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I. INTRODUCTION

A. Purpose

1. This Procurement Manual describes Tennessee Tech's procedures regarding the acquisition of goods and services and the approval and execution of contracts, pursuant to applicable Tennessee law.
2. This Procurement Manual also includes Tennessee Tech's procedures regarding the approval and execution of contracts.

B. Authority

The following Tennessee Tech Policies, along with those incorporated by reference, shall govern Tennessee Tech's purchasing practices.

1. TTU Policy 571 (Methods and Processes of Competitive Procurement)
2. TTU Policy 570 (Contracts and Agreements)

C. Exclusions

1. This Procurement Manual does not apply to:
 - a) The procurement process for capital projects subject to Tennessee State Building Commission Guidelines; or
 - b) The approval process for grant contracts awarded to Tennessee Tech but does apply to contracts for grant sub-recipients and grant subcontractors.

II. MISSION

A. Mission Statement

The Purchasing and Contracts Office is committed to support Tennessee Tech's mission by using the highest procurement standards to acquire, at a level of optimal customer satisfaction, goods and services that represent best value for Tennessee Tech and to ensure that all purchases are made in accordance with Federal and State laws and requirements and Tennessee Tech policies and regulations.

B. Methods of Accomplishment

This mission is accomplished by:

1. Furnishing information and assistance to faculty and staff regarding vendors, procurement methods, and procurement policies and guidelines;
2. Providing guidance in developing competitive bid specifications;
3. Determining the appropriate and best available procurement process and directing the process throughout the acquisition;



4. Acting as a liaison between Tennessee Tech and vendors to facilitate purchases and resolve any issues;
5. Maintaining Tennessee Tech contracts for the purchase of goods and services, as well as utilizing eligible contracts of other entities to obtain goods and services economically and efficiently.

III. DEFINITIONS

As used in this Manual, the following terms shall be defined as detailed below.

1. *Bid or Proposal* means a response by a Bidder/Proposer to a Solicitation.
2. *Bidder or Proposer* means a person or legal entity that is properly registered as required by Tennessee, has the legal capacity to enter into contracts and to sue and be sued, and who responds to a Solicitation for goods and services.
3. *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 when Tennessee Tech offices are closed, the next business day becomes the final calendar day.
4. *Competitive Negotiation* means a procurement method for negotiating a transaction based on pricing, terms and overall value.
5. *Eagle Buy* means the electronic procurement system used by Tennessee Tech to process internal workflow and issue awards.
6. *Equipment* means any physical resource (other than land, buildings or permanent attachments thereto) that will benefit a program for more than one year and will cost more than \$4,999.99. This definition does not apply to library books.
7. *Federal* refers to the United States government.
8. *General Services Administration (GSA)* means the procuring agency for the United States government.
9. *GSA Contracts* means contracts issued by the General Services Administration.
10. *List of Parties Excluded from Federal Procurement and Non-Procurement Programs* means the list maintained by the GSA which identifies suppliers and vendors excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.
11. *Non-recurring Purchases* means infrequent purchases of the same or similar items made during a consecutive six-month rolling period from one or more vendors.
12. *Proprietary Purchase* means a purchase of a good or service that is manufactured and marketed by a person or persons having the exclusive right to provide the service or sell the good.
13. *Protesting Party* means an aggrieved Bidder or Proposer who was not awarded a contract and files a protest claiming his/her rights were infringed in connection with a Solicitation or award by Tennessee Tech.
14. *Request for Proposal (RFP)* means a formal solicitation method used to purchase goods and services for which factors other than cost are considered as part of the evaluation process.



15. *Request for Quotation (RFQ)* means an informal or formal procurement method used when the specifications of goods and services can be defined to the point that an award can be made to the lowest cost Responsive and Responsible Bidder or Proposer.
16. *Responsible Bidder/ 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.
17. *Responsive Bidder/Proposer* means a person who has submitted a Bid or Proposal, which conforms in all material respects to the terms of a Solicitation.
18. *RFQ/RFP Coordinator* the individual designated by the Purchasing and Contracts Office who is responsible for oversight of the Solicitation.
19. *Small Dollar Purchase* means Non-recurring Purchases totaling less than \$25,000 cumulatively, including shipping that are made without quotes or proposals from multiple vendors.
20. *Sole Source Purchase* means a purchase for which only one vendor possesses the unique and singularly available capability to meet the requirements of the Solicitation.
21. *Solicitation* means a procurement process to facilitate the award of a contract for goods and services.
22. *State* means the State of Tennessee.
23. *State of Tennessee Debarred Vendors List* means of list maintained by the Tennessee Department of General Services that identifies suppliers and vendors excluded from receiving State contracts.



IV. RESPONSIBILITIES

A. Purchasing and Contracts Office Responsibilities

The Purchasing and Contracts Office is responsible for the following:

1. Competitive bid processes of Tennessee Tech purchases of goods and/or services totaling \$25,000 or more over the term of the contract, including any renewals.
2. Issuance of Tennessee Tech purchase orders for purchases totaling \$25,000 or more or for the purchase of Equipment.
3. Review and execution of Tennessee Tech contracts or agreements including, but not limited to:
 - a) Personal, Professional or Consultant Services
 - b) Dual Services
 - c) Clinical Affiliation
 - d) Terms and Conditions of Sale
 - e) Licenses
 - f) Sub-Recipient and Sub-Contracts from Grants
4. Co-administration of Tennessee Tech's procurement card program. See the Procard Users Manual for procedures related to the use of Tennessee Tech credit cards.

V. PURCHASING APPROVAL

A. Approval for Procurement of Goods and Services

Unless specifically exempted by this manual, the Vice President for Planning and Finance or designee must approve procurements of goods and services.

B. Approval of Agreements

Only the President or his/her designee has signatory authority for contracts on behalf of the University. Unless the President has specifically designated signatory authority to another individual, the signer could be assuming personal liability. Contracts take many forms, including, but not limited to, terms and conditions, terms of sale, rental agreement, warranty, etc. and all contracts must be reviewed and signed only by the appropriate authority.

C. Additional Required Approvals

The following require additional approval(s):

1. Acquisition or sale of Tennessee Tech real property requires prior approval of the President, Board of Trustees, and the State Building Commission (SBC).
2. Leases of real property or facilities for more than five years or for more than \$150,000 per year requires prior approval of the President, Board of Trustees, Tennessee Higher



- Education Commission (THEC), and the SBC.
3. Contracts related to the legal authority and operating control of Tennessee Tech with respect to the Tennessee Tech Foundation require prior approval of the President and the Board of Trustees.
 4. Revenue contracts of \$250,000 or more annually require prior approval of the President, with a periodic report to the Board of Trustees;
 5. Expenditure contracts totaling \$250,000 or more annually require prior approval of the President, with a periodic report to the Board of Trustees;
 6. Contracts for services that require Fiscal Review Committee review requires prior approval of the President, with a periodic report to the Board of Trustees, and review by the Fiscal Review Committee (See Section X. B. of this manual);
 7. Purchases of insurance require prior approval of the President and the Department of Commerce and Insurance, with a periodic report to the Board of Trustees; and
 8. Capital projects where the estimated cost is \$100,000 or more for new buildings or structures or \$500,000 or more for repair or renovation, from any fund source whatsoever requires prior approval of the President, Board of Trustees, SBC and THEC.

VI. PURCHASING METHODS

A. Small Dollar Purchases

1. A department may make Small Dollar Purchases without the approval of the Vice President of Planning and Finance.
2. Departments should take appropriate steps such as conducting price comparisons to ensure that Small Dollar Purchases are made based upon terms, conditions and pricing that are in Tennessee Tech's best interest.
3. A department may not split purchases to avoid its Small Dollar Purchases authority.
4. Should a department violate its Small Dollar Purchases authority, the Vice President for Planning and Finance may impose restrictions on a department's purchasing authority.
5. The individual(s) responsible for unauthorized purchases may be personally liable for the costs of the purchases and face disciplinary action as described in TTU Policy 650 (Disciplinary Action).

B. Informal Solicitations

1. Departments may request the Purchasing Office to conduct an informal solicitation. For purposes of this manual, an informal solicitation is a procurement process used when the estimated value of a purchase is between \$25,000 and \$99,999, with bids being accepted by telephone, written or electronically.
2. Bidders are not required to sign a bid in response to an informal solicitation.



3. The Purchasing and Contracts Office will determine the appropriate means of soliciting informal bids.
4. The Purchasing and Contracts Office will solicit bids from at least three (3) sources of supply.
5. The Purchasing and Contracts Office will maintain file documentation of informal solicitations.
6. Informal solicitations shall comply with the RFQ requirements.

C. Formal Solicitations

1. A formal solicitation process must be used when the estimated value of a purchase is \$100,000 or more, unless a non-competitive procurement is approved according to this manual.
2. A Request for Proposal (RFP) is a form of formal solicitation.
3. A Request for Quotation (RFQ) may be informal or formal, with the Purchasing and Contracts Office determining the appropriate form of solicitation to be used.
4. Formal solicitations responses must be signed by the Bidder or Proposer.
5. The Purchasing and Contracts Office will post formal solicitations on the Purchasing and Contracts Office website and such posting will serve as the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.

D. Request for Quotation (RFQ)

1. The Purchasing and Contracts Office may issue an RFQ to purchase goods or to purchase services, if the specifications for delivery of the services are defined to a level of detail such that award is made to the lowest Responsive and Responsible Bidder/Proposer. Examples of this type of services include, but are not limited to:
 - a) Moving and hauling services;
 - b) Charter travel services; and
 - c) Maintenance services
2. A written RFQ shall contain the following elements, at a minimum:
 - a) Clear and definitive technical requirements for the goods or scope of services to be procured that allow for open competition where practicable;
 - b) Terms and conditions, which clearly state the requirements for response and language to bind the parties in the event of award;
 - c) Directions regarding Bid or Proposal submittal;
 - d) Instructions for packaging, shipping and delivering goods purchased and instructions for storage by vendor, if applicable;



- e) Any bond requirements; and
 - f) A timeline of the Solicitation process.
3. Usually, the Purchasing and Contracts Office will award a contract from an RFQ to the lowest Responsive and Responsible Bidder/Proposer. Award of a contract to a Bidder/Proposer other than the lowest Responsive and Responsible Bidder/Proposer requires written justification from the end user department and approval of the Vice President for Planning and Finance or designee. The Purchasing and Contracts office will retain written file documentation for RFQs.

E. Request for Proposals (RFP)

- 1. The Purchasing and Contracts Office may issue an RFP to purchase goods and services, whenever cost is not the only determining factor for award.
- 2. An RFP shall specify all steps and evaluation criteria as necessary to finalize selection of the successful Proposer.
- 3. Technical and cost proposals shall be submitted and evaluated separately, unless the Director of Purchasing and Contracts determines that a cost proposal should be evaluated contemporaneously with or prior to evaluation of the technical proposal.
- 4. Prior to reviewing Proposals, individuals evaluating the proposals shall review a list of Proposers and determine if s/he has a conflict of interest with serving on the Proposal evaluation team. Each member shall sign a conflict of interest statement, which shall be retained in the procurement file.
- 5. The RFP Coordinator will examine the Proposals to ensure that the Proposal meets the RFP's mandatory requirements. If the RFP Coordinator determines that a Proposal may have failed to meet one or more of the mandatory requirements, the Director of Purchasing and Contracts will review the proposal, and the Director or RFP Coordinator may seek clarification from the Proposer to determine whether or not the Proposal:
 - a) Meets requirements for further evaluation; or
 - b) Is non-responsive to the RFP and should be rejected.
- 6. If the Director determines a Proposal is non-responsive to the RFP requirements, s/he will document the decision to reject the Proposal. The Vice President for Planning and Finance must approve the Director's decision. Rejected Proposals will not be considered for award.
- 7. Proposal evaluators shall evaluate technical proposals impartially based on the RFP requirements and specifications.
- 8. After the technical proposal evaluation is completed, the RFP Coordinator will open and evaluate the cost proposals, and add a Proposer's cost and technical scores together to arrive at a total proposal score.
- 9. Usually, the successful Proposer is the one whose response receives the highest score.



Award of a contract to a Proposer other than the Proposer receiving the highest score requires written justification from the end user department and the written approval of the Vice President for Planning and Finance. The Purchasing and Contracts office will retain written file documentation for RFPs.

10. When additional steps are necessary to qualify and/or demonstrate the goods and/or services proposed, the Purchasing and Contracts Office may use a multi-step RFP process to qualify potential Proposers before soliciting competitive pricing.

F. Procurements under another State Entity's Bid Process

1. The Purchasing and Contracts Office may use statewide contracts issued by the State's Central Procurement Office as a bid response to a Solicitation or for direct purchase, unless the statewide contract specifically prohibits it.
2. The Purchasing and Contracts Office may purchase goods and services using the competitive procurement process of other State entities, i.e. State universities, TBR or UT institutions, etc., when the bid/contract contains language permitting Tennessee Tech to purchase under their contract.

G. General Services Administration (GSA) Contracts

The Purchasing and Contracts Office may negotiate directly with a vendor who maintains a GSA Contract to purchase the goods and services provided for in the GSA Contract. The price shall not be higher than that contained in the GSA Contract.

H. Goods and Services of Other State or Federal Entities

The Purchasing and Contracts Office may purchase goods and services of other State agencies, political subdivisions of the State, any other public entity of the State, or an entity of the Federal government using non-competitive negotiation whenever such items or services meeting the desired conditions and standards are available.

I. Procurements under Cooperatives.

The Purchasing and Contracts Office may purchase goods and services through cooperative purchasing contracts bid by other public entities whenever the contract is awarded through full and open competition.

J. Emergency Purchases

1. In limited circumstances, departments may purchase goods and services without Solicitation procedures to meet emergencies arising from any unforeseen cause.
2. If practicable, departments must process emergency purchases through the Purchasing and Contracts Office.
3. Departments must provide to the Purchasing and Contracts Office written documentation of the circumstances of the emergency, including the timing and sequence of event, consequences of not taking immediate action, and other information, if any, requested by the Purchasing and Contracts Office.
4. Emergency purchases must, if possible, be prior approved by:



- a) The Director of Purchasing and Contracts, for emergency purchases up to \$49,999;
- b) The Vice President for Planning and Finance, for emergency purchases from \$50,000 up to \$249,999.
- c) The President, for emergency purchases of \$250,000 or more.

K. Competitive Negotiation

The Purchasing and Contracts Office may use a Competitive Negotiation process that is substantially consistent with the process of the State's Central Procurement Office.

L. Sole Source and Proprietary Purchases

- 1. The Purchasing and Contracts Office will approve a Sole Source Purchase when the goods or services are available only from a single supplier.
- 2. The Purchasing and Contracts Office will approve a Proprietary Purchase using a competitive bid process, when a department requires a unique good or service that is available from multiple sources.
- 3. Departments must submit a completed Non-Competitive Procurement Justification Form to request a Sole Source or Proprietary Purchase.
- 4. The Purchasing and Contracts Office may also require a department to submit the following as a part of the request:
 - a) For a Sole Source Purchase, a written communication from the manufacturer specifying that it is the sole distributor or has designated a sole distributor for the good/service. The Purchasing and Contracts Office will, if necessary, authenticate written communications from outside parties.
 - b) A written communication from business and industry that supports the purchase of a particular good or service as industry or business standard. The Purchasing and Contracts Office will, if necessary, authenticate written communications from outside parties.
 - c) Supporting information detailing the basis for non-competitive procurement, based upon the following factors:
 - (1) Whether the vendor possesses exclusive and/or predominant capabilities or the items contain a patented or copyrighted feature providing superior utility not obtainable from similar products;
 - (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, and retailers;



- (5) Whether items must be interchangeable or compatible with in-place items;
- (6) Whether or not it is in Tennessee Tech's best interest to conduct a pilot program for a defined period of time;
- (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) Whether the economics, technical aspects, or other facts and circumstances of the purchase in question make the use of a non-competitive procurement method a more prudent choice than a competitive procurement method.

M. Purchases for the Tennessee Tech Library

1. The Tennessee Tech Library is responsible for developing its procurement policies and procedures, except as provided in this section.
2. The Library may purchase books, electronic or hard copy, without formal bids or quotations. Such purchases are considered capital expenditures.
3. The Purchasing and Contracts Office must bid purchases of electronic journals, subscriptions, and databases, whenever such items are available from multiple sources.
4. The Purchasing and Contracts Office must process purchases of electronic journals, subscriptions, and databases whenever Fiscal Review Committee review is required.
5. The Purchasing and Contracts Office must review and execute, if required, any electronic or written agreements to license journals, subscriptions, or databases.
6. Library purchases for electronic media must comply with Tennessee Tech policies related to accessibility.

N. Grant Purchases

1. Goods or services purchased with grant funds shall comply with the conditions of the grant and applicable State and Federal laws and guidelines.
2. State grant purchases for goods and services shall not be made from vendors on the State of Tennessee Debarred Vendors List available online at <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/local-units-of-governments-/procurement-information.html>.
3. Federal grant purchases for goods and services shall not be made from vendors on the List of Parties Excluded from Federal Procurement and Non-Procurement Programs on the System for Award Management website at SAM.gov.

O. Utility Contracts

Tennessee Tech shall purchase telephone, electric light, gas, power, postal and other services



for which a usage rate has been established by a public authority in such manner as Tennessee Tech deems to be in its best interest.

P. Purchases from the Tennessee Tech Bookstore

Purchases from the Tennessee Tech Bookstore are subject to the requirements of this manual.

Q. Office Supplies Purchases

1. Departments must purchase office supplies using Tennessee Tech's contract with Staples through the punch-out catalog in Eagle Buy.
2. Payments should be made using a Tennessee Tech procurement card.
3. Departments may purchase office supplies from another vendor only if the purchase price is less than the contract price.
4. If a department purchases office supplies from a vendor other than Staples, the department must retain price comparison documentation as part of its payment documentation, which is subject to audit by appropriate Tennessee Tech authorities. Departments may use the Staples Exception Form to document these purchases.

R. Computers and Computer-Related Items Purchases

The appropriate Tennessee Tech ITS ACT Tier 2 support person must approve computer hardware and software purchases before the Purchasing and Contracts Office will process the requisition for purchase.

S. Security Camera Equipment Purchases

Security camera equipment purchases are subject to TTU Policy 410 (Safety and Security Camera Acceptable Use). Departments must attach an approved Security Camera Equipment Request Form to a requisition for the purchase of applicable surveillance equipment.

T. Telephone Services and Equipment

Purchases of telephone services or equipment are subject to TTU Policy 559 (Acquisition, Allocation and Management of Telephone Services and Equipment) and TTU Policy 560 (Cellular Service and Wireless Allowance).

U. Memberships and Subscriptions

Institutional memberships and subscriptions are subject to TTU Policy 517 (Institutional Memberships and Subscriptions).

V. Motor Vehicle Purchases

The Vice President for Planning and Finance must prior approve purchases of motor vehicles (automobiles, trucks, passenger/cargo vans, etc.). Departments must use renewal and replacement (R&R) funds to purchase vehicles.

W. Purchase of Used Equipment

Departments may request to purchase used Equipment. Used Equipment must include a warranty, unless the department receives a waiver of warranty approval from the Vice President



for Planning and Finance. Departments may include the warranty waiver request as an attachment to the requisition in Eagle Buy.

VII. SOLICITATION REQUIREMENTS

A. Scope of Work and Specifications

1. Only criteria or factors included in the Solicitation may be used in evaluating a Bid or Proposal.
2. The scope of work must provide a clear description of what is required of a vendor to satisfactorily perform or deliver the goods and services under the contract and must be written to promote open and fair competition.
3. Competitive bid specifications must be clear, unambiguous and written to promote open and fair competition.
4. Specifications may take the following forms:
 - a) Descriptive Specifications - a conventional listing or narrative description of specification data, which should, if practicable:
 - (1) Identify the product using generic terminology in the description;
 - (2) List any characteristics that determine performance capability and identify those characteristics that are essential in order to meet performance requirements; and
 - (3) Detail the minimum and/or maximum acceptable performance requirements for each characteristic with as much tolerance and flexibility as practicable.
 - b) Specifications Based on Brand Name
 - (1) Brand and model numbers used to specify goods must be those in current production and available in the market. The use of brand and model names alone will not be permitted as a substitute for performance or functional specifications, unless providing performance or functional specifications is impracticable. When an item is specified by the use of brand names, the words "or equal" should be included.
 - (2) 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 and 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 provided.
 - (3) Bidders are required to notify the RFQ/RFP Coordinator whenever specifications are not perceived to be fair and open. All suggestions



or objections shall be made in writing at least three (3) working days prior to the bid opening.

(4) All Bidders must furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of a bid.

c) The Purchasing and Contracts Office may develop standard specifications and scopes of work which fit, insofar as possible, the requirements of the majority of its departments.

d) Specifications may require Bidders to respond to a Solicitation using a discount or surcharge applied to a catalog, price list, Bidder's cost, or price schedule described within the bid. Such bids shall include a specific list of items ("shopping list") for competitive analysis.

e) Specifications may include a list of pre-approved brands and model numbers that meet the requirements. The list of pre-approved items should include at least three (3) different brands. Whenever pre-approved items are listed, the bid shall provide an opportunity for the submittal of additional items for Tennessee Tech's consideration for inclusion in the items approved for bidding. The decision to approve additional brands/models for bidding is at Tennessee Tech's sole discretion, and all Bidders/Proposers will receive notification of additionally approved items in the manner Tennessee Tech deems appropriate.

B. Energy Efficiency Standards

Solicitations may specify minimum energy efficiency standards as the Purchasing and Contracts Office deems appropriate for procurement of major energy-consuming products. Such standards shall be specified in the bid document.

C. Life-Cycle Costing for Purchases of Major Energy-Consuming Products

The Purchasing and Contracts Office may use life-cycle costing to evaluate purchases of major energy-consuming products, taking into consideration the acquisition cost of the product, the energy consumption, and the projected energy cost over the useful life of the product, and the anticipated resale or salvage value of the product to determine life cycle costs.

D. Number of Bidders/Proposers

1. Departments should list all sources that they wish to include in the bid process and include the listing with its purchase request. The minimum number of potential Bidders required are:

a) For aggregate purchases up to \$25,000 (including shipping), prices may be negotiated directly by the department without a competitive bid process.

b) For estimated aggregate purchases from \$25,000 to \$99,999, a minimum of three (3) sources of supply is required.



- c) For estimated aggregate purchases or revenue of \$100,000 or more, the Purchasing and Contracts Office will determine the appropriate number of Bidders/Proposers.
- E. Notification to Potential Bidders/Proposers
 - 1. Whenever the Purchasing and Contracts Office posts a Solicitation on its website, such posting constitutes the official notification of bid. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.
- F. Pre-Bid/Proposal Questions and Comments Period or Pre-Bid/Proposal Conference
 - 1. If appropriate, a pre-bid/proposal conference or a written question and answer period shall be included in the Solicitation process. The purpose of the pre-bid/proposal conference and written question and answer period is to provide prospective Bidders/Proposers the opportunity to submit questions and/or comments regarding the Solicitation.
 - 2. The Purchasing and Contracts Office will prepare a written record of all questions/comments submitted along with Tennessee Tech's official responses and make it available to all prospective Bidders/Proposers.
 - 3. The official responses to the questions/comments are binding and incorporated by reference into the original Solicitation document.
 - 4. Bidders/Proposers shall take into consideration any and all amendments and/or addenda to the Solicitation and Bids/Proposals shall reflect any changes made to the Solicitation.
 - 5. In the event of extensive changes to a Solicitation, the Purchasing and Contracts Office may cancel the Solicitation and reissue it using a revised Solicitation.
- G. Site Visits and Presentations

A Solicitation may provide for site visits to Bidder/Proposer locations by evaluators and/or presentations by Bidders/Proposers as part of the evaluation process. Scores resulting from these activities will be applied prior to the opening of the cost proposal.
- H. Trade-In of Equipment

In cases where a Solicitation includes a trade-in of equipment, departments must provide the Purchasing and Contracts Office the inventory tag number and the condition of the trade-in, i.e. excellent, good, fair or poor. The Purchasing and Contracts Office will include the trade-in information in the Solicitation.
- I. Minority-, Small-, Woman-, and Service-Disabled Veteran-Owned Businesses

The Purchasing and Contracts Office shall follow the requirements of the Tennessee Minority-Owned, Woman-Owned and Small Business Procurement and Contracting Act, T.C.A. § 12-3-1101 et seq.
- J. Strategic Purchasing Efforts among State Entities



Unless it is not beneficial to the other State entities or if doing so would not be in the best interest of Tennessee Tech, the Purchasing and Contracts Office will include a provision in Solicitations to allow other State entities to purchase under the terms and conditions of the Bid or Proposal, if the Bidder or Proposer agrees.

K. Accessibility

Tennessee Tech procurement actions shall comply with Tennessee Tech policies related to accessibility.

L. Bid/Proposal Requirements

1. Bidder/Proposer is solely responsible for delivering the Bid/Proposal to the Purchasing and Contracts office on or before the date and hour specified in the Solicitation.
2. The Purchasing and Contracts Office shall reject late Bids/Proposals.
3. Bidders/Proposers must include their full name and business address, as identified for official tax purposes, on the Bid/Proposal.
4. Bids/Proposals submitted in response to a formal solicitation must be signed by an individual authorized to legally bind the Bidder/Proposer. Bidder's/Proposer's signature may be electronic and/or may be electronically transmitted unless otherwise specified in the Solicitation.
5. The Solicitation may require a Bidder/Proposer to provide any or all of the following types of bonds:

a) Performance Bond

The Purchasing and Contracts Office, in its sole discretion, may require a contractor to post a performance bond issued by a surety company licensed to do business in the State of Tennessee. The performance bond amount shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. The contractor must file the performance bonds with the Purchasing and Contracts Office within fourteen (14) Calendar Days after contractor receives a request from the Purchasing and Contracts Office. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The Director of Purchasing and Contracts shall approve the terms and conditions of all irrevocable letters of credit or certificates of deposit before they are accepted as surety for the contractor's performance.

b) Bid/Proposal Bond

The Purchasing and Contracts Office, in its sole discretion, may require a bid/proposal bond issued by a surety company licensed to do business in the State of Tennessee. The proposal bond amount shall be stated as a set



amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful Bidders/Proposers shall be returned upon contract award. Personal checks shall not be accepted in the place of bid/proposal bonds. Other forms of security to guarantee a Bid/Proposal may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The Director of Purchasing and Contracts shall approve the terms and conditions of all irrevocable letters of credit or certificates of deposit before they are accepted as surety for the Bidder's/Proposer's performance.

6. Public Bid Opening

- a) The Purchasing and Contracts Office may conduct public bid openings, as appropriate.
- b) Public bid openings are for informational purposes only. No award will be made at the bid opening. The Purchasing and Contracts Office will not make an award until the appropriate review concludes and a recommendation of award is made by the evaluators.

7. Bid Withdrawal, Revision, and Rejection

- a) Bidder/Proposer may withdraw or amend a Bid/Proposal before submission deadline.
- b) After Bid/Proposal submission deadline, a Bidder/Proposer will be permitted to withdraw a Bid/Proposal only where the enforcement of the Bid/Proposal would impose unconscionable hardship on the Bidder/Proposer.
- c) A Bidder/Proposer must submit a written request to the Purchasing and Contracts Office to request withdrawal of a Bid/Proposal after submission deadline.

8. Bid Revision

- a) After evaluation is completed and the successful Bidder/Proposer is selected, the Purchasing and Contracts Office may initiate negotiations with the Bidder/Proposer that serve to alter the Bid/Proposal in a way favorable to Tennessee Tech. For example, prices may be reduced, time requirements may be revised, the Bid/Proposal may be revised to supply omitted contract terms, etc.
- b) In no event shall negotiations increase the cost or amend the proposal such that the apparent successful Bidder/Proposer no longer offers the best Bid/Proposal.

9. Bid/Proposal Rejection



- a) Tennessee Tech reserves the right to reject all Bids/Proposals at its discretion. When it becomes necessary to reject all bids/proposals in a formal solicitation process, the Purchasing and Contracts Office will maintain written documentation regarding the reason for rejection in the procurement file.
- b) If another Solicitation is to be issued, all prior Bids/Proposals shall remain closed to public inspection until the evaluation of the re-bid is complete.
- c) The Purchasing and Contracts Office may reject all Bids or Proposals due to:
 - (1) Unreasonably high prices;
 - (2) Errors in the RFQ/RFP;
 - (3) Cessation of need;
 - (4) Unavailability of funds;
 - (5) Failure of all bids to meet specifications;
 - (6) Lack of competition;
 - (7) Determination that the goods and services can be delivered more economically pursuant to an agreement executed by another State entity;
 - (8) Determination that to proceed with the award would be detrimental to the best interest of Tennessee Tech, the reason for which shall be documented and approved by the Vice President for Planning and Finance.

10. Contractor Licensure

Bidders/Proposers must adhere to all requirements in T.C.A. § 62-6-119, if applicable. It is the duty of the Bidder/Proposer to ensure compliance. The Purchasing and Contracts Office will not advise Bidders/Proposers about their obligations under this statute.

M. Tie Bid

A tie bid exists when two or more Bidders/Proposers offer goods and services that meet all specifications, terms and conditions at identical prices, including cash discount offered for prompt payment. The Purchasing and Contracts Office will break a tie bid according to the following:

- 1. First preference shall be given to a “Tennessee Bidder” as defined by T.C.A. § 12-3-113(c);
- 2. Second preference shall be given to a Bidder/Proposer certified as a Disadvantaged Business Enterprise (DBE) by the Governor’s Office of Diversity Business Enterprise.
- 3. Third preference shall be given to the Bidder/Proposer who offers the best delivery.
- 4. If a tie remains, it shall be broken by lot or coin toss.



N. Intent to Award

For all Formal Solicitations and for certain Informal Solicitations, the Purchasing and Contracts Office shall issue a written or electronic notice of intent to award to all Bidders/Proposers. The notice of intent to award does not create rights, interests, or claims of entitlement in any Bidder/Proposer. Upon issuance of the notice of intent to award, the Purchasing and Contracts Office will make the Solicitation file available for inspection to each Bidder/Proposer, upon request, prior to contract award. The notice of intent to award shall specify the inspection period.

O. Acceptance of Bids/No Rights Created

Submission of a Bid/Proposal shall not create rights, interests or claims of entitlement in any Bidder/Proposer, including the successful Bidder/Proposer. Notwithstanding any action or agreement to the contrary, no such right, interest, or claim shall exist unless and until a purchase order has been issued or the parties have properly executed a contract.

P. Bid Protest

1. Any Bidder or Proposer who claims to be aggrieved in connection with the Solicitation may file a written protest with the Director of Purchasing and Contracts. The Protesting Party shall deliver the protest to the Purchasing and Contracts Office no later than the close of business of the seventh Calendar Day after the Purchasing and Contracts Office gives notice of award or intent to award, whichever is earlier.
2. Bidders or Proposers are deemed to know all facts documented in the procurement file on the first day that the files are open for public inspection.
3. Any issues raised by the Protesting Party after the seven-day period to protest shall not be considered as part of the protest.
4. The Director of Purchasing and Contracts may consider the following grounds for Protest and no others:
 - a) The contract award was arbitrary, capricious, an abuse of discretion, or exceeded Tennessee Tech's authority;
 - b) The procurement process violated a constitutional, statutory, or regulatory provision;
 - c) Tennessee Tech did not follow the rules of the procurement as set forth in the Solicitation in making the contract award, and such failure materially affected the contract award;
 - d) The procurement process involved responses that were not arrived at independently through open competition, were collusive, or were submitted in bad faith, or;
 - e) The contract award resulted from a technical or mathematical error during the evaluation process.
5. The Protesting Party has the burden of proof and persuasion with respect to the



invalidity of the procurement process or contract award.

6. Protests shall include the required bond, as specified in Section 8 below. Protests received which do not include the required bond shall not be considered. (A sample protest bond is available upon request to the Purchasing and Contracts Office.)
7. Signature on Protest Constitutes Certificate.
 - a) The Protest must be signed by an authorized company representative, and certified that s/he has read such document, that to the best of his/her knowledge, it is well grounded in fact and that it is not submitted for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.
 - b) If the protest is submitted in violation of this certification, Tennessee Tech may require forfeiture of the Protest bond and/or remove the Protesting Party from future bid opportunities.
8. Protest Bond
 - a) The Protesting Party shall post with the Director of Purchasing and Contracts at the time of filing a notice of protest, a bond payable to Tennessee Tech in the appropriate amount as listed below. The protest bond amount shall be calculated using the total value of the Solicitation, including any renewals.
 - (1) Five percent (5%) of the lowest bid or cost proposal evaluated or the maximum liability or estimated maximum liability provided in the Solicitation;
 - (2) Five percent (5%) of the estimated maximum revenue, if the Solicitation, award or proposed award is for a contract in which Tennessee Tech receives revenue; or
 - (3) The Director of Purchasing and Contracts shall determine the appropriate bond amount for no-cost contracts.
 - b) The protest bond shall be in form and substance acceptable to Tennessee Tech and shall be immediately payable to Tennessee Tech if the Vice President of Planning and Finance determines that:
 - (1) The Protesting Party has violated the certification described in Section 7 above;
 - (2) The protest has been brought or pursued in bad faith; or
 - (3) Tennessee Tech has suffered damages resulting in a loss of funding, increased expenditures, or a disruption in services; the protest was filed in bad faith or in violation of Section 7 above; and the protest was not upheld;
 - (4) The protest does not state on its face a valid basis for protest; or



- (5) For any other reason approved by the Vice President for Planning and Finance.
 - c) Tennessee Tech shall hold such protest bond for at least eleven (11) Calendar Days after the date of the final determination by the President as described in section 9. C) Below.
 - d) 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-, woman-, small- or service disabled veteran-owned business, as defined by T.C.A. § 12-3-1102, Protesting Party may submit a written petition to the Vice President for Planning and Finance for exemption from the protest bond requirement. 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 Vice President for Planning and Finance, who has seven (7) Calendar Days in which to make a determination.
 - e) If the Vice President approves the Protesting Party an exemption from the protest bond requirement, the protest shall proceed as though the bond were posted.
 - f) If the Vice President denies the Protesting Party an exemption from the bond requirement, the Protesting Party shall post the bond with the Director of Purchasing and Contracts as required in Section 8 above within five (5) Calendar Days of the determination.
9. Authority to Resolve Protest.
- a) The Director of Purchasing and Contracts may, at her/his sole discretion, request a meeting with the Protesting Party to seek clarification of the Protest issues. The Director of Purchasing and Contracts shall issue a written decision to the Protesting Party within thirty (30) Calendar Days after the Protest was filed, absent good cause.
 - b) If the Protesting Party is dissatisfied with the Director's decision, the Protesting Party must deliver a written appeal to the Vice President for Planning and Finance within seven (7) Calendar Days from the date of the Director's decision. The Vice President for Planning and Finance may, at her/his sole discretion, request a meeting with the Protesting Party to seek clarification of the protest issues. The Vice President for Planning and Finance shall issue a written decision to the Protesting Party within thirty (30) Calendar Days after receipt of the written appeal, absent good cause.
 - c) If the Protesting Party is dissatisfied with the Vice President's decision, the Protesting Party must deliver a written appeal to the President within seven (7) Calendar Days from the date of the Vice President's decision. The President may, at his/her sole discretion, request a meeting with the Protesting Party to seek clarification of the protest issues. The President shall



issue a written decision to the Protesting Party within a reasonable period.

d) The President's decision is final.

10. Stay of Award

The Protesting Party may also submit with the protest, a written petition for stay of the award. Unless the Vice President for Planning and Finance makes a written determination that continuation of the Solicitation process or the award without delay is necessary to protect the substantial interests of Tennessee Tech, the Director of Purchasing and Contracts shall stay the award pending the outcome of the protest.

VIII. PURCHASING RESTRICTIONS

A. Personal Items

1. Departments may not use University funds for the following types of purchases:
 - a) Items for which the apparent end use is primarily personal in nature. While it is difficult to define specifically all such goods and services, examples of such items include, but are not limited to, bottled water; coffee, beverages and beverage service, equipment or supplies; candy or snacks; tissues, paper towels, disposable plates, bowls, and cups; microwave ovens or other small appliances; clothing; first-aid kits; cut flowers or plants; decorative items; holiday decorations and cards; entertainment and recreational activities; donations or items to be granted as a donation or gratuity in favor of a person, corporation or association; and gifts and gift cards.
 - b) Products and/or tools to clean areas serviced by the University's contracted custodial services provider.
 - c) Hand sanitizer products, unless purchased for common use areas, such as lobbies, public reception areas, student lounges, etc. Hand sanitizer dispensers (wall mounted or standalone) and refills for common use areas are available for purchase through the TTU Warehouse. To request a dispenser:
 - (1) Departments should request approval through the Purchasing Office in writing for the dispenser. An email is acceptable and should include the number of dispensers needed and the location for placement.
 - (2) Submit a work order to Facilities with the index number to charge for the order. Costs for dispensers, installation and refills are available by contacting the TTU Warehouse.
 - (3) Orders for refills for approved dispensers should be submitted through the online work order system as needed.
2. For questions regarding these types of purchases, please contact the Purchasing and Contracts Office or the Business Office, who can assist you with specific questions and provide direction on requesting an exception if appropriate.



B. Printing Services

Unless an exception is granted by the Office of Communication and Marketing, all printing must be performed by Tennessee Tech's Printing Services.

C. Advertising

Departments may not purchase advertising or the use of University trademarks, wordmarks, etc. unless and until approved by the Office of Communication and Marketing.

D. Sales and Use Tax

Tennessee Tech is a tax exempt entity of the state of Tennessee. Vendors may not charge sales and use tax on sales of goods or services to Tennessee Tech. A tax exempt certificate will be provided to a vendor upon request. Requests for a tax exempt certificate may be emailed to salestaxform@tntech.edu and must include the name and address of the company requesting the certificate and the name and email address of the person to receive the certificate.

IX. EAGLE BUY

A. General Information

1. Tennessee Tech uses the Eagle Buy e-procurement system to electronically process requisitions for purchase of goods and services.
2. When planning for an acquisition, departments should anticipate their needs in advance to allow the Purchasing and Contracts Office adequate time for securing quotations/proposals and issuing a purchase order after a requisition is entered in Eagle Buy.
 - a) Informal Solicitations require approximately 1-3 weeks, depending on the method used to transmit the bid information.
 - b) Formal Solicitations typically require 4-6 weeks; however, additional time may be required depending on method of procurement, nature of goods and services being bid, levels of approval(s) required, etc.
 - c) Examples of Solicitations requiring a longer timeframe are:
 - (1) banking and other financial services
 - (2) advertising management
 - (3) consulting services
 - (4) bookstore or dining services management
 - (5) custom software / IT services, etc.
 - d) Departments may consult with Purchasing regarding estimated timeframes for bidding specific goods and services.

B. Approvals



1. The Eagle Buy approval process and workflow is based on criteria such as Banner codes, forms used, dollar value of purchase, commodity codes, etc.
2. Approvers assigned to the workflow review and approve or reject a requisition during the approval process.
3. Depending upon their role in the approval process, an approver may reject a requisition or request additional information from the department based upon:
 - a) Insufficient funding available for the purchase;
 - b) Lack of information to support the purchase; or
 - c) The purchase would violate Federal or State law or Tennessee Tech policy.

C. Requisition for Purchase of Goods

A requisition for a one-time purchase of goods, except for software, is processed in the Eagle Buy system as follows:

1. An Eagle Buy shopper creates a shopping cart in the Eagle Buy system and assigns the cart to a requestor.
 - a) A shopper or requestor may add items to an online cart using punch-out catalogs available in the Eagle Buy system. For items not requiring a bid and which are not available from a punch-out catalog, a “non-catalog” item is specified. Shoppers should include attachments as needed to support the request, i.e. vendor quote, Non-Competitive Procurement Justification Form, order form, etc.
 - b) For items requiring a bid, shoppers should specify a “non-catalog” item in the cart and include attachments, i.e. specifications, list of potential Bidders/Proposers, Non-Competitive Procurement Justification Form, etc. as needed to support the request.
2. After inserting the Banner FOAPAL information, the Requestor submits the cart for the appropriate approvals as defined in the electronic workflow.

D. Software and Digital Services Purchases

A requisition for purchase of software and/or digital services is processed in the Eagle Buy system as follows:

1. For purchases not requiring a bid, using a software & digital services routing form, the Eagle Buy shopper creates a shopping cart in the Eagle Buy system. As part of the cart, the shopper must include information regarding accessibility conformance and copies of software license or other agreement(s) requiring review and/or signature. Requisitions submitted without accessibility conformance information will be returned to the department unprocessed. Shoppers should include other attachments as needed to support the request, i.e. vendor quote, Non-Competitive Procurement Justification Form, etc. After all documentation is attached, the shopper assigns the cart to a requestor.



2. For purchases requiring a bid, using a software & digital services routing form, the Eagle Buy shopper creates a shopping cart in the Eagle Buy system and attaches additional documentation, i.e. accessibility information, specifications, list of potential Bidders/Proposers, Non-Competitive Procurement Justification Form, etc. Requisitions submitted without accessibility conformance information will be returned to the department unprocessed. After all documentation is attached, the shopper assigns the cart to a requestor.
3. After inserting the Banner FOAPAL information, the requestor submits the cart for the appropriate approvals as defined in the electronic workflow.
4. As part of the workflow:
 - a) ITS will complete a risk assessment for software and attach to the document as part of the procurement file. ITS may deny a software purchase if the software is determined to be unsafe for Tennessee Tech's technology environment.
 - b) The appropriate ITS ACT Tier 2 support person will review computer hardware and software purchases. If approved, the requisition will proceed to the next approval step.

E. Blanket Orders

Departments are encouraged to request blanket orders for goods for which multiple or ongoing purchases will be needed. Departments may initiate a request for a blanket purchase order by completing of one of the following forms in Eagle Buy:

1. Blanket Order Routing Form (Goods), (if purchasing goods);
2. Services Contract Routing Form (if purchasing services);
3. Software & Digital Services Routing Form (if purchasing a multi-term software license).

X. CONTRACTS/AGREEMENTS

A. General

1. Unless otherwise noted, these procedures apply to all contracts or agreements (expenditure, no-cost and revenue-generating) between Tennessee Tech and any external party, with the exception of research grant contracts, which are administered by the Office of Research.
2. Documents that bind Tennessee Tech are subject to the requirements of this manual, regardless of the title of the document, e.g. agreement, contract, memorandum of agreement, memorandum of understanding, purchase order, or other similar name.
3. Only the President or his/her designee has signatory authority for contracts on behalf of the University.
4. Each department is responsible for reviewing the terms of a proposed contract to



ensure that the terms do not conflict with Tennessee Tech policies and departmental practices.

5. Every department is responsible for understanding and adhering to the requirements of its contracts.
6. Contracts must be fully executed prior to commencement of services. Departments should plan in advance so that sufficient time is allowed to fully process contracts prior to any services being performed.

B. Fiscal Review Committee

1. Pursuant to T.C.A. 4-56-107, the State's Fiscal Review Committee must review the following contracts and/or contract amendments, and absent extraordinary circumstances, such review must occur prior to award:
 - a) Proposed non-competitive contracts with a term of more than one (1) year or which contain a provision to allow for extension by either party that would extend the contract beyond 12 months and which has a cumulative value of not less than \$250,000, including all possible extensions;
 - b) An amendment to a contract meeting the term and dollar threshold requirements as described in a) above, regardless of whether the original contract was procured through competitive or non-competitive means, 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.
2. The Fiscal Review Committee review process requires at least 75 Calendar Days' lead time to prepare the documents and submit them for review. The Purchasing and Contracts Office will, with the assistance of the requesting department, prepare and submit information as needed for Fiscal Review Committee presentation.

C. Determination of Status

1. Individuals performing services for Tennessee Tech must be properly classified and hired either as an independent contractor through a contract processed by the Purchasing and Contracts Office or as an employee through Human Resources. Departments may use the Guide for Determining – Employee or Independent Contractor form available on the Purchasing and Contracts website, to determine the individual's status. Departments may contact the Purchasing and Contracts Office or the Human Resource Office for guidance regarding the proper classification of a service provider.



2. Non-US Citizen Contractors

- a) Before beginning the process of hiring any individual as an independent contractor, the department must ask the individual whether or not s/he is legally authorized to work in the United States.
- b) If the contractor is not a United States citizen or permanent resident, the department must contact the Office of International Education and provide the following information:
 - (1) Name of individual proposed for contract;
 - (2) Country of individual's citizenship;
 - (3) A description of the services to be provided by the individual;
 - (4) The duration of the work, i.e. how much time is required to complete work;
 - (5) The Visa status of the individual, if known;
 - (6) Contact information (address, email, etc.) for the individual.
- c) The Office of International Education will then contact the individual directly or will advise the department to contact the individual to complete a Foreign National Data Form and submit it along with other documentation as required by the form, to the Office of International Education in order to determine the service provider's eligibility for performance and payment.
- d) The Office of International Education will advise the department whether or not the contractor is eligible to perform the work and the correct method of payment to be used, i.e. honorarium, reimbursement of expenses, stipend, etc.
- e) The department must advise the Office of Human Resources of the status of the independent contractor (as determined by the Office of International Education) so that the Office of Human Resources can determine the appropriate withholding, if any.
- f) In cases where the independent contractor's status creates a tax liability for the independent contractor, the department may wish to advise the independent contractor.
- g) Once it has been established that a contract is needed and verification of payment type and tax status has been made (if Contractor is a non-U.S. citizen), the department shall prepare the draft agreement/contract using the applicable contract template and submit it in Eagle Buy, attaching the information from Human Resources and the Office of International Student Affairs regarding eligibility and tax status for review and processing by the Office of Purchasing and Contracts.
- h) The Office of Purchasing and Contracts will forward the appropriate



documents to the contractor for completion and signature, properly execute the contract, issue a Blanket Order in Eagle Buy and distribute copies of the documentation to the contractor and internal stakeholders, as appropriate.

- i) Tennessee Tech will withhold required federal taxes from payment(s) to an independent contractor, in accordance with United States Internal Revenue Service regulations.

D. Required Contract Provisions and Contractor Requirements

1. The contract shall contain language regarding its scope/purpose and the duties of the parties.
2. Contract Duration
 - a) Contracts solely for the purpose of establishing terms and conditions, including sale or use, and that do not represent or provide for expenditure or receipt of funds may continue in effect for an indefinite term.
 - b) Unless the Vice President for Planning and Finance determines that a longer contract term is in the best interest of Tennessee Tech, the total term of an expenditure contract shall not exceed sixty (60) months, including renewals.
 - c) Unless the Vice President for Planning and Finance determines that a longer contract term is in the best interest of Tennessee Tech, the total term of a revenue contract shall not exceed one hundred twenty (120) months, including renewals.
 - d) The Purchasing and Contracts Office will retain written documentation of extended contract terms as noted in this section.
3. Expenditure and revenue contracts must specify a beginning and ending date or include clear language as to how these dates will be determined.
4. Contracts executed or proposed to be executed for periods of time of more than twelve (12) months:
 - a) should contain a provision giving Tennessee Tech the right of cancellation for convenience;
 - b) must contain a provision giving Tennessee Tech the right of cancellation for lack of funding.
5. A contract may provide for automatic renewal if it requires no expenditure of State funds or contains language allowing Tennessee Tech to cancel upon written notice or due to lack of funding.
6. Payment
 - a) Contracts requiring payments for goods and services, or the purchase order/order form/statement of work issued pursuant to such contracts must include specific rates and prices for the goods and services being purchased



as well as any payment conditions.

- b) Tennessee Tech will pay a contractor only after the goods are received or the services performed and upon receipt of contractor's invoice, unless the Vice President for Planning and Finance or designee approves alternate payment arrangements.
- 7. Contractor performance is subject to monitoring and evaluation by Tennessee Tech and/or other appropriate State and/or Federal officials.
 - 8. Expenditure contracts must specify Tennessee Tech's maximum liability for goods and services received under the contact.
 - 9. Contracts are subject to the requirements of TTU Policy 132 (Conflict of Interest).
 - 10. Contractor shall abide by all applicable Federal and State laws and Tennessee Tech policies, including but not limited to conflict of interest and nondiscrimination laws and policies.
 - 11. Audit and Documentation
 - a) The State of Tennessee shall be entitled to monitor the contract to the extent allowed by T.C.A. § 12-3-602, and the contractor shall maintain books and records related to the contract for three (3) years from the date of final payment.
 - b) See Additional audit language, if required for grant funded contracts, will be added prior to contract execution.
 - 12. Payment for Travel, Meals, Lodging

If Contractor is to be compensated for travel, meals or lodging, such payment shall be in the amount of actual cost or per diem rates, and shall be expressly subject to the limits and provisions of TTU Policy 506 (General and Group Travel).
 - 13. Governing Law
 - a) Contracts shall contain a provision that the contract is governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict of law principles.
 - b) Alternate provisions may be allowable after appropriate legal review, if necessary, and the Vice President for Planning and Finance's or designee's approval.
 - 14. Sales and Use Tax

In compliance with the requirements of T.C.A. § 12-3-306, the contractor must attest that the contractor has registered with the State of Tennessee's Department of Revenue for or does make sales of goods or services that are subject to the collection of Tennessee sales and use tax.



15. Debarment

- a) The contractor shall certify that to the best of its knowledge and belief that the contractor and its principals:
 - (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - (2) have not within a three (3) year period preceding the contract been convicted of, or had a civil judgment rendered against them for commission of fraud, or a criminal offense in connection with, obtaining or 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;
 - (3) are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses listed in subsection (2); and
 - (4) have not within a three (3) year period preceding the contract had one or more public transactions (Federal, State, or local) terminated for cause or default.
- b) Contractor shall provide immediate written notice to Tennessee Tech if at any time the contractor learns that it has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

16. Illegal Immigrants

Pursuant to T.C.A. § 12-3-309(b), contractor shall attest in writing that contractor shall not knowingly utilize the services of illegal immigrants in the performance of the contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract.

17. Data Privacy and Security

For contracts in which a contractor will have access to Tennessee Tech student or customer data, the contractor shall comply with all applicable Federal and State laws and Tennessee Tech policies related to data privacy and data security, including but not limited to the Gramm-Leach-Bliley Act (“GLBA”); the Health Information Portability and Accountability Act (“HIPAA”); the Family Educational Rights and Privacy Act (“FERPA”) of 1974 (20 U.S.C.1232g), the FTC’s Red Flag Rules, and any related regulations and standards.

18. Click-Wrap Agreements

- a) Contracts which may require users to accept online terms and conditions must contain the following clause or essential similar language:



Contractor agrees that click-wrap or click-through agreements shall not be binding upon Tennessee Tech. No employee has the authority to enter into, modify, amend, or supplement a contract through a click-wrap or click-through agreement. This contract can only be modified, amended, or supplemented under these terms through a written amendment in accordance with Tennessee Tech's policies and procedures.

19. Iran Divestment Act

Pursuant to the requirements of T.C.A. § 12-12-101 et seq. addressing contracting with persons with investment activities in Iran, the contractor shall certify, under penalty of perjury, that to the best of its knowledge that contractor is not on the list created pursuant to T.C.A. § 12-12-106.

20. Notice

Contracts shall require a designated point of contact for Tennessee Tech and the contractor to facilitate notice to the other party.

21. Conflicting Terms and Conditions

Contracts shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

22. Force Majeure

Contracts shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war or civil unrest.

23. Independent Contractor

Contracts shall provide that the contractor is not an agent of the State, but rather, holds the status of an independent contractor.

24. Diversity

Contractors shall provide, as requested, information regarding contract performance by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans.

E. Impermissible Provisions.

The provisions listed below should not be included in any Tennessee Tech contract:

1. Provisions requiring the State to indemnify and hold a contractor harmless are prohibited.
2. Provision providing for bonus payments.
3. Limitation of Liability.
 - a) Except as provided in paragraphs c) and d) below, pursuant to T. C. A. § 12-3-701 and § 12-3-1210, Tennessee Tech shall not agree to limit the liability of a



contractor for less than two (2) times the maximum contract liability for an expenditure contract or for more than two (2) times the maximum contract revenue for a revenue contract, unless the Vice President for Planning and Finance or designee determines that:

- (1) Allowing the limitation of liability is necessary to prevent harm to Tennessee Tech from failing to obtain the goods and services sought, or from obtaining the goods and services at a higher price if Tennessee Tech refused to allow a limitation of liability, as long as all Bidders/Proposers are offered the same opportunity as provided in the Solicitation;
 - (2) The limitations and any alternative contract language are commercially reasonable in light of the risks to Tennessee Tech created by the type of goods and services purchased and the purposes for which they will be used.
- b) Except as provided in paragraphs c) and d) below, a limitation of liability in a contract shall not apply to:
- (1) Liability for intellectual property or to any other liability, including, without limitation, indemnification obligations for infringement of third party intellectual property rights;
 - (2) Claims covered by any specific provision in a contract providing for liquidated damages; or
 - (3) Claims for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.
- c) Tennessee Tech may purchase software for use restricted solely to academic teaching or research upon terms that limit the contractor's liability or warranties; provided, that in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct.
- d) Tennessee Tech may acquire software or services, materials, supplies and Equipment free or at nominal cost upon terms that limit the contractor's liability or warranties; provided, that in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct.
- F. Name and Signature on Contract with Corporation or State Agency.
- The contractor's name shall appear on the contract exactly as it appears on Federal and/or State tax documents. The contractor's signatory must have binding legal authority, and his/her title/position should be shown on the signature page.
- G. Contract Management and Monitoring.
1. Monitoring Plan. All departments are responsible for appropriate contract management and monitoring to ensure that:



- a) Contractor performance complies with contract provisions;
 - b) Communication is maintained with contractor to ensure maximum performance and intended results;
 - c) Financial obligations of Tennessee Tech do not exceed the contract pricing;
 - d) Deliverables are received;
 - e) Appropriate approval and remittance of payments for acceptable work are in accordance with contract provisions and applicable law;
 - f) Records are maintained that document activities such as procurement, management, and sub-recipient monitoring, if applicable; and
 - g) Contract results are achieved in accordance with organizational objectives.
2. Whenever a departmental authority approves payment of an invoice, either by signature or electronically in the Eagle Buy e-procurement system, the department is certifying that the department and the contractor have met the management and monitoring criteria in Section G.1.
 3. The department is responsible for communicating with the contractor regarding service issues and to involve the Purchasing and Contracts Office as needed to ensure contractor compliance with contractor's obligations. It is further the department's responsibility to maintain written documentation regarding service issues and to provide copies of the documentation to the Purchasing and Contracts Office when/if needed to support action taken by the University to amend or terminate the contract. Documentation is to be specific and detailed with respect to any problems and attempts undertaken by the department to resolve them. Departments are not authorized to amend or terminate a contract, both actions requiring action by the Purchasing and Contracts Office.
 4. Tennessee Tech shall monitor the Title VI compliance of sub-recipients of Federal funds, as applicable.

XI. AGREEMENT TYPES AND TEMPLATES

A. Personal, Professional and Consultant Services Agreement.

A Personal, Professional, Consultant Services Agreement is used whenever Tennessee Tech contracts with an entity or person to provide services of any type. The following template agreements are used, based on the type of Tennessee Tech funds being used for payment, i.e. grant or non-grant. Fillable template agreements are available on the Purchasing and Contracts website.

1. Personal, Professional, Consultant Services Agreement (Non-Grant Funded)
2. Personal, Professional, Consultant Services Agreement (Grant Funded)

B. Clinical Affiliation / Field Experience Contracts.



1. A Clinical Affiliation Agreement provides for practical clinical experience to Tennessee Tech's students by another party. A fillable template agreement is available on the Purchasing and Contracts website.
2. Tennessee Tech has a template Clinical Affiliation Agreement, which should be used whenever possible when contracting with a clinical site. However, some clinical sites require that their contracts be executed. In that case, the department must review the contract to ensure that its provisions agree with the standards of practice used by the department and note any differences on the face of the agreement before entering the agreement into Eagle Buy for processing. The Purchasing and Contracts Office will review the contract for compliance with University policies and secure additional legal review as necessary.
3. Clinical affiliation agreements do not provide for monetary compensation to either Tennessee Tech, clinical site or student.
4. Health Records and Insurance
 - a) Tennessee Tech may provide health records of students and faculty upon request by the clinical site. Tennessee Tech must give students/faculty prior written notice when they will be required by the clinical site to obtain and provide health records in order to participate in clinical experience. Each student will be required to execute proper release forms for FERPA purposes.
 - b) The clinical site may require written evidence of professional liability and general liability insurance coverage for students and faculty participating in the experience.
 - c) The department must notify students of clinical site's requirement(s) regarding professional and general liability insurance. The department should notify the student of available options to obtain such coverage.
5. Criminal Background Checks and/or Drug Screening
 - a) If the clinical site requires criminal background checks and/or drug screening of students, the department shall notify students of this requirement prior to their enrollment in the program or as soon as the requirement is known.
 - b) The department shall inform students that the check and/or screen must be completed prior to the student's initial clinical placement.
 - c) Each student is responsible for making timely arrangements for a background check and/or drug screening and paying all costs associated with such checks/screens.
 - d) If criminal background checks and/or drug screenings are required for Tennessee Tech faculty or staff, the department shall arrange for the background check/drug screens, pay all costs associated with such checks, and provide the results to the clinical site.
 - e) At a minimum, the clinical site shall be responsible for setting the eligibility



standards for clinical participation at its facility, and if there is any question as to whether the standard has been met, to evaluate the results of the background check/drug screen to determine if the student or faculty /staff member shall be allowed to participate at its facility. The department shall take steps to ensure that any individual not clearly meeting the clinical site's eligibility standards does not participate in the clinical program at the clinical site.

- f) If a faculty/staff member is excluded from clinical placement on the basis of a criminal background check/drug screen, the department must, after consulting with the Office of Human Resources, inform the individual of any review or appeal process available pursuant to the Fair Credit Reporting Act or any other law or policy.
- g) Tennessee Tech will not enter into a business associate agreement as defined by Health Insurance Portability and Accountability Act (HIPAA) for clinical placements.

C. Dual Services Agreements (Tennessee Tech as Procuring Party).

- 1. A Dual Service Agreement is used when Tennessee Tech seeks to procure the services of a full-time employee of another State entity. A fillable template agreement is available on the Purchasing and Contracts website.
- 2. The services performed pursuant to a dual services agreement are to be infrequent or short- term.
- 3. The rate of payment under a dual services agreement must not exceed the rate Tennessee Tech normally pays for such services, shall conform to the Fair Labor Standards Act and shall be coordinated with the employee's primary Human Resource and/or Payroll Department.
- 4. Dual service agreements must avoid conflicts of interest.
- 5. Payment for employee services shall be between Tennessee Tech and the State entity and will be in accordance with the terms of the Dual Services Agreement.
- 6. Dual Services Agreements require the written approval of the appropriate signatory(ies) of each entity. If compensation exceeds \$1,500 to any State agency employee (not including State universities, TBR or UT institutions), the Department of Finance and Administration must approve the agreement.
- 7. Blanket Dual Services Agreements. If Tennessee Tech contracts for the services of multiple employees of another state entity, one blanket dual service agreement may be processed that includes the names and rates of compensation for each employee.

D. Dual Services Agreements (Tennessee Tech as Vendor Party)

- 1. When a Tennessee Tech employee provides services to a TBR/UT institution, another state-funded university, or an agency of the state of Tennessee, a Dual Services Agreement is required.



2. The agency that is procuring the services of the Tennessee Tech employee (Procuring Party) should prepare the Dual Services Agreement for signature by all parties.
3. The following steps should be followed in processing a Dual Services Agreement with TTU as the Vendor Party to assure proper routing/approval and to provide for prompt and accurate payment to the employee. (Note: If services are being provided pursuant to a grant, this process may not apply. Contact the Office of Research for instructions regarding this process.)
 - a) Forward the agreement to the Purchasing Office, who will review the document for form and completeness.
 - b) The Purchasing Office will prepare and attach a Dual Services Agreement Routing Form to a copy of the agreement and forward the agreement and routing form to the Chair/Director of the employee's department of employment (base department) to begin the approval routing process.
 - c) The following approvals are required, and each office must sign the routing form to signify their review/approval of the agreement:
 - (1) Chair/Director of Employee's Base Department
 - (2) Dean/Administrative Officer of Employee's Base Department
 - (3) Human Resources
 - d) After approvals as noted above have been signified on the routing form, the agreement and routing form are returned to the Purchasing Office, who will process the agreement for the appropriate signatures.
 - e) The Purchasing and Contracts Office will maintain a copy of the fully executed agreement and will distribute (may be electronically distributed) copies to:
 - (1) Department Responsible for Invoicing (Base Department)
 - (2) Human Resources
 - (3) Business Office (Attn: Cashiers)
4. Once services have been performed, the Base Department must invoice the Procuring Party. The invoice(s) should reference the employee's name and T#, the dates of service and amount(s), and the purchase/contract order number assigned by the Procuring Party, if applicable. A copy of the invoice should also be sent to the Business Office (Attn: Cashiers).
5. Once payment is received from the Procuring Party, it is deposited into the appropriate departmental account and the employee is notified that the payment has been received. It is then the responsibility of the employee to work with their base department to submit an Extra Pay and Summer Pay Timesheet and Summary Form to Human Resources as authorization for payment. All extra pay documentation should originate in the employee's base department, as each department is responsible for maintaining accurate records of all extra pay received by its employees.



6. The employee's payment will be included in the regular payroll distribution following receipt of the appropriate documentation as noted in #5 above
- E. Rental Agreements for Short-Term Use of Campus Property and Facilities
Agreements for short-term rental of campus property and facilities are subject to Tennessee Tech Policy 122, (Rental of Tennessee Tech Property).
- F. Transient Use Agreement
A transient use agreement provides for the short-term, continuing, non-exclusive use of facilities, such as evening use of high school space as a teaching extension site for a semester. Departments should contact the Purchasing and Contracts Office for assistance in developing a transient use agreement.
- G. Mutual Use Agreement
A mutual use agreement provides for short-term, continuing, non-exclusive mutual use of both parties' facilities. Mutual use of each other's facilities may be substituted for financial compensation. Departments should contact the Purchasing and Contracts Office for assistance in developing a mutual use agreement.
- H. Banking and Related Financial Services Agreements
TTU Policy 521 (Deposit and Investment of Funds) governs agreements for the deposit and investment of all funds, regardless of source, that are received by Tennessee Tech.
- I. Workshop Agreements
 - a) The Workshop Presenter Agreement may be used when Tennessee Tech contracts with a service provider to present a workshop or seminar.
 - b) The Workshop Participant Form may be used to pay individuals to attend a specific workshop or seminar.
 - c) These documents must be signed as is and are only to be used for the purposes as described above.
- J. Contracts for Hardware, Software and Related Services
 1. The legal right to use software is typically obtained in the form of a license agreement provided by the vendor.
 2. The Purchasing and Contracts Office will negotiate changes in all vendor provided agreements.
 3. The Chief Information Security Officer may approve certain software purchases that meet all of the following criteria:
 - a) The license is a contract of adhesion (See Section N below for definition of contract of adhesion); and
 - b) The cost of the software is less than \$5,000 annually; and



- c) The license does not require a written signature; and
 - d) The software is used to facilitate academic or research purposes; and
 - e) The software has been determined, as a result of a comprehensive risk assessment conducted and approved by the Chief Information Security Officer, to represent an acceptable level of liability risk assumption by Tennessee Tech as a result of use of the software by University users.
 - 4. Piloting/Testing of Hardware, Software or Related Services
 - a) Agreements related to Tennessee Tech conducting experimentation or testing of hardware, software or related services are subject to the requirements of this manual.
 - b) Execution of a pilot process cannot be used to justify a non-competitive justification for continued use of the product/service.
 - c) These agreements must contain a provision that at the end of the pilot term the appropriate procurement process shall be followed.
- K. Intellectual Property Agreements

TTU Policy 732 (Intellectual Property), governs Tennessee Tech intellectual property issues.
- L. Non-Credit Instruction Agreement

A Non-Credit Instruction Agreement is a revenue-generating agreement whereby Tennessee Tech provides non-credit instruction/training for business and industry. Tennessee Tech is responsible for the administration of fees, charges, and refunds in accordance with TTU Policy 511.1 (Fees, Charges, Refunds, and Fee Adjustments). Departments should contact the Purchasing and Contracts Office for assistance in developing a non-credit instruction agreement.
- M. Academic Agreements

Academic agreements that involve the payment or receipt of funds must be processed through the Purchasing and Contracts Office and require the signature of the Vice President for Planning and Finance.
- N. Contract of Adhesion
 - 1. When Tennessee Tech is presented with a contract that includes impermissible terms and the vendor is unwilling to negotiate mutually agreeable terms, Tennessee Tech may consider such a contract to be a contract of adhesion.
 - 2. A contract of adhesion must meet the following criteria:
 - a) The proposed contract is a standard form contract or license;
 - b) It is offered to Tennessee Tech on a 'take it or leave it' basis;
 - c) Tennessee Tech has no realistic opportunity to negotiate different terms; and



- d) The desired product or service cannot be obtained except by agreeing to the form contract.
- 3. Prior to entering into a contract of adhesion:
 - a) The Purchasing and Contracts Office will document its attempts to negotiate mutually agreeable terms with the vendor.
 - b) The Purchasing and Contracts Office will request written documentation from the vendor that:
 - (1) No changes to the standard terms are permitted; or
 - (2) The vendor is unwilling to make all changes as needed to meet Tennessee Tech's statutory contractual requirements.
 - c) The Purchasing and Contracts Office will obtain written confirmation from the vendor that it is the sole source for the good/service or that purchase through a reseller would require Tennessee Tech to execute the contract.
 - d) The Purchasing and Contracts Office will require the department to provide a written explanation regarding the need for the particular goods or services, the intended use(s) of the goods or services and any risk(s) associated with the intended use(s).
 - e) The Vice President for Planning and Finance may approve a contract of adhesion if it is determined to be in Tennessee Tech's best interest.

XII. ELECTRONIC SIGNATURES, APPROVALS AND RECORDS.

A. Electronically Transmitted Documents.

In accordance with TTU Policy 117 (Electronic Signatures), the Purchasing and Contracts Office may accept signed faxed or emailed contracts, bids and other documents as required to conduct business transactions for the Purchasing and Contracts Office if:

- 1. The parties to the contract have agreed in the contract to conduct a transaction by electronic means;
- 2. Facsimile or scanned signatures are not otherwise prohibited by State or Federal law or Tennessee Tech policies.

B. Electronic Signatures.

DocuSign® is an approved means of processing electronic signatures for contracts and other documents as required to conduct business transactions for the Purchasing and Contracts Office as long as the conditions noted in section A. above are met.

XIII. UNAUTHORIZED PURCHASES AND CONTRACTS

A. Unauthorized Purchases.

The Vice President for Planning and Finance must approve payment(s) for goods and service



that are made without adherence to this manual and/or Tennessee Tech policies and procedures. The department must provide written documentation of the circumstances surrounding any unauthorized purchase to the Purchasing and Contracts Office. Unapproved purchases are the sole responsibility of the individual making the purchase.

XIV. EXCEPTIONS

A. Approval by Vice President for Planning and Finance

Except as provided in this section, the Vice President for Planning and Finance must approve any exceptions to this manual and may do so after determining the exception is in Tennessee Tech's best interest.

B. Approval by the President

The President must approve any exception for contracts of \$250,000 or more after determining the exception is in Tennessee Tech's best interest.