

<b>System-wide Policy: FI0405 - Procurement</b>	
<b>Version: 18</b>	<b>Effective Date: 10/09/2017</b>

## FI0405 – Procurement

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### Objective:

To provide departments with the policies for obtaining goods and services.

### Policy:

#### Applicability

1. This policy applies to all departmental procurements with the following exceptions:
  - The procurement of legal services by the University's General Counsel or administrative court costs incurred by the university.
  - Procurements associated with capital projects approved by the State Building Commission.
  - Procurements between the university and other governmental agencies including the federal government, the State of Tennessee, public four-year colleges in Tennessee, and the Tennessee Board of Regents.
  - Procurements of real estate by the university.

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- Acceptance of gifts. Goods or services accepted as gifts must be handled in accordance with [FI0315 - Gifts](#) and [FI0620 - Capital Outlay](#).

## Prohibited Practices

2. All purchases must be for official university use or benefit only. Departments may not purchase or request goods or services unless funds are available. The following are prohibited:
  - a. Employees may not make personal purchases with university funds or purchase items that personally benefit another employee. These prohibited purchases include greeting cards, flowers or similar gifts prohibited by the [FI0717 - Employee Gift Acceptance Policy](#). Departments may not use university funds to purchase items for employees and allow the employees to reimburse the university. Also, employees may not use the university's letterhead to place orders for personal purchases or use the university's name to avoid paying sales taxes when making personal purchases.
  - b. University personnel, who are connected in any way with requisitioning or procuring goods or services used by the university, shall not accept any personal gifts, gratuities, or kickbacks from vendors or potential vendors (in some cases, such actions might result in criminal violations). Any university employee who becomes aware of such activities shall inform Audit and Compliance Services. For more details on understanding, avoiding and reporting conflicts of interests, see [FI0125 - Conflict of Interests](#), Conflict of Interests.

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### Purchasing Authority

3. Procurement officers are authorized to issue purchase orders to acquire goods and services. Purchase orders issued by other university employees are invalid and do not obligate the university. The procurement department will receive all bids and make all awards for every purchase of \$10,000 or more, unless an exception has been granted by the chief financial officer and the campus/institute chief business officer or designee.
4. With the approval from the campus/institute chief business officer and the chief financial officer, departments requiring a high volume of competitive procured items, may be given permission to solicit bids outside of the procurement department. These purchases must abide by this policy and all documentation related to the procurement must reside in the procurement department.

### Available Resources

5. Before preparing a request to procure goods and services, departments must determine whether the goods or services are available through existing resources or agreements. Departments must procure from campus service centers and other available internal resources. If such services are not available, then departments must procure items from one the methods described below. These methods do not require additional approval, a purchasing requisition, a contract, or bids to be obtained.
  - a. **Campus Service Centers** - When available, departments must procure goods and services through internal university resources such as campus central storerooms, print shops, telephone services or similar operations. The procurement department can assist departments in procuring these items. Note: While department can buy items from campus auxiliary centers (such as campus bookstores), they are not required.

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- b. **UT Market Place** - The UT Market Place contains on-line catalogs with several university's vendors. The pricing for items in the Market Place has been procured competitively, and contains all applicable discounts. Thus, departments can place orders of any amount, without additional bidding. Purchasing items in the Market Place allows departments to compare prices and efficiently place orders. To view the Market Place [CLICK HERE](#)
- c. **Existing Procurement Agreements** - The State of Tennessee, the Tennessee Board of Regents (TBR) and the University of Tennessee have agreements with many different vendors offering negotiated prices. These agreements can be viewed in the [IRIS Portal](#). The procurement department can assist you in locating agreements that may fit your needs.

Departments are required to buy items covered in existing university purchasing orders, or obtain written permission from a campus procurement director. Departments must notify procurement; if they identify prices that are lower than existing procurement agreements; if vendors are not honoring the prices in the agreements; or vendors are not providing satisfactory service.

- d. **State Resources** - Departments may purchase products and services available from other state agencies such as [TRICOR](#).
- e. **Group Consortium Agreements** - The procurement departments may, without further bidding, use purchasing agreements established by a group procurement organization (consortiums or cooperatives) provided that the agreements resulted from competitive bids through a governmental entity. If departments are interested in a particular good or service that is offered though a consortium agreement, they must contact their procurement department. Departments are not authorized to enter into agreements directly with these organizations.
- f. **Preferred Hotels** - Through a competitive process, the university has entered into agreements with hotels in locations frequently visited by

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employees. Departments may reserve rooms or events directly with these hotels without further bidding or contracts. For more information, visit the [System's Travel Webpage](#).

- g. **U.S. General Services Administration (GSA) Schedules and Contracts** - When a vendor maintains a schedule or contract with the U.S. General Services Administration (GSA), or any agency of the U.S. government, the university may directly negotiate with that vendor.

### Procurement Methods

6. If a department is not able to locate the goods or services through one of the methods listed above, they must procure the items in accordance with one of the following methods. Failure to follow these requirements may result in disciplinary action.
- a. **Small Purchases (under \$10,000)** - Purchases of goods or services for less than \$10,000 may be made by departments based on their discretion provided they are not available through one of the methods listed above. These purchases are limited to less than \$10,000 per vendor, per calendar year. Departments may not divide invoices to stay below the \$10,000 threshold. When a department determines that they will spend \$10,000 or more in a calendar year from the same vendor, they must initiate a purchase requisition and the items must be procured in a competitive manner. If the vendor requests a contract, regardless of the dollar amount, the contract must be routed through the contract review process in accordance with [FI0420 - Contracts](#).

**Note:** Departments may not purchase the following items, regardless of cost, without obtaining the required approvals:

- i. Unmanned Aircraft Systems (Drones) – These must be procured in accordance [SA0950 - Unmanned Aircraft Systems](#).
- ii. Firearms – The approval of the campus/institute business officer must be obtained before procuring firearms. All firearms must be

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recorded in the University’s inventory records – See [FI0600 - Equipment - Sensitive Minor](#) for more guidance

- iii. Vehicles – All vehicles requiring a motor vehicle license plate must be procured through a campus motor pool or be approved by the campus/institute business officer.
- iv. The Principal Investigators are responsible for ensuring that purchases comply with contracts and awards that contain Federal Acquisition Regulations (FAR) clauses. They should contact the Procurement Department for assistance in this area.
- v. Purchases of radiological equipment, nuclear devices, lasers, potentially hazardous chemicals, defibrillator machines and other items identified in federal or state statutes as hazardous materials must be approved by your campus/institute safety officer prior to procurement.

- b. **Exceptions to the Bidding Process** - All purchases of \$10,000 or more must be awarded through a campus/institute procurement department after obtaining bids. Exceptions to the bidding requirement are listed below. To process these, a “Sole Source” order type must be selected and the NCJ form must be completed and attached to the “Internal Notes” in the University’s Purchasing System.

These exceptions and others not listed must be approved by the campus/institute procurement department, the chief business officer (or designee) and if the procurement is expected to be \$250,000 or more, it must be approved by the chief financial officer (or designee).

Furthermore, if the amount of the non-biddable purchase is \$250,000 or greater and the terms of the agreement exceed one year, the proposal must be presented to the Fiscal Review Committee of the Tennessee General Assembly for their consideration at least 60 days before the effective date of the agreement. Thus, exceptions of this nature should be processed at least 90 days before the proposed effective date. See Fiscal

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Policy [FI0420 - Contracts](#) for more details on the Fiscal Review requirements.

- i. **Competitive Negotiation** - When the department feels that it is advantageous to the university to negotiate with specific vendor(s) versus obtaining bids, they may request to obtain the necessary goods or service through competitive negotiations. Before any negotiations may be conducted, written approval must be obtained from the procurement director, chief business officer (or designee) and the chief financial officer. At the conclusion of the process, the results and recommendations must be approved by the chief business officer (or designee) and the chief financial officer before a purchase order can be issued.
- ii. **Unique Goods or Specialized Services** - The items being procured must meet one of the following requirements:
  1. Only one product or service can meet the department's specific need **and** the product or service is available from only **one** source.
  2. Compatibility or consistency with past acquisitions or products or services is essential (e.g., avoiding additional costs by changing the supplier). Examples include additions or extensions to maintenance agreements for equipment or software currently owned by the university.
  3. Services that involve highly skilled judgment or training, artistic ability or other attributes and whose quality depends on an individual's characteristics and knowledge. Examples include: artists, art, lecturers and entertainers.
- iii. **Emergency Purchases** - Bids are not required when the goods or services must be procured immediately to protect the lives or health of persons or animals, to prevent or minimize damage to university property, or to meet other critical requirements. The

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procurement department must be notified as soon as possible to expedite the purchase and to document the emergency situation.

- iv. **Utilities** - Procurement of electricity, natural gas, water or other utility service that is only available from one source. In the purchasing system the “Standard Order” type can be selected for these purchases and they do not have to be routed as a “Sole Source” purchase.
- v. **Sponsored Projects** - A sponsored project that specifically identifies a grantee, sub-recipient, or other vendor to be used on the project. In the purchasing system the “Standard Order” type can be selected for these purchases and they do not have to be routed as a “Sole Source” purchase
- vi. **Library licenses** - Procurement of databases and subscriptions by libraries do not require competitive negotiations. In the purchasing system the “Standard Order” type can be selected for these purchases and they do not have to be routed as a “Sole Source” purchase.
- vii. **Accreditation Services** – Payments to an organization for the accreditation of a campus, college or department do not require competitive bids.
- viii. **Athletic Conference Memberships** – Membership payments to an athletic conference do not require competitive bids.
- c. **Informal Bids (Purchases between \$10,000 and \$49,999)**. All purchase orders between \$10,000 and \$49,999 will be awarded by the procurement department. The award will be based on the solicitation of competitive price quotations from at least three sources, unless the purchase is exempt from the bidding requirements as noted above. The procurement department may use short deadlines to expedite the procurement. Documentation for bids will be maintained in the procurement department.

To expedite these purchases, departments are encouraged to solicit the three bids from vendors and attach them to the purchasing requisition.



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The purchasing requisition must be prepared in accordance with the requisition process outlined in section 7.b.i below. Procurement will review the department's submission and make the award; request additional information from the department; or solicit additional vendors. Awards to vendors other than the low bidder must be approved by the procurement department and the business officer and written justification must be maintained in the procurement department. Furthermore, a seven day protest period must be provided before the purchase order can be issued, if the award is not issued to the low bidder.

Departments may not solicit bids for services that require a contractor's license, insurance, or performance bonds. When obtaining bids, departments must do the following:

- i. Departments shall comply with procedures established by their procurement department.
- ii. Obtain at least three written vendor responses, including via e-mail, facsimile or a website.
- iii. Not have any conflict of interests with any of the vendors submitting bids and no one in the department may accept anything of value from any of the vendors submitting bids. Accepting items from vendors may result in disciplinary and criminal action. See [FI0125 - Conflict of Interests](#)
- iv. Not split transactions or bids to stay below the formal \$50,000 bid limit.
- v. Not falsify or manipulate the vendor bid detail.
- vi. **MUST NOT** communicate the results with vendors. Also, they must not notify the vendors of any award related to the purchase unless permission to do so is granted by Procurement.
- vii. Should consider obtaining bids from vendors who have registered with the [Governor's Office of Diversity Business Enterprises](#).

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- viii. The procurement department after consulting with the campus/institute business office may suspend the ability of a department and/or individual to obtain bids. The procurement department will maintain all documents supporting the award in accordance with the [FI0120 - Records Management](#).
  
- d. **Purchases of \$50,000 and Greater.** The procurement department is solely responsible for all purchases of \$50,000 and higher and they are generally procured through a formal bid process which is detailed below.

### Formal Bid Process

- 7. For purchases of \$50,000 or greater, the procurement department will solicit the lesser of 15 vendors or the number of vendors registered for the applicable National Institute of Governmental Purchasing (NIGP) code(s), through the university's online procurement system.
  - a. **Types of Formal Bids** - When items are procured in a formal process, the procurement department will generally use one of the following techniques: a Request for Proposals (RFP), a Request for Quotations (RFQ), a Request for Qualifications, or a Request for Information (RFI). Each of these are briefly described below and the procurement department can assist in determining the best process for each situation.
    - i. **Request for Information (RFI)** - The purpose of an RFI is to collect written information about the capabilities of potential vendors, seek clarification about available products or services, or to solicit feedback and gain knowledge to assist in making a decision about the next step in procuring the goods or services. An RFP or RFQ typically follows an RFI.
    - ii. **Request for Quotes (RFQ)** - The RFQ solicits quotes and other information from vendors that will be used to make an award that is typically based on the price and the vendor's ability to deliver the products or services requested.

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- iii. **Request for Qualified Suppliers (RFQ-S)** – The purpose of an RFQ-S is to evaluate bidders only on qualifications. While the university collects price data and negotiates pricing, the university does not score pricing in an RFQ-S bid. The university generally does an RFQ-S bid only when awarding to multiple suppliers.
  - iv. **Reverse Auction** - A reverse auction is a competitive process that allows prequalified respondents to bid electronically multiple times on specified goods during a specified time frame. The lowest price at the close of the response period is awarded the bid.
  - v. **Request for Proposals (RFP)** - The RFP process is a multi-step process that considers more than price in making the award. The RFP requires a sealed technical proposal that is evaluated independently from the sealed cost information. An RFP template is available in the forms section of this policy to assist departments in preparing an RFP.
- b. **Formal Bid Steps** - A formal bid process generally includes a requisition, solicitation of bids, the tabulation of bids, and the issuance of purchase order. Each are detailed below.
- i. **Requisition** - A department must prepare an electronic purchasing requisition, which is routed for approval(s) and to the applicable procurement department. Formal competitive bidding typically lasts a few months; therefore, departments must anticipate their needs as far in advance as possible. The following should be consider when completing a requisitions:
    1. **Specifications** - Specifications for goods and services must be worded to permit open and competitive bidding. Specifications must be detailed enough so that vendors can provide an appropriate bid response. Reference to brand names and numbers must be considered descriptive (not restrictive) unless specified otherwise.
    2. **Information Technology (IT) Solutions** - Requisitions for IT hardware, software, and web services must comply with

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[IT0126 - Accessibility](#) and the applicable campus/institute Accessibility program in advance of bids being solicited.

3. **Capital Lease Agreements** - Specifications for equipment being purchased under a capital lease must comply with the capital lease provision in [FI0605 - Equipment](#).
  4. **Federal/State Grant and Contract Purchases** - The requisition must note any special procedures, requirements, or limitations that may exist through a sponsored project or other governing document (grant or contract). Special procedures that must be observed in the purchase of equipment on federally sponsored projects are found in the Federal Acquisition Regulations (FAR) and in the Federal Uniform Guidance. Copies of these and additional information concerning certain grants and contracts may be obtained from the UT Controller's Office. Any FAR clauses that apply to the purchase must be submitted with the purchasing requisition, and it is the responsibility of the procuring department to be aware of these.
  5. **Dates and Times** - The requisition should include all relevant dates and times such as the period that the agreement will be valid, required delivery dates, and similar information.
  6. **Trade-in of Used Equipment** - A requisition may include a request for new equipment to include an allowance for the trade-in of used equipment. In these cases, separate price quotations for the new equipment will be requested with and without the trade-in allowance. The university reserves the right to purchase equipment with or without the trade-in allowance.
- ii. **Solicitations** - The procurement department will convert the departmental requisition into a solicitation for bids. Considerations and requirements related to formal solicitations include:

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- 1. Vendor Registration** - To receive bid solicitations from the university, vendors must register in the university's electronic procurement system, ESM Solutions. The registration process is described on the [System's Office of Procurement Services' Website](#).

**Debarment** - Vendors who have been debarred will not be permitted to participate in future solicitations. Only the procurement department may debar a vendor, and the System Office of Procurement Services will maintain a list of all debarred vendors on its website. Reasons for debarment include late shipments, under shipments, damage and defective products, unethical practices, misrepresentations of goods or services, conviction of crimes involving fraud or restraint of trade with respect to public contracts, and debarment or suspension by any federal agency for covered transactions.

- 2. Terms and Conditions** - The University's general bid conditions should be included or referenced in every bid solicitation. These conditions are noted in [Attachment B to this policy](#).
- 3. Instructions** - The formal solicitation should contain directions, including all relevant dates and timelines, regarding the submittal of bids.
- 4. Diversity Business Enterprises (DBE)** - As required by the Tennessee Small Business and Minority-owned Business Purchasing and Contracting Act (TCA 12-3-801), the university will actively solicit bids from DBEs. The university will annually report its procurement activities with DBEs to the Governor's Office of Diversity Business Enterprises in accordance with TCA 12-3-808. A list of all

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certified DBEs is available on the Governor's Office of Diversity Business Enterprises' website.

5. **Amend** - A statement that the procurement department may amend the solicitation at any time prior to award must be included in the solicitations.
6. **Cancellation** - A statement that the campus procurement director may cancel the solicitation in its entirety and reissue the solicitation in whole or in part, should be included in the solicitation.
7. **Performance Bond** - If the requisitioning department or the procurement department doubts the bidder's ability to perform the contract, the procurement director may require a submission of a performance bond (at the vendor's own expense). The performance bond must be provided within 10 business days as a condition of receiving the purchase award. If applicable, the possible requirement of a performance bond should be included in the solicitation, since it often effects pricing.
8. **Evaluation Criteria** - Unless it is not in the University's best interest, the solicitation should include the factors to be used in evaluating the proposals, including all requirements.
9. **Price Increases and Decreases** - The solicitation may contain a clause describing the conditions in which a price increase might be granted. Generally price increases should be in writing to the procurement department, must not reflect increases in profit, and must be justified by adequate information that supports the general or industry-wide nature of the change. Unless the procurement department accepts the price increases the vendor must honor the university purchase orders.

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10. **Extension of Terms** - Solicitations should include language that allows the terms of any agreement to be extended to other university campuses and departments, the State of Tennessee and the Tennessee Board of Regents provided that this doesn't negatively impact the vendor's bid being offered in the solicitation. The solicitation should also allow the university to re-negotiate favorable incentives, and cost terms with the successful proposer that are reflective of the additional volume added as a result of participation of other entities.

iii. **Bid Tabulations** - Each bid must include the bidder's full name and business address. The respondent should indicate his or her title and, if requested by the procurement department, furnish satisfactory proof of authority to bind the company. Bids must be submitted through the University's procurement software, unless the bid solicitation directs otherwise. A representative bidding in the name of a principal must give the name of the firm to which an order should be issued in the event of an award. Other considerations and requirements related to bid tabulations include:

1. **Late Sealed Bids** - All sealed bids must be submitted through the university's procurement system or received in the procurement department (if instructed to do so in the bid solicitation) on or before the date and hour specified for bid opening. The procurement department will reject all late bids regardless of reason.
2. **Accepting or Rejecting Bids** - The university reserves the right to reject any bids. Reasons for rejecting a bid include but are not limited to a bidder's failure to agree to the [University's general bid conditions](#).
3. **Canceling an Invitation to Bid** - The procurement department may cancel an invitation to bid at any time. In

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such an event, the procurement department will notify the appropriate vendors.

4. **Pricing and Errors on Bids** - Responses to formal bids shall request a net price for each unit of the specified item. Except for cash/time payment discounts, net price is the list price less all trade or other discounts offered. If there are errors in the computation of prices, the stated unit price will govern. No change or alteration will be permitted after the bid opening.
5. **Debarment** - Awards will not be made to bidders currently debarred by the university and before an award is issued to a vendor with funds coming directly from the federal government, the procurement department should consult the government's excluded parties list to determine the eligibility of the proposed bidder (<http://sam.gov>).
6. **Tie Bids** - In the event that a solicitation results in two or more responses that tie in price or points from a RFP, the university may request best and final offer from only those proposers with scores that tie. Should another tie result or should the procurement department elect not to request a best and final offer, the tie will be broken by the following methods in descending order:
  - in-state business;
  - certified Diversity Business Enterprise registered with the State of Tennessee;
  - award item(s) to vendor who was low bidder on other item(s) being bid per the same requisition;
  - earliest delivery;
  - by lot or coin toss.
7. **Amending or Withdrawing Bids** - Amending or withdrawing bids may be permitted in the following circumstances:



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- a. **Before Bid Opening** - Before bid opening, a vendor may contact the procurement department in writing and request the withdrawal of a previously submitted bid or exchange an amended bid for a previously submitted bid.
  - b. **After Bid Opening** - After bid opening, a vendor may submit a written request to withdraw his or her bid at the discretion of the procurement department. Reasons for such requests would include pricing errors.
- iv. **Bid Tabulations for Requests for Proposals** - The following applies to tabulating RFP responses.
  1. **Technical Proposals** - All technical offers will be evaluated by a committee on the criteria in the bidder's response and other information learned during the evaluation process such as reference checks and/or vendor presentations. At the conclusion of the technical evaluation process, the committee will submit scores from each committee member to the procurement department for their review. The procurement department may discuss the technical proposals with the vendors and request additional clarifying information. The procurement department may also request additional information from the committee or ask them to re-evaluate their scores.
  2. **Cost Proposals** - The procurement department will not distribute cost proposals to the RFP review committee until after the procurement department has completed their review of the technical scores. The procurement department is responsible for tabulating the cost proposals. Final cost tabulations will be forwarded to the evaluation committee for review. The procurement department may also verify or seek clarification from vendors regarding their

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responses to ensure a proper understanding and correct calculation of the cost proposals.

3. **Best and Final Offer** - After the technical and cost proposals have been tabulated, the University may elect to conduct a best and final offer or additional negotiations. During this process the procurement department will provide written instructions to the highest scoring vendors detailing any revisions to the RFP and the vendors are then allowed to resubmit their cost proposals and responses to other requested information, which will then be scored in accordance with the written instructions.
- v. **Purchase Orders** - A purchase order is the official document that governs the transaction(s) and binds the University and the vendor. The purchase order should reflect information from the requisition such as a description of the goods or services being procured, prices, delivery information, and all other terms and conditions agreed to with the vendor. The purchase order will be submitted electronically to the vendor.
  - a. **Before the Order is Issued** - Prior to issuing the purchase order, the procurement department should:
    - i. **Additional Negotiation** - The University may negotiate with the apparent successful bidder(s), and the university encourages its procurement agents to do so. They should attempt to renegotiate lower prices, reduced delivery charges or other terms that benefit the university.
    - ii. **Ensure the Accuracy of the Award** - The award will be made to the qualified and responsible vendor with the lowest bid or highest RFP score whose goods or services best meet the bid conditions specified. The department is responsible for checking the purchase

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order against their requisition and immediately reporting any discrepancies to the procurement department. Correspondence with vendors about the purchase order must be conducted by the procurement department unless permission has been granted by procurement to the department.

- iii. **Awards to Second Placed Bidders** – If the **Awards to Second Placed Bidders** - If the procuring department feels that the lowest bid or highest RFP score doesn't provide the best solution, they must submit written justification to the procurement department. The procurement department and the chief business officer (or designee) must approve an award to a bidder other than the one receiving the highest score. Furthermore, a seven day protest period must be provided before the award can be made.
- iv. **Exemption from Federal and State Taxes** - The university is exempt from federal excise taxes, state sales tax on tangible personal property, and other State taxes (consult the Controller's offices Website.) Procurement should ensure that this is communicated to the vendor and if applicable, a copy of the university's tax exemption certificate should be provided at the time of purchase to ensure that tax is not charged (see [CERTIFICATE OF EXEMPTION](#)). Contractors must pay taxes on the materials they use to complete their contracts when those materials become a part of the real property. All taxes are to be itemized. Bidders are responsible for determining applicable taxes.

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2. **Types of Purchase Orders** - The procurement department issues the following types of purchase orders:

- i. **Standard Purchase Order** - This order for goods or services for a fixed amount. Generally, this applies to one-time purchases.
- ii. **Framework Order** - A framework order covers purchases made during a specific time period and may be issued to cover a variety of purchases. Generally, framework orders are issued for the following types of purchases:

1. **Maximum Fixed-dollar Purchases** -

These framework orders permit the purchase of specific items up to a fixed dollar limit from one vendor within a specified time period.

2. **Purchases for Specific Item(s) Based on Bids** -

These framework orders permit the purchase of an estimated quantity to be purchased during a given time period. The maximum dollar limit is estimated and not fixed.

3. **Change Orders** - When revisions are required in a purchase order, procurement department will issue a change order that is distributed in the same manner as the original purchase order. Departments must send the procurement department a written request that specifies (1) the original purchase order number, (2) the name of the vendor, (3) the desired change, and (4) the reason for the change. Reasons for change orders include:

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- i. To correct errors.
  - ii. To amend prices or quantities;
  - iii. To facilitate emergency purchases;
  - iv. To increase the original award for contracted goods or services provided the increase does not exceed 15 percent. (The percent increase isn't applicable for framework orders procured in a competitive manner.)
4. **Encumbrance of Operating Funds** - When a purchase order is issued, functionality within IRIS encumbers the total amount of the order against the account number(s) listed in the requisition. After the goods or services are received and the vendor is paid, the original amount encumbered is replaced with the actual cost incurred.
5. **Canceling Awards** - The university reserves the right to cancel purchase orders or parts of purchase orders without penalty and without the vendor's consent under the following conditions:
- a. Vendor does not comply with the terms or conditions of the contract.
  - b. Vendor does not perform the work with promptness or diligence.
  - c. Vendor does not make shipments within the agreed or specified time, except for causes beyond the vendor's control.

Vendor requests to cancel a purchase order must be received in writing (including via email), with a copy sent to the appropriate university department. The university will decide if the order will be canceled. The university may grant relief provided that the vendor is prevented from performance by a circumstance beyond the vendor's

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reasonable control. The burden of proof for such relief rests with the vendor. The procurement department retains the right to remove any vendor who defaults on any purchase order from conducting future business with the University.

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## Vendor Protests

8. **Right to Protest** Bidders who submits a substantive bid may protest the award to a different bidder. The following grounds for a vendor protest will be considered and no others.
- a. The contract award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the procurement department.
  - b. The procurement process was conducted contrary to University policy or other regulatory provision.
  - c. The procurement department did not follow the rules of the procurement set forth in both the solicitation and in making the award, and such failure to follow the rules of the procurement materially affected the award.
  - d. The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
  - e. The award was the result of a technical or mathematical mistake or error during the evaluation process.
9. **Protest Period.**
- a. **Open File Period** - Once the university announces the award, the open file period begins. It is the vendor's responsibility to contact the university to obtain the bid results. The procurement department will communicate the award to all bidders via electronic communication. It is the vendor's responsibility to contact the university to obtain the bid results. After Procurement sends this notice, the bid files are open for inspection by any bidder for 7 calendar days, starting on the day that procurement sends the notice and ending at 5:00 PM local time on the 7th calendar day (note; the university has offices in Eastern and Central time zones). During this time period, any bidder may request an electronic copy of the files.
  - b. **Prior to evaluation of responses** - Concerns regarding any defects or ambiguities involving a bid document shall be made in writing by the bidder and delivered to the procurement department no later than seven (7) calendar days after the bid has been posted on Procurement's website

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or in the ESM procurement system. These concerns will be addressed by the procurement office through a written addendum to the bid or by cancelling the bid altogether. A bond is not required for protests received within seven calendar days after the bid was posted.

- c. **Protest after the Notice of Intent to Award** - Any bidder, who has submitted a bid, may file a written protest with the procurement office. The protest must be received in the purchasing office within 7 calendar days (Open File Period) noted in (a) above and must be accompanied by a bond or a request for exemption from the protest bond. The bond requirements and exemption procedures are described section 12 below. Any issues raised by the protesting party after the seven (7) day Open File Period will not be considered as part of the protest.

On the first day of the Open File Period, all respondents are deemed to know all facts documented in the university's procurement files. A written protest filed by a bidder with the procurement department must enumerate and detail all grounds for the protest in accordance with these rules. The bidder challenging the procurement process or award has the burden of proof and persuasion with respect to the invalidity of the procurement process or award.

- d. **Awards Prior to and During Protests** - With the exception of request for proposals and requests for qualification that have technical points awarded, the university's procedures typically result in a purchase order being promptly awarded to the lowest bidder meeting all of the required specifications. Thus, the award may have been issued prior to receipt of a protest. If the award has not been made prior to the receipt of a protest, the university reserves the right to determine that continuation of the purchase is necessary and in the best interest of the university during the protest period. This determination will be made by the procurement director in consultation with applicable university officials.



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**10. Protest Certification** - The signature of the protesting party, or its representative, on any document submitted during the protest procedure constitutes a certificate by the signer that the signer has read such document, and that to the best of the signer's knowledge, the information, and belief formed after reasonable inquiry, is well grounded in fact, is warranted by existing law, and 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 protest. If a document is signed in violation of these requirements, the University may, to the extent permitted by law, retain the bond, seek sanctions against either the person who signed it, a represented party, or both. These sanctions may include all reasonable expenses, including attorneys' fees incurred, because of the filing of the protest.

**11. Protest Bond** - Unless the bidder is exempted from the protest bond requirement as described below, the university will not consider a protest that lacks a protest bond.

a. **Amount** - Before a protest will be reviewed by the University, the protesting party must post, with the procurement director that issued the bid, a bond payable to the university in the amount of 5% of the lowest cost proposal evaluated or 5% of the highest revenue proposal evaluated. Such protest bond must be signed with a wet signature and in a form and substance acceptable to the university and must be immediately negotiable and payable to The University of Tennessee conditioned upon a decision by the university that:

b. **Exemption from Protest Bond** - At the time that a notice of a protest is filed in which the lowest evaluated cost proposal is less than \$1,000,000, or in which the highest evaluated revenue proposal is less than \$100,000, a certified Diversity Business Enterprise protesting party may submit a written petition to the procurement director for an exemption from the protest bond requirement. Such a petition must include evidence that they are currently certified as a minority, women, service-disabled or small business enterprise with the State of Tennessee Governor's Office of Diversity Business Enterprise. The procurement director has 5 business

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days in which to make a determination whether the protestor is certified as a Diversity Business Enterprise. If an exemption from the protest bond requirement is granted, the protest will proceed as though the bond were posted. If the procurement director denies an exemption from the protest bond requirement, the protesting party must post the bond with the procurement director within 3 business days of the determination.

- c. **Retention of the Protest Bond** - The University will hold such protest bond for at least 11 calendar days after the date of the final appeal by the protestor and the final determination by the University. The University may retain the bond if they feel the protestor pursued the protest in bad faith.

12. **Resolution of Vendor Protests** - Each procurement director has the authority to resolve the protest and will issue a written decision within 60 calendar days from receipt of a valid protest.

If the decision of the procurement director does not resolve the protest to the protesting party's satisfaction, the protester has the right to request that the campus/institute chief business officer review the record. The request must be made in writing to the campus/institute chief business officers within 7 calendar days of the date of the decision issued by the procurement director. The review and consideration of the protest by the campus/institute chief business officer will be issued in writing to the protester, the procurement director, and the chief financial officer (or designee), and this review and consideration represents resolution of the issue at the campus or unit level. The campus/institute chief business officer will have sixty (60) calendar days from receipt of the appeal by the protestor to resolve the protest.

If the decision of the campus/institute chief business officer does not resolve the issue, the protester can appeal to the chief financial officer to review the record. The request must be made in writing within seven (7) calendar days of the date of the decision issued by the campus/institute business officer. The decision of

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the chief financial officer (or designee) will be issued in writing to the protester and represents final resolution of the protest.

## Receiving

- 13. Receipt of Goods and Services** - The requisitioning department determines that goods and services have been received and are in accordance with the terms of the purchase order (or contract) prior to approval of the invoice for payment (See [FI0430 - Receiving Materials](#) and [FI0505 - Accounts Payable](#) for instructions on receiving goods and services and processing invoices, respectively).

## Public Records Requests

- 14. Public Review of Bid Files** - The University does not release information that is protected by law. Request for procurement records will be accessible to the public during regular business hours or may be sent electronically. Requests for inspection of the procurement records must be reasonable, must contain sufficient information for retrieval, and must not interfere with the orderly operation of the procurement department. The university will redact (blackout) information deemed confidential under Tennessee law such as Social Security Numbers. As provided by Tennessee law, the following items will be available for public inspection only after the university completes its evaluation: bids for the purchase of goods and services and individual purchase records including related evaluations and memoranda. The procurement Department may charge a nominal fee for copies of these records and they may require proof of Tennessee residency. For more information on public records requests consult the [BT0014 - Public Records \[Repealed and Replaced by TUAPA Rule\]](#).

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**PROCEDURES:**

To view links to campus policies and procedures, click here:

<https://policy.tennessee.edu/campus-policies-procedures/>

**FORMS:**

[RFP Template](#)

**FOR MORE INFORMATION:**

Blake Reagan (865) 974-3311 [breagan@tennessee.edu](mailto:breagan@tennessee.edu)

**Related Policies:** [FI0315 - Gifts](#), [FI0420 - Contracts](#), [FI0445 - Employee Services Between the University Board of Regents Institutions and State Agencies](#), [FI0620 - Capital Outlay](#), [FI0125 - Conflict of Interests](#)