit a written petition to the Director of Purchasing & Contracts for exemption from the protest bond requirement. Such a petition must include clear evidence of minority-owned or small business status. On the day of receipt, the petition shall be given (may be faxed) to the Chancellor or his/ designee. The Chancellor has five (5) business days in which to make a determination. If an exemption from the protest bond requirement is granted, the protest shall be processed as though the bond were posted. Should the Chancellor deny an exemption from the requirement, the protesting party shall post the bond with the Director of Purchasing and Contracts of the College within three (3) business days of the determination. For the purposes of this section, “minority-owned business” is defined as solely owned or at least fifty-one percent (51%) owned by a person or persons who control the daily operation of such business and who is disabled (a person having a physical or mental impairment that in the written opinion of the person’s licensed physician, substantially limits one (1) or more of the major life activities of such person, including caring for oneself, and performing manual tasks, which include writing, walking, seeing, hearing, speaking, and breathing); African American (persons having origins in any of the Black racial groups of Africa); Asian American (persons having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the subcontinent, or the Pacific Islands); Hispanic American (persons of Cuban, Mexican, Puerto Rican, Central or South American, or other Spanish or Portuguese origin, culture, or descent, regardless of race,); or Native American (persons having origins in any of the original peoples of North America). For as one which is independently owned and operated, has total gross receipts of no more than two million dollars (\$2,000,000.00) for

the most recently ended federal tax year, and employs no more than thirty (30) persons on a full-time basis.

## II. Authority to Resolve Protest

- (a) The Director of Purchasing & Contracts of the College has the authority to resolve the protest. If deemed necessary, the Director of Purchasing & Contracts may request a meeting with the protesting party to seek clarification of the protest issues.
- (b) The final determination of the Director of Purchasing & Contracts shall be given in writing and submitted to the protesting party.
- (c) The protesting party may request that the final determination of the Director of Purchasing & Contracts be considered by the Vice President for Business and Finance of the College. The request for consideration shall be made in writing to the Vice President for Business and Finance within seven (7) calendar days from the date of the final determination by the Director of Purchasing & Contracts.
- (d) The Vice President for Business and Finance has the authority to review and resolve the protest. If deemed necessary, the Vice President for Business and Finance may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the Vice President for Business and Finance shall be given in writing and submitted to the protesting party.
- (e) The protesting party may request that the final determination of the Vice President for Business and Finance be considered by the President of the College. The request for consideration shall be made in writing to the President within seven (7) calendar days from the date of the final determination by the Vice President for Business and Finance.
- (f) The College shall have no longer than sixty (60) calendar days from receipt of the protest to resolve the protest.
- (g) The protesting party may request that the final determination of the President be considered by the Chancellor. The request for consideration shall be made in writing to the Chancellor within seven (7) calendar days from the date of the final determination by the President. The determination of the Chancellor or his designee is final and shall be given in writing and submitted to the protestor.
- (h) In the event that the College fails to acknowledge receipt of a protest within fifteen (15) days of receipt of a protest or fails to resolve the protest within sixty (60) calendar days, the protesting party may request that the Chancellor consider the protest at a meeting.

## III. Stay of Award

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

#### IV. Protest Subsequent to Award

The Tennessee Claims Commission has exclusive jurisdiction to determine all monetary claims against the state for the negligent deprivation of statutory or constitutional rights.

### 3.6 Tie Bids:

- I. Goods - A tie bid exists when two or more bidders offer products that meet all specifications, term and conditions at identical prices, including cash discount offered. In such case, a tie bid will be broken by the following methods, in descending order of preference.
  - (a) In-state business will be given preference.
  - (b) Small and minority business will be given preference.
  - (c) Award of item(s) to vendor who was low bidder on other item(s) being bid per the same requisition.
  - (d) Best delivery.
  - (e) By lot or coin toss (properly witnessed and documented).
- II. Personal, professional and consultant services - In the event that a proposal evaluation process results in two or more proposals receiving evaluation scores that tie for the rank of highest score, the College shall request best and final cost proposals from only those proposers with scores that tie. The College may calculate new evaluation scores for the tying proposals by adding the original technical scores to the recalculated cost scores. Should another tie result, the contract shall be awarded by coin toss.

### 4.0 Special Purchase Categories

#### **4.1 Resale Purchases for Auxiliary Enterprises:**

Purchases for items for resale shall be made as follows:

- (a) Textbooks and other course-related materials may be purchased without adherence to Section 3:2 of this Policy, Minimum Notice and Number of Bids . All textbooks ordering lists and authorization forms must be maintained for audit purposes.
- (b) Certain items for resale for which customers have expressed a preference, and/or new or promotional items procured under accepted retail merchandising practices, may be purchased without adherence to Section 3:2 of this Policy, Minimum Notice and Number of Bids. Appropriate documentation shall be maintained which supports the action taken.

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

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

Purchases of electronic journals, subscriptions, and databases for the library shall be procured through the Purchasing & Contracts Department in instances when a competitive process can be used. In addition, any required electronic or written agreements to license journals, subscriptions, or databases shall be routed through the Purchasing & Contracts Department for review and approval prior to use. Appropriate documentation must be maintained for purchases to support sole source procurement.

#### **4.3 Computer Purchases**

Departments requesting computer hardware and software must complete a requisition for all purchases and obtain the Information Technology Department's approval prior to forwarding to the Purchasing & Contracts Department. All Requisitions for Purchases that exceed \$249,999.99 will also require the Tennessee Board of Regents' approval.

Acquisition of computer systems involving the purchase of hardware with the development of application software shall be made in accordance with TBR Guideline G030; Section 7, and TBR Policy 4:02:10:00, Acquisition of computer hardware, software and related services.

#### **4.4 Printing**

ALL printing for the College must have the approval of the Director of Public Relations prior to any contact with an outside vendor. These items include, but are not limited to, inter-office forms, course-related materials, applications, letterhead, envelopes, brochures, publications, calendars, newsletters, business cards, quick-print jobs, etc. If needed, assistance with the specifications can be provided by the Public Relations Office.

#### **4.5 Equipment Purchases**

The purchase of equipment with a value up to \$10,000 can be purchased without competitive bidding. All requests for equipment costing over 10,000 will be sent out to vendors for competitive bidding unless purchased under a contract that was competitively bid.

#### **4.6 Copy Machines**

Departments requesting to lease a copy machine shall work with the Director of Purchasing and Contracts. The purchase is to be made pursuant to Section 5.0, Contracts, Leases and Agreements.. If applicable, departments must send a letter requesting annual renewals to the Purchasing & Contracts Department.

#### **4.7 Emergency Purchases**

Purchases of specific material, supplies, equipment or services may be made in the open market for immediate delivery only to meet bona fide emergencies arising from any unforeseen cause. All bona fide emergency purchases must be approved by the Director of Purchasing & Contracts and/or the Vice President for Business and Finance, and a written report on the circumstances of any such emergency justifying the purchase shall be prepared and maintained by the Purchasing & Contracts Department. All emergency purchases shall, if practical, be made on the basis of competitive bids. **All emergency purchases must be processed through the Purchasing & Contracts Department.**

#### **4.8 Sole Source and Proprietary Purchases**

Non-competitive negotiation for sole source procurement is the negotiation of the terms of a contract with only one provider.

Personal, professional and consultant service contracts may be obtained by non-competitive negotiation when the contractor is a state agency, a political subdivision of the state, and any other public entity in Tennessee, or an entity of the federal government.

- (a) Sole source or proprietary purchases may be allowed pursuant to the following:  
Sole Source Procurement – sole source purchases are made only when items are unique and possess specific characteristics that can be filled by only one source.
- (b) Proprietary Purchases – A proprietary product is one that is manufactured and marketed by a person or persons having exclusive right to manufacture and sell

the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is found that bids may be obtained from different franchises, bid invitations must be issued unless the estimated purchase is less than \$10,000.

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

- (1) Whether the vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products.
- (2) Whether the product or service is unique and easily established as one of a kind.
- (3) Whether the program requirements can be modified so that competitive products or services may be used.
- (4) Whether the product is available from only one source and not merchandised through wholesalers, jobbers or retailers.
- (5) Whether items must be interchangeable or compatible with in-place items.
- (6) Whether the cost of conversion, including, but not limited to disruption, re-training and replacement, precludes bidding competitively.
- (7) Whether the product is to be used in an instructional setting and the intent is to provide instruction on the specific product or diversity of products.
- (8) For personal, professional and consultant services, whether the use of non-competitive negotiation is in the best interests of the College.
- (9) Other justifications as approved by the Chancellor or his designee.

Only authorized sole source purchases may be procured utilizing non-competitive negotiation. Whenever specifications are not so worded or designed to provide competitive bidding, or specify a single brand, the person responsible for the recommendation shall be required to justify the necessity for the specification in writing, and the request shall be approved by the applicable director, applicable Vice President, the Director of Purchasing & Contracts and the Vice President for Business and Finance. All sole source and proprietary purchases over \$10,000 must be processed through the Purchasing & Contracts Department.

#### **4.9 Utility Contracts**

The College 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 College deems to be in the best interest of the College. Each such purchase or contract shall be made on a competitive basis, whenever possible, in accordance with the TBR Purchasing Policy, 4:02:10.00, unless it has been



determined that such purchase is single source. If such purchases have been determined to be single source, the purchase is to be made pursuant to Section 4.8. Sole Source and Proprietary Purchase, of the VSCC Purchasing Policy.

#### **4.10 Competitive Negotiation**

A contract may be entered into by competitive negotiation only in cases when the College is unable to obtain needed goods and/or services by the competitive bid process. The President and his designee shall prescribe the procedures under which negotiation is to be conducted. These procedures shall be for the safeguarding of the information and provide fairness to the vendors in the negotiation process to be implemented. Such an action must be approved by the President, or his designee. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the President or his designee, and he/she shall approve the results prior to entering into a contract.

#### **4.11 Clothing**

Clothing in the form of uniforms will be purchased or rented by the College and provided to the Office of Campus Police and the custodial and tradesmen staff persons in the Office of Plant Operations. Clothing (i.e., shirts) will also be provided to the Recruiters/Admissions Advisors from the Office of Admissions who actively recruit at offsite locations on behalf of the College.

If employees of other departments want to obtain logo or emblematic College merchandise, they may do so by working with the College Bookstore or other merchants, using the designs prescribed by the Office of Public Relations, Marketing and Publications. These items will not be paid for by the College, but rather by the employees who choose to purchase them.

This policy section applies to clothing purchased by the College for its employees. This section does not pertain to athletic clothing, clothing purchased by the Foundation, or clothing items awarded to all employees of the College for special appreciation events. Additionally this policy does not apply to clothing purchased from student fees for student groups along with the College leaders of those groups or programs.

All employee clothing purchases must be procured by requisition, prior to purchase. Check requests and procurement cards are not allowed for these purchases.

#### **5.0 Contracts, Leases, and Agreements**

Arrangements for leases, maintenance and rentals are to be negotiated by the Purchasing & Contracts Department. Formal approval of leases and rentals is to be made by the Purchasing & Contracts Department when a College Department has conducted the preliminary negotiations. All such arrangements which commit funds of the College must be approved by the Director of Purchasing & Contracts. Any written document in support of these arrangements which are received in the department should be forwarded to the applicable Vice President for signature and then forwarded to the Purchasing & Contracts Department for processing. Items requiring Board of Regents approval will be forwarded by the Director of Purchasing & Contracts to the President's Office for transmittal to the Chancellor for his prior approval. All contracts and agreements will be

in conformance with VSCC Policy I:01:02 and TBR Guideline G-030, Contracts and Agreements.

- (a) No agreement of any nature which requires the expenditure of funds shall extend beyond the end of fiscal year in which it is entered into unless expressly subject to the condition that the College shall have the right to terminate the agreement at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the agreement.
- (b) All agreements, contracts and subcontracts shall contain all necessary nondiscrimination requirements provided by Federal or State laws and regulations
- (c) No contract for purchase of materials, supplies, equipment or services shall be awarded pursuant to these procedures unless funds have been appropriated and are available for the purchase. No contract shall be entered into in addition to the contract resulting from acceptance of a bid and issuance of a purchase order except pursuant to TBR Policy No. 1:03:02:10, Approval of Agreements. The requisitioner must certify funds are available.
- (d) Contracts containing no financial consideration may be negotiated.
- (e) Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months. Revenue contracts may not have a contract term for a period in excess of one hundred twenty (120) months.
- (f) A revenue contract shall be used to formalize an agreement in which the College provides specific deliverable goods or services for monetary compensation. Revenue contracts shall conform to the requirements of this policy, TBR Policy 1:03:02:10 and G-030.

## **6.0 Life-cycle Cost**

It is the policy of the College to use the life cycle costs of commodities as developed and disseminated by the federal government when feasible. In determining life cycle costs, the acquisition cost of the product, the energy consumption and the projected cost of energy over the useful life of the product and the anticipated resale or salvage value of the product may be considered in the evaluation

## **7.0 Energy Efficiency Standards**

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

The College shall use energy efficiency standards prescribed by Energy Star for the purchase of energy-consuming products. The Energy Star website (<http://www.energystar.gov>) provides a qualified list of products and commodities meeting Energy Star's minimal energy specifications, life cycle costing calculations, life

cycle formula information and qualified products that meet Energy Star's rating for using less energy and helping to protect the environment. (T.C.A. §§12-3-604 & 12-3-605) Products and commodities listed on the Energy Star website's list of qualified products and commodities will be used as "acceptable brands and models" on bid documents.

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

## **8.0 Restrictions and Limitations of Purchases**

### **8.1 Consignment of Equipment**

If a department is offered merchandise and/or equipment on a consignment basis, permission to accept or receive such merchandise should be requested by letter to the Director of Purchasing & Contracts through the department dean and applicable vice president. A complete description of the merchandise or equipment and a clear statement of the conditions under which the consignment is being offered should be given. The Director of Purchasing & Contracts will secure administrative approval for acceptance. Acceptance should not be made until proper approval is received.

### **8.2 Restrictions of Certain Purchases**

- (a) No personal items shall be purchased through the College or from funds of the College for any employee or any relative of any employee of the College. Such items include: brief cases, Christmas cards, birthday cards, get well cards, fountain pens, and personal magazine subscriptions, etc.
- (b) The College may not pay the membership dues of an individual in professional organizations, etc. An exception may be granted in instances where an organization does not permit institutional memberships or where an individual membership (in the name of an institutional representative) is less expensive than an institutional membership. However, memberships necessary to maintain or enhance an employee's professional status (e.g. American Institute of Certified Public Accountants or Bar membership dues) should be considered the responsibility of the employee and the association dues considered a personal expense.
- (c) Purchases from College employees. Purchases by the College from College employees are prohibited by Tennessee State Law.
- (d) No employee of the College responsible for initiating or approving requisitions shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future awards or compensation. Whenever any contract is awarded contrary to the provisions of these policies and procedures, the contract shall be void and of no

effect, and if the violation was intentional, the employee responsible for the purchase shall be liable for any state funds paid contrary to these policies and procedures.

- (e) College employees should not purchase personal items using the College purchasing process even when those items are to be paid for by the individual.
- (f) Purchases utilizing federal funding are to follow federal guidelines regarding such purchases. Purchases for goods or services shall not be made from vendors on the List of Parties Excluded From Federal Procurement and Non-procurement Programs.

## **9.0 Disposition of Surplus Personal Property**

### **9.1 Trade-In**

Departments may trade in equipment toward the purchase of similar items. Any trade-ins should be listed on the requisition for purchase.

### **9.2 Disposal**

Surplus property is personal property which has been determined obsolete, outmoded, unusable or no longer usable by the College, or property for which future needs do not justify the cost of maintenance and/or storage. Disposal of such property must be in accordance with TBR Policy No. 4:02:20:00, Disposal of Surplus Personal Property.

## **10.0 Mechanisms to Obtain Goods/Services**

### **10.1 Procurement Card**

The College has a Procurement Card program. The procurement card is to be used for items costing less than \$5,000.00 or as assigned (including shipping/handling), with the exception of items mentioned above and other restrictions listed on page 3 of the Procard Manual. Refer to VSCC Procurement Card Policy IV:02:02 and VSCC Procard Manual.

### **10.2 Check Request**

The Check Request is the form used by departments to request payment for goods or services costing less than \$10,000, only in instances where the procurement card is not accepted. The form is to be completed in entirety and with all the approval signatures and required documentation attached. The completed form is to be routed to the Business Office for payment.

### **10.3 Requisitions for Purchase**

The Requisition for Purchase is the method used by departments to request procurement action by the Purchasing & Contracts Department. It is used in the following purchasing techniques:

- (a) to request that a special or department contract be established for a specific commodity or service;
- (b) to request the purchase of goods or services in a specific amount for delivery on a one-time basis;

#### **10.4 Purchase Order**

When a College Purchase Order has been issued by the Purchasing & Contracts Department, a copy of the purchase order will be sent to the requisitioner/department. The department should thoroughly check the purchase order against their requisition, and discrepancies should be reported to the Purchasing & Contracts Department immediately.

Partial payments are made to vendors provided the invoiced items have been received and a receiving report has been prepared by the requesting department.

#### **10.5 Purchase Change Order Form**

A purchase change order is issued by the Purchasing & Contracts Department, when necessary, to correct or cancel a purchase order. If such a need arises, the Purchasing & Contracts Department should be contacted immediately. The Purchasing & Contracts Department has exclusive authority to change purchase orders.

#### **11.0 Follow-Up Procedures for Purchase Orders**

##### **11.1 Follow-Up**

The Purchasing & Contracts Department does not usually have knowledge of late delivery dates. Follow-up on orders is not routine, but the Purchasing & Contracts Department will inquire about delivery or expedite delivery if requested to do so by the requisitioning department. However, the departments may also contact vendors themselves to expedite delivery.

##### **11.2 Receipt Documentation**

It is the receiving Department's responsibility to monitor and document the receipt of all items purchased. The receipt of the items can be documented in any of the following methods.

- A Receiving Report is to be completed by the receiving Department for all items purchased on a Purchase Order.
- The Packing Slip can be signed and dated verifying the receipt of the items listed.
- An electronic or written notification can be sent verifying the receipt of the goods/services received.
- For items purchased and paid for using the procurement card or a check request, the Procard Activity Log or the Check Request form will serve as the receipt documentation.

Complete records of all receipt documentation shall be maintained in order to provide a clear audit trail on the receipt of all purchases.

If the items purchased using a Purchase Order are not per specifications, such as color, model, size, etc., the Purchasing & Contracts Department will contact the vendor after notification by the receiving department.

### **11.3 Receipt of Damaged Goods**

If damages are discovered after completing the receipt documentation, the department is to notify the Purchasing & Contracts Department and Accounts Payable as soon as possible.

### **11.4 Materials Returned**

The department should contact the Purchasing & Contracts Department to discuss the proper procedure in each case for returning goods, to a vendor.

## **12.0 Vendors**

### **12.1 A permanent register of vendors.**

A permanent vendor file will be established and maintained by the Purchasing & Contracts Department which shows the types or classes of materials, supplies, equipment or services which the person, firm or corporation is willing and able to furnish. Additional correspondence that is sent from the vendor (i.e. new address, changes in representatives, newly offered commodities, etc.) will be added to the vendor's file. Problems with vendors will be documented and kept on file.

### **12.2 Removal from vendor list**

Vendors who fail to respond to a reasonable number of bids or fail to provide adequate goods and/or services shall be removed from the vendors list. Reported failure to comply with bids, awards, and/or orders becomes a part of the vendor's application file. If a qualified vendor repeatedly fails to respond to RFP/RFQ, the vendor will be removed from all commodity groups. Examples of failure to comply include but are not limited to:

- \* Over shipments
- \* Under shipments
- \* Early Shipments
- \* Late Shipments
- \* Damaged Products
- \* Defective Products
- \* Shipments not in Conformance with Specifications
- \* Unauthorized Substitutions
- \* Service Deficiencies
- \* Failure to Ship

- \* Billing Errors

Other principal causes for temporary or permanent removal from the bid list are:

- \* Unethical Practices
- \* Misrepresentation of Merchandise

### **12.3 Reinstatement**

After receipt of a notice of removal or suspension, a vendor may submit in writing an explanation of the circumstances which caused the removal or suspension order. If in the opinion of the Director of Purchasing & Contracts and/or other College personnel, such circumstances have been corrected, the removal may be rescinded.

### **13.0 Funds Availability**

- (a) The responsibility for insuring that all expenditures remain within the amounts budgeted rests with the department head or other administrative head of the unit to which funds have been allocated.
- (b) The over-expenditure of a budget account is never authorized. If additional funds are needed, a budget transfer request must be submitted and approved before College funds are either obligated or expanded.
- (c) All purchase orders will result in funds being encumbered from the budgeted account.

### **14.0 Purchases from Small, Minority-Owned, and Women-Owned Businesses**

Volunteer State Community College will actively solicit bids from small, minority-owned, and women-owned businesses in order to obtain a fair proportion of goods and services from such businesses, whenever possible. In accordance with TCA 12-3-808, on an quarterly basis (January – March, April – June, July – September, October – December), information related to small, minority-owned, , and women-owned business purchasing will be filed with the Board of Regents.

For reporting purposes under this section, a “minority-owned business” means a business that is a continuing, independent, for profit business which performs a commercially useful function and is at least fifty-one percent (51%) owned or controlled, by one (1) or more minority individual(s) who is impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is: a) African American (a person having origins in any of the black racial groups of Africa); b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race); c) Asian American (a person having origins in any of the original peoples of the Far East,

Southeast Asia, the Indian subcontinent, or the Pacific Islands); or d) Native American (a person having origins in any of the original peoples of North America)."

A "small business" means a business which is independently owned and operated and is not dominant in its field of operation. The College will comply with the State of Tennessee's design and procedures to identify small businesses and will monitor purchases from those businesses. A "woman owned business" means a business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

## **15.0 Additional Purchasing Responsibilities**

### **15.1 Council of Buyers**

The Director of Purchasing & Contracts will be assigned to represent the College as a member of the Council of Buyers. The College may assign additional representatives as the President or his designee elects. The representative(s) will adhere to Section XXIII, Council of Buyers, TBR Policy No. 4:02:10:00, Purchasing Policy and Procedures.

### **15.2 Reports**

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

- (a) **Small/Minority/Women-Owned Business Report.** This report consists of transactions with minority-owned, women-owned, and small businesses required by TCA 12-3-808 shall be reported to the TBR Director of Purchasing and Contracts on a quarterly basis (January-March, April-June, July-September, and October-December).
- (b) **Group Purchasing Report.** This report consists of transactions procured with comparison pricing from group purchasing organizations required by TCA 49-7-124 and shall be reported to the TBR Director of Purchasing and Contracts on an annual basis.
- (c) **RFP Diversity Report.** This report consists of contracts issued from request for proposals for goods and/or services pursuant to TCA 12-3-807(b) and shall be reported to the TBR Director of Purchasing and Contracts.

TBR Source 1: TBR Meetings, March 5, 1976; June 30, 1978; December 12, 1980; September 18, 1981; June 25, 1982; September 30, 1983; September 20, 1985 ; December 4, 1987; June 24, 1988; June 30, 1989; September 22, 1989; September 21, 1990; June 28, 1991; June 25, 1993; September 23, 1994; September 20, 1996, March 7, 1997, December 5, 1997; March 27, 1998, December 4, 1998; June 28, 2002; June 27, 2003, April 2, 2004; September 30, 2005; December



8, 2006; March 30, 2007; June 29, 2007; September 28, 2007; March 28, 2008; December 4, 2008; June 19, 2009; TBR Board Meeting September 25, 2009.

TBR Source 2: November 12, 1985, Presidents' Meeting; August 15, 1989, Presidents' Meeting; November 8, 1995, Presidents' Meeting; May 14, 1996 Presidents' Meeting; November 12, 1996, Presidents' Meeting; August 5, 1997 Presidents' Meeting, November 5, 1997 Presidents' Meeting; February 17, 1998 Presidents' Meeting & March 27, 1998 Board Meeting; November 4, 1998 Presidents' Meeting, November 7, 2001 Presidents Meeting. August 16, 2005 Presidents' Meeting, August 16, 2006 Presidents' Meeting; May 15, 2007 Presidents' Meeting, February 12, 2008 Presidents' Meeting November 5, 2008, Presidents Meeting February 17, 2009; Presidents Meeting, August 11, 2009; President's Meeting, August 17, 2010

VSCC Source: July 5, 1989, President; December 19, 1994; President; July, 1998, President; July 1999, President; August, 2002, President; May, 2008, President; September 8, 2008, President's Cabinet; January 25, 2010, President's Cabinet; April 26, 2010, President's Cabinet; May 9, 2011, President's Cabinet; October 23, 2013, President; June 23, 2014, President's Cabinet;