

BY-LAWS, POLICY AND PROCEDURE

of the

STATE BUILDING COMMISSION
of
TENNESSEE

Revised June 2015

BY-LAWS, POLICY AND PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

The following by-laws and statements of policy and procedure are consistent with State Building Commission authority and clarify and appropriately reflect policy enactment, present operations, and delegation of responsibility for staff role. Adoption of this compilation should allow more expeditious and efficient handling of projects under the jurisdiction and review of the Commission, and encourage streamlined operating procedures that permit the flow of work to be handled without large increases in manpower.

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BY-LAWS
of the
STATE BUILDING COMMISSION
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ARTICLE I
STATE BUILDING COMMISSION

I-1 NAME

The name of the Commission shall be the State Building Commission of Tennessee.

I-2 AUTHORITY

The Commission and these by-laws are established pursuant to the authority established by Legislative Acts described in the Tennessee Code Annotated 4-15-101 et seq and other specific statutory responsibility relevant to the Commission.

I-3 PURPOSE OF THE COMMISSION

- A. Improvements to Real Property - The Commission will approve and supervise projects involving improvement to real property funded by public or private funds or both in which the State or a department, institution, or agency thereof has an interest. No contract shall be let for construction and no building shall be constructed until the plans for improvements have been submitted to and approved by the Commission. Exceptions - Department of Transportation highway and road improvements pursuant to Title 54, Chapter 5 of the Tennessee Code.
- B. Demolition of Buildings - The Commission will review and approve proposals which involve the demolition of a building situated on State-owned land or on land in which the State has an interest. Exceptions - Department of Transportation, Bureau of Highways for demolition of structures in highway rights-of-way.
- C. Acquisition, Disposal, and Lease of Property - The Commission will review and approve acquisition and disposal of interest in real property by the State or a department, institution, or agency thereof, and leases described in TCA 12-2-115(b). Exceptions - Acquisition of interest in real property by the Department of Transportation for highway and road rights-of-way (acquisitions other than right-of-way not excepted); interest in real property acquired by gift or devise for the University of Tennessee and State University and Community College System unless such gift or devise obligates the State to expend State funds for capital improvements or continuing operating expenses; and, Wildlife Resources Agency leases do not require approval, but are subject to review.
- D. Buildings Constructed with Private Funds - The Commission will review and approve proposed leases and other contracts which may involve the use of private funds for proposed construction

and which relate to improvements of real property in which the State or a department, institution, or agency thereof has an interest.

I-4 ENFORCEMENT OF STATUTES

The Commission shall enforce the provisions of Tennessee Public Buildings Accessibility Act (TCA 68-18-201, et seq). The Commission shall enforce the provisions of the Tennessee Energy Conservation Code (TCA 13-19-101, et seq) in new building construction.

I-5 PROMULGATION OF RULES, REGULATIONS, AND STANDARDS

The Commission will promulgate rules, regulations, standards, and procedures to be followed for construction of State buildings and fulfillment of its other responsibilities.

ARTICLE II
MEMBERSHIP AND STAFF

II-1 MEMBERS OF THE COMMISSION

The Commission shall consist of seven (7) ex officio members. The Governor, the Secretary of State, the State Comptroller, the State Treasurer, the Commissioner of Finance and Administration, the Speaker of the Senate, and the Speaker of the House of Representatives.

II-2 TERM OF MEMBERS

The terms of members of the Commission shall be co-extensive with their holding of the respective offices entitling them to membership on the Commission.

II-3 VACANCIES

No vacancy on the Commission shall impair the right of a quorum to exercise all rights and perform all the duties of the Commission.

II-4 ADMINISTRATIVE STAFF

The Commission will employ such administrative staff personnel as are necessary to carry out its purpose and charge, who shall be attached to the Department of Finance and Administration for all administrative purposes except the discharge of duties and functions directly required of such personnel by the Commission. An affirmative vote of the majority of permanent members of the Commission shall be required in order to establish appointments, salary, and wages of Commission employees.

ARTICLE III

MEETINGS

III-1 SCHEDULE

- A. The Commission will hold regular meetings on the second Thursday of every month. Called meetings of the Commission may be held at which matters pertaining to the operation and affairs of the Commission, as provided for in the notice to the called meeting, may be given attention and appropriate action taken. Meetings of the Commission may be canceled or rescheduled upon notice.
- B. The Commission will notify the heads of departments, institutions and agencies of the schedule of regular meeting dates.

III-2 HOW CALLED

Meetings of the Commission may be called by the Chairman, Vice Chairman, the Secretary, or a majority of the members of the Commission at such time and place as those calling the meeting shall fix. Adequate public notice of regular, special, and emergency meetings shall be given.

III-3 ATTENDANCE

Whenever the Commission is requested to act upon a matter for a department, institute or agency, the Commission prefers that the head of that department, institute or agency be present to personally submit the request. Those departments, institutions or agencies which do not have their head in attendance, will, at the option of the Commission, be heard after those which do.

III-4 RULES OF ORDER

Meetings shall be governed by Robert's Rules of Order.

III-5 QUORUM VOTING

At all meetings, a majority of members, being four (4), shall constitute a quorum. A majority vote of the quorum shall constitute the action of the Commission.

III-6 MINUTES

Adequate written minutes shall be kept recording the official acts and proceedings at meetings of the Commission. Minutes will be presented for approval or correction at a subsequent meeting and such approval indicated by signature of the Secretary.

ARTICLE IV

OFFICERS

IV-1 CHAIR

The Governor of the State shall serve as Chair. The Chair shall be the Chief Executive Officer of the Commission and shall have the general and active management of the Commission's business and shall exercise general supervision and direction over all of the affairs of the Commission. The Chair may affix his or her signature to contracts or documents required to implement actions of the Commission.

IV-2 VICE-CHAIR

The Commission shall elect a Vice-Chair from its membership. The Vice-Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair.

IV-3 SECRETARY

The Commission delegates its authority to the Executive Subcommittee to elect a Secretary for the Commission and Executive Subcommittee from its membership. The Secretary shall be responsible for minutes and records of the Commission and for giving proper notice of meetings. The Secretary is also jointly responsible with the Chair of the Executive Subcommittee for placement of items on a Commission meeting agenda.

IV-4 STATE ARCHITECT

The State Architect, selected and approved by the Commission, shall serve as Chief Staff Officer of the Commission and shall serve as the operating manager of the affairs of the Commission, be administratively attached to the Department of Finance and Administration, be responsible for supervision of projects approved by the Commission, and will institute such operating procedures as are required to implement the rules, policy, and procedure, and will promulgate technical standards, including, but not limited to policy and procedures of the Office of the State Architect, and of the Commission. The State Architect shall submit agenda items to the Secretary and to the Executive Sub-Committee Chair for their consideration. The State Architect shall prepare and maintain, at the discretion of the Secretary, minutes and records of the Commission.

IV-5 DELEGATION OF AUTHORITY OF OFFICERS OF THE COMMISSION

The Commission, for any reason sufficient to it, may delegate its powers, or duties, or any of them, to any member or members or to any officer or officers.

ARTICLE V**EXECUTIVE SUB-COMMITTEE****V-1 MEMBERSHIP AND OFFICERS**

The Executive Sub-Committee is composed of the three State Constitutional Officers and the Commissioner of the Department of Finance and Administration. The Executive Sub-Committee shall elect its own officers from among its membership.

- A. The Executive Sub-Committee shall elect a Chair from its membership, who shall not also serve as the Secretary of the Commission. The Chair shall be the Chief Executive Officer of the Executive Sub-Committee and shall have the general and active management of the Executive Sub-Committee's business and shall exercise general supervision and direction over all affairs of the Executive Sub-Committee. The Chair is also jointly responsible with the Secretary for placement of items on an Executive Sub-Committee meeting agenda.
- B. The Executive Sub-Committee shall elect a Secretary from its membership. The Secretary shall be responsible for minutes and records of the Executive Sub-Committee and for giving proper notice of meetings. The Secretary is also jointly responsible with the Chair for placement of items on an Executive Sub-Committee meeting agenda. The Secretary shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair.
- C. The State Architect, selected and approved by the Commission pursuant to Article IV-4, shall serve as Chief Staff Officer of the Executive Sub-Committee and shall serve as the operating manager of the affairs of the Executive Sub-Committee, be responsible for supervision of projects approved by the Executive Sub-Committee, and will institute such operating procedures as are required to implement the rules, policy, and procedure, and will promulgate technical standards, including, but not limited to policy and procedures of the Office of the State Architect, and of the Commission. The State Architect shall submit agenda items to the Chair and the Secretary for their consideration.

The State Architect shall prepare and maintain, at the discretion of the Secretary, minutes and records of the Executive Sub-Committee.

V-2 AUTHORITY

- A. The Executive Sub-Committee is authorized to act for the full Commission in any matter which has been delegated to the Executive Sub-Committee by the Commission.
- B. The Executive Sub-Committee may approve changes to or adoption of policy and procedure as representative of the full Commission.
- C. The Executive Sub-Committee is delegated authority on behalf of the Commission to take final action on land acquisition, land disposal, and lease transactions where such transactions are consistent with established Commission policies. Actions taken by the Executive Sub-Committee shall be reported to the Commission at its next regularly scheduled meeting.
- D. The Executive Sub-Committee is delegated on behalf of the Commission to take final action on the selection of architects, engineers and design professionals for State projects where

such transactions are consistent with established Commission policies and previous actions approved by the Commission regarding the project. Actions taken by the Executive Sub-Committee shall be reported to the full Commission at its next regularly scheduled meeting.

- E. Transactions not fully consistent with established Commission policies, and transactions which in the judgment of a member of the Executive Sub-Committee merit consideration of the Commission, shall be submitted to the Commission for consideration.
- F. The Executive Sub-Committee may act on behalf of the Commission in matters relative to demolitions; however, a Committee member may require a proposed demolition project be brought before the full Commission for consideration and action.
- G. The Executive Sub-Committee may approve routine funding allocation changes on projects under the jurisdiction of the State Building Commission.

V-3 EXECUTIVE SUB-COMMITTEE MEETINGS

A. SCHEDULE

The Executive Sub-Committee will hold regular meetings on the second Monday following the regularly scheduled Commission meeting. Called meetings of the Executive Sub-Committee may be held at which matters pertaining to the operation and affairs of the Executive Subcommittee, as provided for in the notice to the called meeting, may be given attention and appropriate action taken. Meetings of the Executive Sub-Committee may be canceled or rescheduled upon notice. The Commission will notify the heads of departments, institutions and agencies of the schedule of regular meeting dates.

B. HOW CALLED

Meetings of the Executive Sub-Committee may be called by the Chair and the Secretary, or by a majority of the members of the Executive Subcommittee, at such time and place as those calling the meeting shall fix. Adequate public notice of regular, special, and emergency meetings shall be given.

C. ATTENDANCE

Whenever a department, institute or agency has a matter on the agenda that is a recommendation or discussion item, the Executive Subcommittee requires that a representative of the department, institute or agency be present. The recommendation or discussion items for those departments, institutions or agencies that are not represented will be heard at the discretion of the Executive Sub-Committee.

D. RULES OF ORDER

Executive Sub-Committee Meetings shall be governed by Robert's Rules of Order.

E. QUORUM VOTING

At all Executive Sub-Committee meetings, a majority of members, being three, shall constitute a quorum. A majority vote of the quorum shall constitute the action of the Executive Sub-Committee.

F. MINUTES

Adequate written minutes shall be kept recording the official acts and proceedings at meetings of the Executive Sub-Committee. Minutes will be presented for approval or correction at a subsequent meeting and such approval indicated by signature of the Secretary.

V-4 DELEGATION OF AUTHORITY OF THE EXECUTIVE SUB-COMMITTEE

The Executive Sub-Committee, for any reason sufficient to it, may delegate its powers, or duties, or any of them, to any member or members or to any officer or officers.

ARTICLE VI

AMENDMENT PROCEDURE

These by-laws may be amended, altered, or repealed upon the affirmative vote of a majority of permanent members of the Commission. The by-laws may not be in conflict with the statutes of the State.

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POLICY and PROCEDURE
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2.01 DEFINITION OF A PROJECT REQUIRING APPROVAL OF THE COMMISSION

- A. Any improvement to real property, including the demolition of any building or structure located on real property in which the State of Tennessee or any of its departments, institutions, or agencies has an interest, other than Department of Transportation, highway and road improvements and demolition of structures in highway rights-of-way will require State Building Commission approval. "Improvements to real property" is defined as follows:
1. The construction or erection of new buildings or structures in which the State of Tennessee or any of its departments, institutions or agencies has an interest whether financed by public or private funds or both;
 2. The major maintenance of any building or structure in which the State of Tennessee or any of its departments, institutions or agencies has an interest, wherein "major maintenance" is defined as the repair or renovation of any building or structure or any portion thereof in which the State of Tennessee or any of its departments, institutions or agencies has an interest and which is being funded by direct appropriations for major maintenance or which the estimated construction cost (including contingency) is in excess of five hundred thousand dollars (\$500,000); or
 3. The major maintenance or renovations not covered in paragraph 4 below, funded from sources other than capital appropriations with expenditures, or a combination of separate expenditures, in excess of \$500,000 made in a six month period on a single building or structure owned or leased by the State institution of higher education or governing board thereof. Major maintenance shall not include cost of utilities, recurring and routine maintenance of systems and grounds, telephones/network installations and relocations, and custodial services. It is the express intent of the Commission that no major maintenance or renovation project be split to avoid the \$500,000 threshold.
 4. The renovation of any building or structure in which the State of Tennessee or any of its departments, institutions or agencies has an interest, wherein "renovation" means the change in the functional use or operation of space in existing buildings or structures in which the State of Tennessee or any of its departments, institutions or agencies have an interest.
 5. Any improvement to real property in excess of five hundred thousand dollars (\$500,000) by a foundation created for the primary purpose of benefiting the University of Tennessee or any institution of the Tennessee Board of Regents, the operation of which will be, or is intended by the foundation to be or become, the responsibility of the University of Tennessee or any institution of the Tennessee Board of Regents. The intent of the foundation to retain operation of the improvement or to transfer operations to the State shall be contained in the records of the foundation.

6. Notwithstanding paragraph 2-4 to the contrary, the State Building Commission delegates its authority to the State Architect and the Commissioner of Finance and Administration, an officer and member, respectively, of the State Building Commission, in consultation with the applicable State procurement agency, to authorize and approve projects costing more than \$100,000, but less than \$500,000, including designer and construction procurement, pursuant to applicable State Building Commission policies and other applicable laws and procedures.
 - a) The delegation referenced in this Section 6 does not apply to major maintenance projects funded in whole or in part by bond proceeds or residual proceeds from bond funding because current oversight and monitoring for projects using bond proceeds after initial SBC approval, by delegation or otherwise, will still be in effect by State and Local Finance staff as required by applicable laws and procedures.
 - b) Projects approved through the delegation referenced in this Section 6 must be reported to the State Building Commission, by the Commissioner of Finance and Administration and the State Architect, before the commencement of the project using a form approved by the State Building Commission staff.
 - c) This policy will be effective on January 1, 2012.
 - d) The State Building Commission reserves the right to alter, amend, cancel or revoke this Section 6 at any time.
7. The demolition of any building or structure located on real property in which the State of Tennessee or any of its departments, institutions or agencies has an interest, or the demolition of any building or structure by a foundation created for the primary purpose of benefiting the University of Tennessee or any institution of the Tennessee Board of Regents, provided such building or structure when constructed or acquired was originally approved by the commission pursuant to this section, except for the demolition of any building or structure acquired by the department of transportation for highway rights-of-way.
 - a) The Commission shall consider the comments of the Tennessee Historical Commission prior to approving or disapproving plans to demolish, alter or transfer State property that is or may be of historical, architectural or cultural significance.
 - b) This shall apply to demolitions of any building or structure created by a foundation which existed for the primary purpose of benefiting the University of Tennessee or any institution of the Tennessee Board of Regents.
- B. The Commission shall also review proposals involving projects situated on land in which the State has an interest and proposed leases or contracts which would involve the use of public, private, or both funds for construction or improvements.
- C. The Commission shall review and approve proposed leases in excess of \$75,000 annual consideration or longer than five (5) years and land acquisition or disposal by any agency, department, or institution of State government, except thus as provided in Article I of its by-laws:
 1. Leases by or to the Tennessee Wildlife Resources Agency do not require approval unless they are of the type described in TCA 4-15-102(d) (1) (D); however, the Commission will review the exempt leases as a matter of policy.

2. The Department of Transportation's Bureau of Highways is exempt for acquisition of land for highway rights-of-way, and other exceptions provided in TCA 12-2-112.
- D. The University of Tennessee and any institution of the Tennessee Board of Regents are exempted for any interest in real property acquired by gift or devise unless such gift or devise obligates the State to expend State of Tennessee funds for capital improvements or continuing operating expenses.
- E. Pre-fabricated, including modular, buildings that will be or are attached to a permanent foundation are considered a building under the jurisdiction of the State Building Commission.
- F. In the event of an emergency at a non-higher education, State-owned facility, the Commissioner of Finance and Administration has the authority to approve any emergency repairs, with the written consent from at least one of the Constitutional Officers. The University of Tennessee and any institution of the Tennessee Board of Regents are responsible for their own emergency preparedness procedures. Such emergency repairs shall be promptly reported to the State Building Commission members thereafter in accordance with State Building Commission policy.

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POLICY and PROCEDURE
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3.01 LEGISLATIVE PROJECTS

Projects under the jurisdiction of the legislature shall be approved and recommended by the Senate and House Management Committee prior to submission to the Commission for approval.

3.02 GENERAL STAGES OF REVIEW

- A. Projects shall be brought before the Commission for review and action at the following stages, except as herein excepted or a specifically excepted by the Commission.
1. First Stage – Initial approval of project budget, scope, land, source(s) of funding, proceeding with process to select a designer, and delivery method if other than design/bid/build.
 2. Second Stage – Designer Selection by Executive Sub-Committee.
 3. Third Stage – Approval of Early Design Phase
 4. Fourth Stage – Approval of preliminary and final bidding documents, including but not limited to plans, outline specifications, bidding requirements, contract forms, conditions, specifications, and drawings.
 5. Fifth Stage – Approval of award of construction contract.
- B. The State Architect shall assist the Commission in the review of projects and has the responsibility for approval, coordinating, and monitoring of a project through completion and acceptance. The Commission delegates to the State Architect the approval for the fourth and fifth stages as long as the project remains within the approved project budget, scope and source(s) of funding remain available. The State Architect may further delegate these responsibilities and approvals to the head of a State Procurement Agency.
- C. The Commission may limit its approval to any stage of a project.
- D. The State Architect shall schedule a project for further review by the Commission when it is believed to be in the interest of the project to have such review, or whenever it is proposed that project budget, scope, delivery method, or source(s) of funding be changed from that originally approved.
- E. First Stage approval of a project (sub-paragraph 3.02(A)(1) automatically carries with it, SBC approval of all usual and customary easements, licenses, disposals of utilities, right of entries, and right of ways necessary for the maintenance and support of utilities for the project. Any such action shall be reported to the full Commission at their next regularly scheduled meeting following the execution of the legal documents reflecting the action taken.

3.03 EARLY DESIGN PHASE REVIEW

Departments or agencies shall present to the Commission, at the discretion of the State Architect, in the early stages of development of new projects, sufficient information to describe the project and to identify proposed building systems concepts and estimated costs, as associated with the completion of the Design Development Phase.

3.04 PRE-PLANNING PROJECTS

Pre-planning projects shall be approved by the Commission for coordination by the State Architect through the Design Development Phase.

3.05 FULL-PLANNING PROJECTS

Full-planning projects shall be approved by the Commission for coordination by the State Architect through the Construction Documents Phase.

3.06 DESIGNER SELECTION

(Authority is delegated to the Office of the State Architect for the designer selection process criteria)

The overall goal is to secure the most qualified designers for State projects resulting in the development of suitably functioning facilities meeting the user's needs within time and budget limitations in the overall best interest of the State.

Objectives of the designer selection policy:

- Provide clear guidance.
- Promote access by all interested professionals.
- Promote competition.
- Promote transparency and accountability.
- Secure the best designer resulting in quality work on State capital projects.
- Encourage clear communication between the State and design professionals interested in working on State projects.

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4.01 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGNER

- A. The Standard Form of Agreement between Owner and Designer (SBC-6), Standard Terms and Conditions for Agreements between Owner and Designer (SBC-6a), and Standard Form of Supplement to an Agreement between Owner and Designer (SBC-6s) are available on file with the Office of the State Architect and also available within the State Designer's Manual.
- B. A designer (architect, engineer, or other licensed professional) contract must be signed by the designer, the head of the contracting agency, the State Architect and the availability of funds certified by the Commissioner of Finance and Administration, as required by T.C.A. 9-4-5113. In addition, all such contracts over \$50,000 must be approved by signature of the Comptroller of the Treasury. All such contracts over \$100,000 must also be approved by the signature of the Attorney General (as to form and legality). The Tennessee Board of Regents (TBR) and the University of Tennessee System (UT) are exempt from the foregoing requirements of this paragraph. However, it is a requirement of the Commission that all designer contracts for projects under the jurisdiction of the State Building Commission (SBC), and contracted by the TBR or UT be signed as follows:
- 1) Designer
 - 2) Head of the Agency. For the purposes of this policy, Agency is defined as either the Tennessee Board of Regents or The University of Tennessee System.
 - 3) Head of the Facilities Development Office or the head of the Financial Office of the Agency for compliance with statutes, policies and contracting procedures.
 - 4) Head of the Financial Office of the Agency for certification of funding.
 - 5) Head of the Legal Office of the Agency as to form and legality.

In addition, the State Architect shall sign the contract or otherwise evidence his or her approval of the contract in writing, for conformance to SBC Policy and Procedures. All supplements to designer contracts must be approved and executed by the same parties approving and executing the original contract and any supplement(s).

- C. It is the expressed intent of the State Building Commission that review and approval of contracts as herein above provided by the Attorney General shall be for form and legality, and review and approval by the Comptroller shall be to ensure compliance with statutes, policies and procedures.
- D. Once a designer is selected by the Executive Sub-Committee, the State Procurement Agency must report to the Executive Sub-Committee if the State Procurement Agency has not executed the SBC-6 Owner-Designer Agreement within 180 days.

4.02 MILITARY NATIONAL GUARD BUREAU DESIGNER AGREEMENTS

The use of a modified federal design agreement for projects of the Department of the Military is acceptable.

4.03 PROJECTS FUNDED FROM INSURANCE PROCEEDS

For projects funded from insurance proceeds on Owner-Designer contract based upon actual documented costs or the State's standard contract based upon the State's standard fee percentage calculated on actual construction costs is acceptable.

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POLICY and PROCEDURE
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5.01 REQUIREMENTS FOR ALL PROCUREMENT**A. Diversity participation in projects**

It is the express desire of the State Building Commission to include an emphasis on diversity in its contractual relationships with contractors for the construction, demolition or renovation of State projects under the jurisdiction of the Commission. The Commission acknowledges that firms who demonstrate and embrace diversity within their programs and policies are assisting the State in achieving its goals in building a more reflective marketplace of the community within this State.

1. It is a policy of the State Building Commission that the above statement shall accompany the bidding or proposal documents for State projects under the jurisdiction of the Commission.
2. It is a requirement of all successful bidders or proposers on projects under the jurisdiction of the State Building Commission that they report to the State the names and amounts of contracts entered into with diversity owned businesses on their contract with the State in order for the State to collect data on such participation.
3. For projects under the jurisdiction of the State Building Commission which utilize a procurement process for selection of a contractor which involves an evaluation of qualifications and experience as well as price, it is the intent of the Commission that such proposal evaluations will recognize the positive qualifications and experience of proposers utilizing minority, women, small and disabled businesses as well as a diverse workforce to meet service needs. In support of the above, it is the intent of the Commission to require proposers or bidders to submit in the qualification section of the procurement document:
 - a) A description of the Proposer's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability and small business enterprises
 - b) A listing of the Proposer's current contracts with business enterprises owned by minorities, women, persons with a disability and small business enterprises
 - c) An estimate of the level of participation by business enterprises owned by minorities, women, persons with a disability and small business enterprises in a contract awarded to the Proposer pursuant to this RFP
 - d) The percent of the Proposer's current employees listed by gender, noting ethnicity and disability.

B. Determining time and place for receipt and opening of bids or proposals

ITEM 5

CONSTRUCTION PROCUREMENT

1. The Commission may permit projects for building construction or improvements located in counties having a population of 600,000 or more to have their bids or proposals opened in the county in which the project is located.
2. Normally, bids or proposals shall be received and publicly opened and read at a location in:
 - a) Johnson City, Washington County, for projects located in Cocke, Carter, Greene, Hancock, Hawkins, Hamblen, Johnson, Sullivan, Unicoi, and Washington Counties.
 - b) Knoxville, Knox County, for projects located in Anderson, Blount, Campbell, Claiborne, Cumberland, Grainger, Jefferson, Knox, Loudon, Morgan, Roane, Scott, Sevier, and Union Counties.
 - c) Chattanooga, Hamilton County for projects located in Bledsoe, Bradley, Hamilton, Marion, McMinn, Meigs, Monroe Polk, and Rhea Counties.
 - d) Nashville, Davidson County for projects in the middle Grand Division of the State.
 - e) Jackson, Madison County for projects located in Benton, Carroll, Chester, Crockett, Decatur, Dyer, Hardeman, Hardin, Haywood, Henderson, Henry, Gibson, Lake, Madison, McNairy, Obion, and Weakley Counties.
 - f) Memphis, Shelby County for projects located in Fayette, Lauderdale, Shelby, and Tipton Counties.
3. For projects that cross the boundaries of Grand Division, bids or proposals normally shall be received and publicly opened and read in Nashville, Davidson County.

C. Advertisement and invitation

1. Following review and approval of Bidding or Proposal Documents, the State Procurement Agency shall make solicitations for bids publicly known. To this end, the following procedures shall be followed:
 - a) The State Procurement Agency will notify the Designer in writing to proceed to the Bidding Phase of the project.
 - b) The State Procurement Agency shall provide an Advertisement for Bids or Invitation to Bid for each project bid.
 - c) The State Procurement Agency will furnish necessary information regarding the project to appropriate trade organizations for publication in their respective bulletins when appropriate. The State Procurement Agency shall require, where appropriate, that plans and specifications be provided to Plan Rooms of appropriate recognized construction trade organizations in the general area.
2. An Advertisement for Bids/Proposals shall be posted on the State Procurement Agency's website. The advertisement shall normally run four (4) weeks prior to the bid. The Advertisement shall be an abbreviated Legal Notice, not necessarily as detailed as the Invitation contained in the Bidding Documents or Request for Proposal, but providing:
 - a) The name of the project
 - b) The date, time and place of the bid opening
 - c) The location, availability, and deposit requirements for Bidding Documents

- d) Bonding requirements
 - e) Contractor License requirements
3. The time, date, and place of bid or proposal opening may be changed, if the State Procurement Agency finds sufficient cause.

D. Withdrawal of bid or proposal from consideration due to mistake in cost proposal

1. Basis for withdrawal - The Commission may allow a bidder to withdraw its cost bid from consideration after the bid or proposal opening without forfeiture of security based upon a claim of mistake, provided the bid was submitted in good faith and the bidder or proposer submits credible evidence that the mistake was clerical in nature as opposed to a judgment mistake and this clerical error must be actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the cost bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn.
2. Means of requesting withdrawal - A request to withdraw a cost bid due to a mistake must be made in writing to the Commission via the State Architect, delivered by the bidder or proposer in person or post-marked as certified or registered mail not later than 24 hours after the time fixed for receipt and opening of bids.
 - a) The request to withdraw a cost bid due to a bid mistake shall acknowledge intent by the bidder or proposer to submit its original work papers, documents and materials used in preparation of the bid.
 - b) The bidder's or proposer's work papers shall be delivered by the bidder in person or by registered/certified mail not later than five (5) days (Saturday, Sunday, legal holidays and the bid day excluded) from the date of receipt and opening of bids.
 - c) Failure of the bidder or proposer to make a withdrawal request as prescribed herein shall constitute a waiver by the bidder or proposer of his right to claim any mistake in its cost bid.
3. Owner to Proceed with Award - In order not to interrupt the bid or proposal process and construction schedule, submission of a request to withdraw will be deemed an acknowledgement by the bidder or proposer that it is unwilling to undertake the project pursuant to his bid or proposal. Consequently, such bid or proposal will be rejected from consideration of award of a contract for the work and withdrawn pursuant to these procedures. The lowest remaining responsive bid or proposal submitted by a responsible bidder or proposer shall be considered as the apparent low bid in a Design/Bid/Build Procurement and the next best evaluated proposal will be considered for contract award in an alternative delivery procurement.
4. Censure of bidder from participation in contract - A bidder or proposer who is permitted to withdraw a bid or proposal shall not supply any material or labor to, or perform any subcontract work for anyone to whom a contract is awarded for the work for which the withdrawn bid (not any re-bid) was submitted.
5. Review Panel

- a) There is hereby established a Review Panel, composed of three members and consisting of the State Architect, who shall act as chairman, one representative from the State agency for which the work is planned, and one representative of the general building contracting industry, designated by the chairman.
 - b) If a bidder or proposer files a request to withdraw its cost bid without forfeiture of its bid security, the Review Panel shall promptly hold a meeting to consider the disposition of the request. The chairman of the Review Panel shall give to the withdrawing bidder or proposer, reasonable notice of the time and place of the meeting. The bidder or proposer may appear at the meeting and present additional information in support of the request to withdraw the cost bid.
 - c) The Review Panel shall review the facts, information, and data submitted by the bidder or proposer in support of the request to withdraw the cost bid, and after consultation with the Office of the Attorney General, shall provide the Commission, within five (5) days of the meeting, a written statement of its findings and recommendations to allow or deny the request for withdrawal of the cost bid without forfeiture of his bid security.
 - d) Notwithstanding b) and c) above, in situations where the bid errors are clear and meet the criteria established in paragraph D1 above, the State Architect is empowered to rule on the issue without impaneling the Review Panel. The State Architect is required to report such action to the State Building Commission.
6. Disposition
- a) If the Review Panel finds that the price bid was based upon a mistake of the type described in Paragraph D1 above, the bidder's or proposer's withdrawal will be permitted without forfeiture of the bid security.
 - b) If the Review Panel finds that the price bid was based upon a mistake not of the type described in Paragraph D1, the Review Panel shall recommend to the State Building Commission the denial of the request to withdraw without forfeiture of bid security. The bidder or proposer shall have the right to appear before the Commission and to submit arguments in support of the request for withdrawal. If the Commission then affirms the Panel's recommendation, the bidder's bid security shall be forfeited. The findings and rulings of the Commission shall be final.

5.02 DELIVERY METHODS

The State utilizes the standard Design/Bid/Build, along with other alternative delivery methods for its construction procurement. Descriptions and requirements regarding all construction delivery methods may be found on the website under Policy and Procedures of the Office of the State Architect. The use of an Alternative Delivery Method shall be subject to the approval of the SBC.

5.03 PROCUREMENT THROUGH IN-PLACE GIFT

The purpose of these guidelines is to establish the conditions precedent for approval by the State Building Commission (SBC) of gift projects that are to be constructed, erected, installed,

etc. on land owned or leased by the State, and such gift or gifts are to become the property of the State.

A. Background

Due to the ability of private Donors to utilize volunteer labor, accept materials at reduced or no cost, as well as eliminate some of the administrative costs normally associated with State projects, Donors are able to provide improvements more economically and, in some instances, more quickly than if provided by the State's delivery system. This ability by the Donor allows the State to receive benefits that would otherwise not be available or would have to be funded from State funding sources to meet the State's need.

B. Procedure

Pursuant to the SBC's authority to approve and supervise all projects involving public or private funds in which the State has an interest granted in TCA 4-15-102(a) (1), the following criteria shall apply:

1. The SBC must be presented documentation from the Donee (State governing entity) that the proposed gift will be a needed asset to the State. The State agency will present the funding strategy including source of funds for operations and maintenance of the completed project.
2. The SBC must be presented with documentation from the requesting agency or department that the project cannot be accomplished by competitive processes and the reasons therefore.
3. All plans and specifications must be approved by the SBC in accordance with Item 3 of the State Building Commission Policy & Procedures, relating to project reviews.
4. Donor must assure compliance with all applicable federal, state, and local laws and requirements.
5. The following protections to the State must be provided by the Donor unless waived by the SBC:
 - a) Sufficient protection that the project will be completed and that the State will not be subject to liens or claims by material suppliers or workmen. For projects valued at \$100,000 or more this protection must be provided in the form of a contract bond executed on the SBC standard contract bond form in an amount of no less than 100% of the estimated value of the project.
 - b) Sufficient property insurance if project involves existing State improvements.
 - c) Indemnification of the State by the Donor or third party, as determined by the SBC, against damage claims incurred incident to the delivery of the project. For projects in excess of \$100,000 value, this must take the form of liability insurance and workmen's compensation at a level no less than the amount and limits required on general SBC projects.
 - d) Sufficient protection against losses due to fire, theft, acts of God, nature, etc. which must take the form of Builders Risk Insurance in amounts no less than that required on general SBC projects.

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POLICY and PROCEDURE
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6.01 LOCAL BUILDING PERMIT PURCHASE

Local building permits shall normally be purchased on State projects where local building authorities desire to and will sell such building permits. The Commission shall be advised, at the earliest stage possible on any State project, of any conflict between the classification of a proposed State project and local zoning requirements.

6.02 ARRANGEMENT OF OFFICE AREAS

In projects that relate to arrangement of office space, "open office landscaping" shall be initiated as the prime alternative for the layout of office space. If another form of layout is utilized, the reason for rejection of "open office landscaping" shall be documented. Responsibility for evaluation of the layouts is delegated to the State Architect. The Commission recognizes that basing office area design on layouts requiring permanent or inflexible structural changes can result in major non-recoverable expense to the State; however, it also recognizes that use of permanent, demountable, or other types of partitioning may be justified in particular cases.

6.03 ROOFING

A minimum ten-year standard warranty by the roofing systems manufacturer shall be required for new roofing systems of low pitch, commonly referred to as flat roofs; and further, the prime contractor shall be required to execute a standard roof bond, backed by a surety company licensed to do business in the State of Tennessee, for a three year period.

6.04 CHANGE ORDERS

- A. A bid alternate cannot be added by change order after award of contract if its addition to the original contract would have constituted a combination for which a lower acceptable bid was submitted.
- B. For change orders on State building contracts a maximum of 10% overhead and 5% profit is allowed for a contractor or subcontractor performing work and that an additional 5% is allowed for the general contractor where the sub-contractor does the work.
- C. Signature Requirements
 - 1) The signatures required to execute a contract change order are as follows:
 - a) Contractor
 - b) Designer

- c) State Architect who may further delegate this signature authority in writing to the head of a State procurement agency.
- 2) The availability of funds shall be certified by the Commissioner of Finance as required by TCA 9-6-113 or, in the case of Higher Education, by the Head of the Financial Office of the Agency.
- 3) Change Orders which result in a net aggregate increase or decrease in excess of ten (10%) percent of the original contract sum or which exceed an individual change order item in an amount in excess of \$500,000 must be approved by the State Architect and shall be reported to the State Building Commission.
- 4) The above provisions will be inserted by the appropriate Agency in the Construction Contract specifying the signatures required for the execution of a construction contract change order.

6.05 FINAL PAYMENT TO CONTRACTORS

If circumstances warrant, as judged by the State Architect, an appropriate newspaper advertisement will be published prior to final payment made by the State to a contractor on a State project.

6.06 BUILDING PLAQUES

Building plaques shall include the name of the Governor(s), Department head(s), and all State Building Commission members from the date of Building Commission approval of a specific project to the date of completion of the project.

6.07 DESIGNER EVALUATION

Upon completion of any State project under the jurisdiction of the Commission for which the State has employed a design consultant, Designer Evaluation Forms SBC-7 and SBC-8 shall be completed by appropriate State officials responsible for the administration of the project. At the option of the appropriate State official, evaluation forms may be completed relative to the major consultants of the designer for the project. Forms SBC-7 and SBC-8 are on file with the Office of the State Architect, available within the State Designer's Manual, and made available to the State Building Commission.

6.08 DESIGNER ADDITIONAL SERVICES

When the total amount of additional services, as defined in Article 2-2, Standard Terms and Conditions for Agreements Between Owner and Designer (SBC-6a), approved for an individual project exceeds twenty (20%) percent of the designer's fee for basic services or when an individual additional services approval amount exceeds \$100,000, the additional services shall be reported to the State Building Commission.

6.09 SUBCONTRACTOR REPLACEMENTS

A general contractor's request to replace a regulated subcontractor, such as those required by contractor's licensing law to be named on the bid envelope and used in the capacity as named, must be made in writing to the State Architect. This written request shall state the reasons for the need to replace the subcontractor; the name, license number, expiration date of license,

class of work licensed for, and monetary limit for the subcontractor who will be the proposed replacement, and a written confirmation from the general contractor that there will be no change in Contract Sum or Contract Time associated with the replacement. With the request, the general contractor, to the best extent possible, shall provide a written statement from the subcontractor to be replaced, stating reasons for its withdrawal from the work, and that there are no objections to being replaced.

The State Architect is empowered to rule on subcontractor replacements and shall report such action to the State Building Commission.

6.10 JOB ORDER CONTRACTING (JOC)

All proposed work orders, through a JOC, whose individual work order amount exceeds \$100,000 shall require State Building Commission approval.

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POLICY and PROCEDURE
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7.01 PROCUREMENT OF LEASES WHERE THE STATE IS LESSEE

- A. Approval of the Commission. These policies and procedures are intended to clarify the requirements of TCA §§ 12-2-114 and 12-2-115. All leases (i) where the rent due to the lessor under the lease is in excess of \$150,000 per year or (ii) where the term of the lease, including all renewal and extension options contemplated in the lease, is greater than 5 years, must be approved by the Commission prior to execution by the State. As used in (i) above, the term “rent” includes all sums paid to the landlord in accordance with the terms of the lease connected to the State’s occupancy of the space, such as utilities, janitorial expenses, operating or management expenses and the like, but does not include the cost of any tenant build-out or construction work in the space requested by State.
- B. General Requirements. The lease procurement process shall be objective, impartial, transparent, and consistent in its application. All leases must be procured in compliance with the policies and procedures of the Commission, the Office of the State Architect, and the applicable state procurement agency (“SPA”). The SPAs are the Department of General Services, Real Estate Asset Management; the University of Tennessee, Office of Capital Projects; and the Tennessee Board of Regents, Department of Facilities Development. Any exception from the requirements of this Item 7.01 must be requested in writing by the Head of the applicable SPA and approved by the Commission.
1. Prior to engaging in any activities to lease space for any state agency, department or institution of higher education of the State (each an “Entity”), the applicable SPA shall prepare a general statement of such Entity’s space needs.
 2. Lease procurement documents shall be drafted in such a manner as to maximize competition and allow the State to make better informed decisions on leasing matters.
 3. Each SPA shall procure leases using a form of request for proposal (including pro forma lease) that has been previously approved by the Commission unless advertisement is not required (See Section 7.01E).
 4. No individual, company, or other entity involved in the evaluation or negotiation of proposals should have a financial interest or have the appearance of a conflict of interest unless disclosed and addressed in accordance with SBC Policy Item 12. A written conflict of interest disclosure documenting the independence of each person involved must be completed and retained as part of the procurement file.
 5. All proposals to lease space to the State must contain the name(s) of any persons who are contemplated to become financially interested in the lease and shall be displayed in such manner as to make them readily available and accessible for public examination.
 6. Leases may be negotiated if negotiation is determined in writing by the Head of the SPA to be (a) in the best interest of the State or (b) necessary to ensure consistent

evaluation of lease proposals. All negotiations shall be conducted in accordance with a lease negotiation policy approved by the Executive Sub Committee.

7. All documents associated with a lease procurement shall be confidential from initiation of the lease process until a Notice of Intent to Award is issued to all proposers. At such time as a Notice of Intent to Award is issued, all proposals, analyses, and other records and documentation of the procurement shall become public information.
 8. A Notice of Intent to Award shall be issued and all proposals, analyses, and other records and documentation of the procurement shall become public information not less than ten (10) days prior to the meeting of the Commission or the Executive Sub Committee at which approval of the lease will be sought.
- C. Additional Higher Education Requirements. All leases with annual rents in excess of \$150,000 or with terms greater than five (5) years procured by a Higher Education SPA must be submitted to the Tennessee Higher Education Commission for review, analysis, and approval, prior to the issuance of any advertisement of space needs. The review and analysis of the lease request by the Tennessee Higher Education Commission may include, but shall not be limited to, the gathering of comments from various parties regarding the lease action request; the funding implications, and the appropriateness of the lease action request in lieu of a building construction request through the annual capital budget process.
- D. Advertising Requirement. Unless one of the exceptions set forth in Section E is satisfied, the applicable SPA must advertise, at least two (2) weeks prior to the date the proposals are opened and at the cost of the Entity requesting the space, the Entity's space needs prepared in accordance with Section B: (i) on the website of the SPA procuring the lease; (ii) in a newspaper of general circulation in the city(s) and/or county(s) where the space is needed on at least one (1) occasion and at least two (2) weeks before proposals are opened; and (iii) via at least one (1) of the following additional methods:
1. A public notice, conspicuously posted, in some part of the courthouse or central government building of that particular county;
 2. A news release distributed to daily and weekly newspapers and broadcast stations in that particular county; or
 3. An email blast or other written communication to (i) the members of the legislature, mayors, county executives of the county(s) in which space is sought and (ii) all persons currently leasing property to the SPA conducting the procurement or who have expressed an interest in leasing property to the applicable SPA in writing in the past twelve (12) months.
- The advertisement shall describe the location, square footage, term of the lease, and other general information regarding the space needed by the State and shall include the name and contact information for State employee responsible for coordinating the lease procurement, together with the web address where a copy of the lease procurement documents and other pertinent information can be found.
- E. Exceptions to Advertising Requirement. Advertisement shall not be required if one of the following exceptions is satisfied:
1. The annual rental will be less than fifty thousand dollars (\$50,000);
 2. The property to be leased is owned or otherwise controlled by a State agency; city, county or other political subdivision of the State; or the federal government;
 3. The space required by the entity has special and unique requirements as determined by the Commission;

4. The term of the lease will be one (1) year or less, although if Commission approval is needed the requirements of Section G must be satisfied.

F. Special and Unique Space.

1. Space meeting the following needs has been determined by the Commission to be “special and unique”:
 - a. The space to be leased (i) has characteristics, such as location, size or quality, which can only be satisfied by one landowner, as determined by a reasonable survey of the real estate market, and (ii) will have an annual rent of less than \$50,000.
 - b. The space to be leased (i) will be let for less than 30 days; (ii) will have a total cost of \$50,000 or less; and (iii) is for an auditorium, hearing room, conference or related space.

If a lease is procured under this Section F, the file must include documentation of the special and unique nature of the need and space; the efforts of the SPA to obtain a fair rental rate for the space; that there is no State owned space that will meet the need; and the approval of this special and unique nature of the space and proposed procurement method by the Chief Financial Officer of the University of Tennessee, the Chancellor of the Board of Regents, or the Commissioner of the Department of General Services, as applicable.

2. The Commission may determine that other space needs have special and unique requirements on a case by case basis upon receipt of a written justification signed by the head of the Entity for whom the space is sought and the Head of the SPA conducting the procurement prior to the commencement of any discussions regarding a lease of space with the potential lessor. Said written justification will include documentation of the special and unique nature of the need and space; the efforts of the SPA to obtain a fair rental rate for the space; and any other matters requested by the Commission.

G. Leases with Terms of One (1) Year or Less. Leases requiring Commission approval that were not advertised because the term of the lease will be for one (1) year or less, will be approved by the Commission upon receipt of a written justification from the head of the Entity and the Head of the SPA that such a short term lease is in the best interest of the State because:

1. The Entity only has need for space for one (1) year or less at which time the Entity's needs will either terminate or be fulfilled through State-owned space; or
2. An unforeseen situation has arisen making it impractical to advertise.

If a lease is procured under this subsection, the file must include documentation of the efforts of the SPA to obtain a fair rental rate for the space and to gain multiple proposals to lease space to the State.

H. Termination For Convenience of the State. All leases shall be terminable for convenience by the State on not more than 120 days written notice, unless approved by the Commission. Any request to deviate from the requirement of the preceding sentence shall be submitted in writing by the Head of the SPA making such request to the Commission together with a justification supporting such request for a deviation. For leases with terms of (i) less than 1 year, including renewal and extension options, or (ii) 5 years or less with a total annual rental amount of less than \$150,000, the authority to approve such a request for a deviation from the 120 day requirement is delegated to the Chief Financial Officer of the University of Tennessee, the Chancellor of the Board of Regents, or the Commissioner of the Department of General Services, as applicable.

- I. Lease Evaluation. In evaluating lease proposals the SPA may take into account not only the rent offered but the type of space, the location, its suitability for the purpose, services offered by the lessor, moving costs, and all other relevant factors. In the event that an SPA, in the evaluation of a lease proposal, intends to utilize (i) a “net present value” approach or (ii) standard cost estimates, the discount rate or standard cost estimates used by the SPA shall be those posted on the website of the Office of the State Architect at the time the proposal is evaluated. An SPA may use other estimated cost factors in evaluating a lease proposal so long the lease procurement documents reflect that estimated cost factors may be used and how such estimated cost factors will be established. The SPA shall propose that the State enter into a lease with the proposer offering the proposal with the lowest total cost unless a statement of justification from the Head of the SPA supporting award to a different proposer has been submitted to and approved by the Commission prior to entering into the lease. For leases with terms of (i) less than 1 year, including renewal and extension options, or (ii) 5 years or less with a total annual rental amount of less than \$150,000, the authority to approve such a proposal is delegated to the Chief Financial Officer of the University of Tennessee, the Chancellor of the Board of Regents, or the Commissioner of the Department of General Services, as applicable.
- J. Signatures Required. Leases shall be executed on behalf of the State as follows:
1. By the Attorney General and Reporter if the lease has a term, including all renewal and extension options, of more than 5 years or a rental amount due to the lessor of more than \$150,000 per year, in compliance with TCA § 12-2-115.
 2. By the Commissioner of the Department of General Services if procured by STREAM.
 3. By the Chancellor of the Tennessee Board of Regents if procured by TBR.
 4. By the Chief Financial Officer of the University of Tennessee if procured by UT.

7.02 LEASE AMENDMENTS WHERE THE STATE IS LESSEE

- A. Approval by Commission. Amendments to leases originally submitted to and recommended by the Commission shall receive Commission approval prior to execution of such amendments. Further, any amendment to a lease which was not submitted and approved by the Commission because the term was less than five years or the annual rent due to the lessor was less than \$150,000, but due to the amendment or the aggregate effect of amendments now exceed those limits, shall be submitted to the Commission for approval prior to the execution of the lease amendment.
- B. Advertising Requirement. Advertising meeting the requirements of Section 7.01D above shall be required for all lease amendments unless one of the requirements set forth below is satisfied:
1. The amendment is for the sole purpose of exercising a lease renewal or extension pursuant to the terms of the lease.
 2. The amendment is for the sole purpose of extending the term of the lease by one (1) year or less beyond the expiration date of the lease so as to allow for additional time needed for the procurement of a new lease to meet the space need; to allow the user time to transfer the occupants or purpose to an alternative location; or to allow the user to wind up its operations for which the space was leased.
 3. Advertisement has been waived by the Commission.

7.03 CERTIFICATION OF FUNDS WHERE THE STATE IS LESSEE

- A. Pursuant to TCA § 12-2-115(d), certification of funds under TCA § 9-4-5113 shall not be required for leases of space, so long as funds are certified in accordance with the process set forth below.

1. General Government Requirements. The requirements below shall be followed to satisfy the requirement for a certification of funds for leases that will replace expiring leases and for new leases, as applicable. In all cases, promptly after executing a new lease, STREAM shall provide to the Finance and Administration Budget Office a statement with the term of the new lease; the total amount due each year during the term to the lessor under the terms of the lease; and the estimated total of all other utility, janitorial or other costs that are the responsibility of the State under the terms of the lease.
 - a. Expiring Leases. In August of each year, a list of existing leases which will expire during the next fiscal year for needs requiring the procurement of new leases shall be provided to the Finance and Administration Budget Office with sufficient information for them to identify the current rental cost, allotment code, and cost center of each expiring lease, as well as STREAM's estimate of the rental cost of a new lease to meet the continuing need. The Finance and Administration Budget Office will return the list to STREAM with a certification that funds will be available for new leases to meet the needs of the expiring leases, with any exceptions on the list clearly noted. New lease may then be procured to meet the space needs satisfied by the expiring leases in accordance with this policy. If, however, the new lease requires rental payments in excess of those estimated by STREAM, the Finance and Administration Budget Office must certify the availability of funds prior to execution of the lease.
 - b. New Leases. For leases that will satisfy new space needs, STREAM must obtain a certification of funds from the Finance and Administration Budget Office for the estimated rental amount prior to advertisement or negotiation of a lease. If the new lease requires rental payments in excess of those estimated by STREAM, the Finance and Administration Budget Office must certify the availability of funds prior to execution of the lease.
2. Higher Education Requirements. The requirements below shall be followed to satisfy the requirement for a certification of funds for leases that will replace expiring leases and for new leases, as applicable.
 - a. Expiring Leases. In August of each year, a list of existing leases which will expire during the next fiscal year for needs requiring the procurement of new leases shall be provided to the Business and Finance office of the University of Tennessee or Tennessee Board of Regents, as applicable (the "Business and Finance Office"), with sufficient information for them to identify the current rental cost, allotment code, and cost center of each expiring lease, as well as the requesting party's estimate of the rental cost of a new lease to meet the continuing need. The Business and Finance Office will return the list to requesting party with a certification that funds will be available for new leases to meet the needs of the expiring leases, with any exceptions on the list clearly noted. New lease may then be procured to meet the space needs satisfied by the expiring leases in accordance with this policy. If, however, the new lease requires rental payments in excess of those estimated by the requesting party, the Business and Finance Office must certify the availability of funds prior to execution of the lease.
 - b. New Leases. For leases that will satisfy new space needs, the leasing party must obtain a certification of funds from the Business and Finance Office for the estimated rental amount prior to advertisement or negotiation of a lease. If the

new lease requires rental payments in excess of those estimated by the leasing party, the Business and Finance Office must certify the availability of funds prior to execution of the lease.

7.04 REPORTING OF LEASES WHERE THE STATE IS LESSEE

- A. Reporting of Leases. On a quarterly basis, each SPA must provide the information required by TCA § 12-2-115 and any other information requested by the Commission for all leases entered into by that SPA, so that information on all leases to which the State is a party are posted on the website of the Office of the State Architect whether approved by the Commission or not.

7.05 DISPOSAL OF INTEREST IN LAND BY LEASING OF SURPLUS STATE REAL PROPERTY FOR CROP LEASE

- A. In accordance with TCA 12-2-112(d) the Tennessee Wildlife Resources Agency is responsible for leasing of surplus State real property for crop leases, as well as being responsible for the administration of all crop leases and such leasing and administration shall be pursuant to forms reviewed and approved by the State Building Commission. Such crop lease forms shall include, at a minimum:
1. The procedure through which property is selected for participation in the crop lease program;
 2. The procedure through which crop leases are procured, including how the invitation to bid is prepared; how potential bidders are notified; and information on bidding and bid opening requirements;
 3. The approval procedure for the form of crop lease and any required terms and conditions of such form of crop lease, including, but not limited to, durations of not more than five (5) years, liability insurance, security for rental payment for revenue leases; and
 4. A list of documentation that must be maintained in the central office of Tennessee Wildlife Resources Agency for each lease.
- B. The Tennessee Wildlife Resources Agency is required to provide an annual report of crop leases entered into for the previous calendar year no later than May 31 of the following year. Said annual report shall include a statement as to compliance with the procedures of the State Building Commission, with any deviations noted, and the following information for each new and existing lease: name of lessee, acreage of land leased, county in which leased land is located, acreage of crops left in the field or cash rent due (with any offsets), statement of whether advertisement was required or waived. If there have been any deviations from full compliance with the procedures of the State Building Commission, said annual report shall include a disclosure of such deviations and information as to actions taken to address such deviations.

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POLICY and PROCEDURE
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8.01 GENERAL ACQUISITION AND DISPOSAL

A. Acquisitions and dispositions of interests in real property under TCA 4-15-101, et seq., and TCA 12-2-112, et seq., shall be submitted to the Executive Sub-Committee prior to any commitment to complete a transaction. The Department of General Services, through the Division of Real Estate Asset Management (STREAM), shall have the responsibility for ensuring that departments, institutions and agencies comply with this policy as follows:

1. Departments, institutions and agencies shall present requests with supporting documentation to STREAM.
2. STREAM shall analyze the information and determine and obtain additional information and appropriate diligence for proper presentation to the Executive Sub-Committee. Any contracted diligence services for a transaction procured prior to approval of the transaction by the Executive Sub-Committee shall be reported in the transaction approval summary submitted to the Executive Sub-Committee.
3. STREAM may enter into an option to purchase property prior to Executive Sub-Committee approval if all of the following are satisfied:
 - i. The acquisition is deemed to be time sensitive by the requesting agency in writing and concurred with by STREAM.
 - ii. The target property meets one of the following conditions:
 1. Identified for future acquisition in a State Building Commission approved Master Plan,
 2. Approved for acquisition by State Lands Acquisition Committee in accordance with Tennessee Code Title 11, Chapter 14
 3. Determined to be a priority wetland and bottomland hardwood forest acquisition in accordance with Tennessee Code Title 11, Chapter 14
 4. Included as part of approved SBC project where land purchase is specified in the project scope, and
 - iii. Funding is available for the option consideration, if any will be paid, and for the acquisition. Availability of funds shall be verified with the Department of Finance and Administration.

Any actions taken regarding options will be reported to the Executive Sub-Committee at the next scheduled meeting. Option consideration shall be not greater than 1% of the anticipated purchase price not to exceed \$10,000 except for transactions with an anticipated purchase price of less than \$100,000 where up to \$1000 consideration may be paid. Transactions shall not be subdivided to exceed the option threshold.

The requirements of 3(ii) above and the limits on the amount of option consideration may be waived upon approval of the Commissioner of Finance and Administration and one other member of the Executive Sub-Committee.

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4. No Acquisition or Disposition shall be consummated until the Executive Sub-Committee has approved the transaction.
 5. The execution of an option shall not bind the State to the acquisition of the property.
- B. The Executive Sub-Committee shall act in its capacity as set forth in Article V of the Commission by-laws.
- C. The Commission approval granted under Paragraph B above shall be conditioned upon the laws, rules and regulations governing the acquisition and disposal of interests in real property being complied with by the Department of Finance and Administration. Prior to final execution of the acquisition or disposal, the appropriate agreements, including documentation to indicate that all laws, rules and regulations and other contract terms have been complied with, shall be submitted to the Attorney General for approval.
- D. Pursuant to the authority granted under TCA 12-2-112(a)(8) the State Building Commission establishes the maximum limit of \$75,000 under which the Commissioner of Department of Transportation may execute deeds to convey surplus right-of-way property without State Building Commission approval pursuant to TCA 12-2-112(a)(9), contingent upon all current procedures remaining the same, with the transaction being submitted to RPA for the review of the established fair market value.
- E. The Department of Finance and Administration shall make appropriate revisions in its rules and regulations, policies and other documents to implement this policy, which shall be approved by the Commission (see Attachment 2).
- F. Exceptions to or deviations from this policy shall be justified in writing to the Commission by the Commissioner of Finance and Administration. The Commission shall have final approval for such exceptions.
- G. Policy for Surplus Real Property Disposal. The State shall seek consideration for sales in fee based on the fair market value of such property, as determined by appraisals in accordance with T.C.A. 12-2-112. Because of the public policy or interest served, monetary consideration may, in special and unique circumstances, be waived or reduced when:
1. The conveyance primarily benefits the State; or
 2. The grantee is a local or federal governmental entity designed for the public safety, health and welfare; or
 3. Payment of the full fair market value by a local or federal government would not be in the interest of the program benefiting from the conveyance; or
 4. The conveyance is to any political subdivisions of the State and the real property (land and/or improvements and related personal property), or interest thereon, owned by the State, has no commercial value, or the estimated cost of continued care and handling would exceed the estimated proceeds from its sale. No commercial value means real property, including related personal property, which has no reasonable prospect of being disposed of at fair market value or more than a nominal consideration.

The disposal agency shall document the factors leading to and the determination justifying disposal by grant of any surplus property under this section and shall retain such documentation in the files of the agency.

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In the event of a negotiated sale to a governmental body for a public use purpose, the fair market value may be determined by qualified State employees.

- H. When a disposal under G is approved, the grantee shall pay the costs incident to the disposal, such as the applicable real estate transaction fee imposed by the Commissioner of Finance & Administration and approved by the State Building Commission, and any incidental costs such as dismantling, removal, the cleaning up of the premises, survey, appraisal, etc.
- I.
 - 1. If any property is conveyed under G, the deed of conveyance shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event that such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the State, revert to the State and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the State Building Commission to be necessary to safeguard the interest of the State.
 - 2. The Commissioner of Finance & Administration has the responsibility for enforcing compliance with the terms and conditions of transfer and any necessary actions for recapturing such property in accordance with the provisions of this section. Notice to the head of the disposal agency by the Commissioner of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefore.
- J. For all acquisitions and disposals of interest in real property, closed in the previous quarter, that have been previously approved by the Executive Subcommittee, the following information shall be reported back to the Executive Subcommittee by RPA on a quarterly basis:
 - 1. Resulting appraisal value(s)
 - 2. Final purchase or sales price
 - 3. Amount(s) and source(s) of funding used or received
- K. THIRD PARTY FEES ON LAND ACQUISITIONS
 - 1. Under the following described circumstances, agencies, departments and institutions may utilize third party entities ("Facilitator") to facilitate land acquisitions by the State, so long as the Facilitator's specific utilization by the agency, department, or institution has been approved by the Commission prior to the Facilitator's acquisition of the land sought to be acquired by the State:
 - a. The land cannot be acquired for fair market value by the State directly because of timing, contract terms or other issues; or
 - b. The third party intends to transfer the land to the State as a gift.
 - 2. In the event that a Facilitator is used pursuant to Paragraph 1 above, Facilitator Costs may be reimbursed without additional approvals by the Commission upon satisfaction of the conditions set forth in this paragraph. "Facilitator Costs" shall be reasonable costs paid by the Facilitator to persons or entities unrelated to the Facilitator which are necessary and/or desirable (as determined by the Facilitator and the agency, department, or institution) in order to acquire the land. Facilitator Costs may include, but shall be limited to, title search and commitment fees, title insurance policy premiums, closing costs paid to a closing agent, survey

fees, environmental assessment fees, recording fees, transfer taxes, and appraisal fees. Facilitator Costs may additionally be defined to include legal fees not in excess of \$5,000 per acquisition, so long as they are based on hourly rates not exceeding the hourly rates set by the Attorney General for the payment of outside counsel legal fees. In the event that any other type or category of cost not specifically identified above is requested by a Facilitator to be reimbursed, such cost must be approved as to both type and amount first by the agency, department, or institution acquiring the land, then by STREAM, and finally by the Commission.

3. Notwithstanding anything stated in Paragraph 2 to the contrary, no Facilitator Costs shall be reimbursed unless an estimate of the Facilitator Costs was presented by the agency, department, or institution at the time of the Commission's initial approval of the Facilitator's utilization, and unless the Facilitator Costs actually incurred, and for which reimbursement is being sought, have been first approved by the agency, department or institution for which the land is being acquired, and then determined by STREAM to be reasonable, taking into account the complexity of the acquisition. The agency, department, or institution utilizing the Facilitator shall, on the next quarterly report inform the Commission of all line item costs as well as the reasons for any specific reimbursed Facilitator Cost(s) exceeding the previously presented estimate by the lesser of the sum of \$500 or twenty percent of the previously presented estimate for each individual line item. Additionally, either STREAM or the agency, department or institution for which the land is being acquired may reject requests for reimbursement of Facilitator Costs if: (i) the provider of such service is not on the approved State vendor list, and/or (ii) the State does not receive a benefit from the Facilitator's payment of such costs, such as by obtaining a reduced title policy premium or being able to reuse without additional fee the survey, appraisal or environmental assessment.

4. The State shall encourage Facilitators to use a competitive process to select vendors providing services that may be reimbursed as Facilitator Costs. Notwithstanding the foregoing sentence, the State shall require Facilitators to use a competitive process for said vendor selections if any of the vendors chosen to provide services for which reimbursement is sought is not on the approved State vendor list, in which case the Facilitator shall adequately document the competitive process; shall submit same to the agency, department or institution; and shall at the same time, on the next quarterly report, inform the Commission of the selection.

8.02 DISPOSAL OF INTERESTS OTHER THAN FEE SIMPLE

- A. In the disposal of leasehold, easement or other less than fee interest in any State-owned real property, it shall be first determined and reported to the Commission that the interest being conveyed will not hamper the future operations of the State.
- B. The State shall seek consideration for such conveyances based on their fair market value, but shall consider lesser consideration or a grant in cases where the conveyance is for a public purpose.
- C. In the case of disposals of interest that benefit a private person, persons or entity, the State shall publicly advertise the availability of the property and receive proposals by interested parties. Where it is not feasible to require public advertisement, the interest may be conveyed to a requesting party for consideration at no less than the fair market value as determined by appraisal, unless otherwise approved by the Commission.
- D. PROCEDURE

1. When a department or agency of State government determines a need exists to dispose of easements, rights-of-way, or leases of real property, it shall notify the Department of Finance and Administration, using forms prepared by RPA. Such notification shall include adequate information about the nature of the proposed conveyance, interested parties, and the justification of the department or agency for the disposal.
2. RPA shall review the request and determine whether any other State agency has a need for the property. After determining that the disposal is in the State's best interest, the Department of Finance and Administration shall submit a recommendation to the Executive Sub-Committee, which shall have authority to take appropriate action in accordance with the above policy. Said action shall be reported at the next regularly scheduled meeting of the Commission.
3. Qualified State employees may assess the value of leases, easements, and rights-of-way, unless the Executive Sub-Committee determines that either: a) an independent appraiser(s) shall be employed; or, b) some other method shall be utilized to determine consideration.
4. Where advertising is applicable, such advertisement shall be placed once in a newspaper which is local with respect to the property to be disposed of and once in a daily newspaper in the nearest major city, provided that when one of the major cities is the situs, advertisement shall be required once in a daily newspaper. A minimum of two (2) weeks shall be allowed for responses to such advertisement.

8.03. BOUNDARY DISPUTE RESOLUTION**A. BOUNDARY DISPUTE CLAIM**

1. Upon discovery of a boundary dispute claim by a Department or Agency of the State of Tennessee, the following procedures are to be followed:
 - a) If a boundary problem is discovered, the State agency having jurisdiction over the disputed property will have a staff real estate professional investigate the problem.
 - b) The Agency's real estate professional will examine all records, deeds, plats and monumentations to determine the extent of the problem.
 - c) Once the problem has been defined, the Agency will contact and work in conjunction with RPA to resolve the dispute.
 - d) RPA will, with any professional consultant deemed necessary, examine the chain of property title and make a determination of what should be the proper property description. The State agency having jurisdiction over the property and RPA will devise a potential solution to the problem. Approval to proceed will be required by both agencies before contacting the affected property owner(s).
 - e) Upon receiving approval, RPA will contact all affected property owners and negotiate a boundary line. If there is a significant loss or gain of State property (more than five acres), it will require State Building Commission approval prior to any settlement being reached with affected property owner(s).
 - f) If a property line can be negotiated and a loss or gain of State lands is less than five acres, RPA will approve the settlement of the boundary and report the

- settlement to the State Building Commission at the next scheduled monthly meeting.
- g) The Attorney General's Office must approve all deeds of correction or boundary line agreements. All boundary line agreements and new boundary plat retracements will be recorded in the county where the property is located. (Note: Deeds of Correction require all original signers to re-sign and should only be used on recent acquisitions.)
 - h) The State agency having jurisdiction over disputed property will pay all surveying, deed preparation and recording fees associated with boundary dispute.
2. Upon discovery of a boundary problem by an outside party, the following procedures are to be followed:
- a) Once a claim has been made by an adjoining property owner against State land, the State department having jurisdiction over the real estate will have a real estate professional from the department contact the property owner to determine the nature and extent of the claim.
 - b) The Agency representative will document the claim in writing. The property owner must provide legal or credible testimony to support his or her claim. The burden of proof falls on the claiming property owner to provide evidence that the State's boundary is incorrect.
 - c) The Agency's representative will review the landowner's survey, tax map, deed and deed calls, written and oral testimony provided by reputable sources or other qualified sources of evidence.
 - d) The Agency's representative will review the State's boundary by examination of State's deed and deed calls and surrounding properties. He will also review recording information to determine the most recent survey recorded.
 - e) If the Agency determines in its discretion that the claim has possible merit, then the Agency will contact RPA who will review all the documentation presented and make any independent investigation deemed necessary.
 - f) RPA will conduct an investigation of all the records and testimonies associated with the disputed tract and make a boundary line determination.
 - g) The Agency and RPA will attempt to negotiate a boundary agreement with the property owner.
 - h) If it is determined that the State will lose or gain a considerable amount of acreage (more than 5 acres) it must have prior approval by the Agency having jurisdiction over the property, RPA and the State Building Commission. Any agreements that involve five acres or less can be approved by the Agency and RPA and will be reported to the State Building Commission at the next scheduled meeting.
 - i) Once a boundary line agreement has been reached and approved, RPA will have prepared a Deed of Correction or a boundary line agreement that will be recorded in the county where the property is located. In settling land disputes,

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sharing of the surveying, deed preparation and recording fees is encouraged by the requesting agency and the affected property owner. The Agency and the property owner may negotiate the fees before any work is begun.

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9.01 STATE/LOCAL FUNDING FOR CONSTRUCTION OF NEW ARMORIES

- A. Department of Defense and National Guard Bureau policies require the State to participate in construction projects. It is the policy of the State that local governments participate in the funding of these projects as set forth herein.
- B. The Municipal and/or County government shall acquire and deed to the State in fee simple a site on which the armory is to be constructed. Said site is subject to the minimum standards and approval of the State and National Guard Bureau, and the Municipal and/or County government shall provide title insurance and survey documents pertaining to the site. The Municipal and/or County government shall make all required utility services available at the site boundary at no cost to the State.
- C. The Municipal and/or County government share of the construction cost shall be a lump sum contribution based upon a schedule of Local Government Contributions for Armory Construction (Article 9.02), as approved by the Commission. The Department of the Military, in coordination with Commission staff, shall provide an analysis of armory constructions costs and recommend to the Commission a Schedule of Local Government Contributions for Armory Construction to maintain the level of the local contribution at the percentage of construction cost indicated below (Article 9.02), and shall annually make recommendations to the Commission for revisions to the Schedule to maintain the intended percentage of local contribution.
- D. The Department of the Military has developed a series of complete armory designs with standardized sizing of each facility to allow better cost forecasting. Based on analysis of historical costs of these facilities and on current construction costs, it has been determined that the local government funding share based on the allocation set forth above can be approximated as follows (Article 9.02), and shall be utilized as the local government share until modified by the Commission.

9.02 LOCAL GOVERNMENT CONTRIBUTIONS FOR ARMORY CONSTRUCTION

- A. Intended percentages to be achieved:

	PERCENT SHARES OF TOTAL		
CONSTRUCTION COSTS:	FEDERAL	STATE	LOCAL
Armory, including all fees, testing, etc.	75	12.5	12.5
Site preparation	0	50.0	50.0
Grading, seeding, landscaping	75	12.5	12.5
Paving & security fencing	75	12.5	12.5

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STATE / LOCAL FUNDING OF ARMORIES

Extension of utilities from Armory to property line	75	12.5	12.5
Access roads within property line includes driveways	75	12.5	12.5
Sidewalks within property line	75	12.5	12.5
Flagpole	75	12.5	12.5
Bid advertisement costs	0	50.0	50.0
Other improvements not eligible for Federal funding	0	(as applicable)	(as applicable)

B. Lump Sum contributions to be required of local government:

60 Person Armory	\$150,000
100 Person Armory	\$175,000
200 Person Armory	\$200,000
400 Person Armory	\$225,000
800 Person Armory	\$250,000
1,000 Person Armory	\$275,000

9.03 DISPOSAL OF REPLACED ARMORIES

A. In conjunction with negotiation of the State-Local Agreement for the proposed construction of a new armory facility, and in consideration of local government contribution, including the site, to the construction of the new armory, the Department of the Military may offer the vacated and/or replaced facility to local government in accordance with the following:

1. The transfer to local government shall be a grant.
2. The deed to the property will contain a restriction that any disposal of the property shall be at a price not less than fair market value, and that the disposal by local government shall be strictly in accordance with all applicable laws, regulations, and procedures governing such disposal by the local government.
3. The transfer to local government shall be made upon vacating of the property by the Department of the Military, and is subject to all applicable laws, regulations, and procedures for the disposal of State real property including approval by the Commission.

B. In the event vacated and/or replaced armory facilities are not transferred to local government, and such vacated and/or replaced armory facilities are surplus to the Department of the Military, said surplus real property shall become the jurisdiction of the Department of Finance and Administration for disposition pursuant to applicable laws, policies, and procedures for administration and disposal.

9.04 FORM OF AGREEMENT FOR STATE/LOCAL FUNDING

The form to be used for agreements between the State and local governments for construction of National Guard armories shall be that set forth as "Tennessee State Building Commission Standard Form of State/Local Agreement for Construction of a National Guard Armory", revised January 1989, that is on file with the Office of the State Architect.

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10.01 STATE PARTICIPATION FOR CONSTRUCTION OF CHAPELS AT FACILITIES OF THE DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

The Commission will normally approve 50% matching State funds for local contributions for chapel design and construction up to a maximum State participation per chapel of \$125,000.

10.02 POLICY REGARDING THE STATE'S FINANCIAL PARTICIPATION IN CAPITAL PROJECTS WITH GRANTEES OF DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

A. SCOPE

It is intended that this policy cover all requests submitted by the Department of Mental Health (TDMH) or the Department of Intellectual and Developmental Disabilities (DIDD) for State Building Commission approval of cooperative programs involving State financial participation with a local government or not-for-profit contract agency (Grantee), in the construction, addition, or renovation of facilities providing services for the mentally ill or the mentally retarded. Such programs are authorized in T.C.A. Section 33-1-202.

B. OBJECTIVES

1. Establish a limit on the maximum financial participation by the State.
2. Establish a threshold for the minimum level of financial participation required of the Grantee making the request.
3. Establish a clear guideline on the ownership of real property involved in or resulting from the completion of a requested project.
4. The responsibility for the continued provision of appropriate services for the mentally ill or mentally retarded should be clearly established.
5. In no instance should the State participate in the funding of capital projects housing subsidiary organizations of the Grantee.

C. TERMS AND CONDITIONS

1. Construction of new, free-standing facility
 - a. Projects on State-owned land

- (1) The Grantee must provide at least twenty-five percent (25%) of the funds needed for the project, exclusive of the value of the real property upon which the project will be constructed.
 - (2) The maximum financial participation on the part of the State shall not exceed seventy-five percent (75%) of the cost of the project, exclusive of the value of the real property upon which the project will be constructed.
 - (3) Title to the property will remain with the State.
 - (4) Necessary major maintenance of the facility shall be the responsibility of the State.
 - (5) Regular and preventive maintenance of the facility shall be the responsibility of the Grantee.
- b. Projects on land provided by the Grantee
- (1) The Grantee must agree to transfer title to the real property to the State, along with a title insurance policy, prior to the project being submitted to the State Building Commission for its consideration.
 - (2) The Grantee must provide at least twenty-five percent (25%) of the funds needed for the project, exclusive of the value of the real property upon which the project will be constructed.
 - (3) The maximum financial participation on the part of the State shall not exceed seventy-five percent (75%) of the cost of the project, exclusive of the value of the real property upon which the project will be constructed.
 - (4) Necessary major maintenance of the facility shall be the responsibility of the State.
 - (5) Regular and preventive maintenance of the facility shall be the responsibility of the Grantee.
2. Renovations, Additions, and/or Modifications to Existing Facilities
- a. State-owned facilities
- (1) Grantee must provide at least twenty-five percent (25%) of the funds needed for the project.
 - (2) The maximum financial participation on the part of the State shall not exceed seventy-five percent (75%) of the cost of the project.
 - (3) Title to the property will remain with the State.
 - (4) Major maintenance of these facilities shall be the responsibility of the State.
 - (5) Regular and preventive maintenance of the facilities shall be the responsibility of the Grantee.
- b. Non State-owned facilities
- (1) Grantee must provide at least twenty-five percent (25%) of the funds needed for the project.

(2) The maximum financial participation on the part of the State shall not exceed seventy-five percent (75%) of the cost of the project.

(3) Title to the property will remain with the original owner.

(4) Where the State does not hold title to the real property, the Grantee will lease the facility to the State for ninety-nine (99) years at the sum of one dollar (\$1.00) per year. If the Grantee does not hold title to the real property, the Grantee shall obtain and deliver to the State, an appropriate long-range renewable lease agreement. Such lease agreements are necessary in the event the Grantee is unable or unwilling to perform under the provisions of this policy or the operating contract with the TDMH or the DIDD.

(5) All necessary maintenance of the facility shall be the responsibility of the Grantee.

D. FACILITY UTILIZATION

It is intended that projects approved in accordance with the provisions of this policy, shall be used solely for the purposes of conducting and providing services approved and supported by the TDMH or DIDD. It is further intended that no capital project approved in accordance with this policy shall house or be used for the provision of services by any subsidiary organization of the Grantee. The Grantee requesting State financial participation shall certify, in a manner prescribed by the TDMH or the DIDD and acceptable to the State Building Commission, that the provisions of this section will be adhered to.

E. FORM AND CONTENT

1. The TDMH and the DIDD shall present project requests to the State Building Commission on such forms and in such manner as the State Building Commission shall require.
2. Grantees seeking State financial participation in a capital project in accordance with the provisions of this policy, shall submit their request on such forms and in such manner as shall be determined by the TDMH or the DIDD.

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11.01 CERTIFICATE OF NEED FOR HEALTH CARE FACILITIES

An agency or institution proposing to build a health care facility requiring a Certificate of Need under Title 53, Chapter 54, T.C.A., shall first obtain approval of the Health Facilities Commission and shall have obtained a Certificate of Need before requesting State Building Commission consideration and approval of the proposed health care facility project. This policy shall not apply to any facility that does not serve the general public.

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12.01 INDIVIDUAL CONFLICTS OF INTEREST

Commission members (“Members”), and the staff of the Commission, the Office of the State Architect, the State Procurement Agencies (“SPAs”), and the User Agencies participating in Commission procurements or contracts (collectively “Staff”), all serve the interests of the State of Tennessee and its citizens, and have a duty to avoid activities and situations which, either directly or indirectly, put personal interests before the professional obligations they owe to the State and its citizens.

It is the expectation of the Commission that its Members and that Staff adhere to the various statutes that exist in the Tennessee Code Annotated (T.C.A.) which are pertinent to individual, potential, or actual conflicts of interest, including but not limited to the following statutory sections, and any successor sections thereto:

- T.C.A. § 8-50-501, Disclosure statements of conflict of interests by certain public officials
- T.C.A. § 12-2-208, Purchase by officer unlawful – penalty for violation
- T.C.A. § 12-2-415, State surplus property disposition regulation
- T.C.A. § 12-2-416, Violation of § 12-2-415
- T.C.A. § 12-2-417, State employee violation – punishment
- T.C.A. § 12-4-101, Personal interest of officers prohibited
- T.C.A. § 12-4-102, Penalty for unlawful interest
- T.C.A. § 12-4-103, Bidding by state employees prohibited
- T.C.A. § 12-4-104, Penalty for unlawful transactions
- T.C.A. § 12-4-105, Grand jury investigations
- T.C.A. § 12-4-106, Prohibition against receiving rebates, gifts, money or anything of value

12.02 ORGANIZATIONAL CONFLICTS OF INTEREST**A. PURPOSE**

The purpose of this policy Item 12 is to prescribe ethical standards of conduct applicable to the Members and Staff, and to inform Persons (as hereinafter defined), including Contractors/Consultants (as hereinafter separately defined), entering into State contracts that are subject to Commission approval and oversight, of the ethical standards of conduct applicable to procurements and to resulting contracts and all amendments thereto, all of which serves to:

- Promote full and open competition, integrity, and transparency in the procurement and contracting process;
- Prevent Persons from obtaining an unfair competitive advantage in the procurement and contract process;

- Promote an environment conducive to Contractors/Consultants providing services to the State in an impartial and objective manner;
- Provide guidance to enable Contractors/Consultants to make informed decisions while conducting business with the State; and
- Protect the validity of the State's contracts, protect the State's interests, and protect the State's confidential and sensitive information.

B. POLICY

1. All Members, Staff, and Contractors/Consultants shall at all times conduct and carry out their duties and responsibilities in a manner intended to uphold high ethical standards and to comply with this policy. If a Member, member of the Staff, or Contractor/Consultant has actual knowledge of an Organizational Conflict of Interest (as hereinafter defined, and hereinafter referred to as "OCI"), the OCI shall be disclosed to the State Architect and shall be avoided, mitigated or waived in accordance with Paragraph 4 below.
2. All SPAs must consider potential OCIs during preparation of all procurement solicitation documents, during the evaluation of all offers and proposals, and must disclose the existence of OCI's that become known or discovered at any time during the term of any contract resulting from a procurement. SPAs must include clauses in every procurement solicitation and in every contract resulting from a procurement that would appropriately identify known current and future OCIs. If an OCI is discovered during preparation of the procurement documents, the SPA must include a clause requiring offerors and proposers to make disclosures and representations, and to explain plans to resolve conflicts.
3. All Contractors/Consultants must disclose the existence of OCIs that are known or discovered at any time prior to award and during contract performance, and must, upon request, disclose all facts bearing on the OCI.
4. Upon identification of an OCI, the SPA shall, as soon as reasonably possible, simultaneously notify the State Architect of the OCI and submit to the State Architect a plan to address the OCI, which plan shall include actions and/or agreements necessary to avoid, mitigate, and/or waive the OCI.
 - a. Avoidance generally involves a Contractor/Consultant foregoing a contracting opportunity, or foregoing existing contractual rights, in order to remain eligible for future work, or involves a limitation on future contracting allowing the Contractor/Consultant to perform the initial contract, but precluding the Contractor/Consultant from submitting offers on future contracts. Avoidance may also involve the removal or limitation of an individual member of the Staff's involvement in the procurement, evaluation, and/or management of services performed by a Contractor/Consultant under an initial contract or under future contracts.
 - b. Mitigation may involve specific actions by a Contractor/Consultant and/or an SPA to limit the effect of a conflict, or mitigation may involve more general efforts and /or recognitions when the circumstances are covered by policy of the Commission and/or policy of the Office of the State Architect.
 - c. The SPA may, upon written approval of the State Architect, waive the requirement to resolve an OCI if the SPA determines that resolution is not feasible or is not in the best interest of the State, which determination must be documented in writing and maintained by the SPA.

- d. No OCI occurs when (i) all material facts of the transaction and the basis for a possible OCI are disclosed and the contract, procurement or transaction is approved or (ii) the contract, procurement or transaction is fair to the State which such determination shall be documented in writing and filed with the State Architect.
- e. The SPA shall not commence implementation of the plan to avoid, mitigate, and/or waive the OCI required by subparagraphs 4.a., 4.b. or 4.c. until the SPA has documented the basis for the plan in writing and has received written approval of the plan from the State Architect, or until documentation has been filed with the State Architect as required by subparagraph 4.d.
- f. In all instances where an OCI exists in a procurement or contract in which the State Architect participated, the use of the term "State Architect" in the first sentence of this paragraph 4, and in subparagraphs 4.d. and 4.e. above, shall be taken to mean the Commission or its designee[s].
- g. Any approval or failure to approve by the State Architect pursuant to subparagraphs 4.a., 4.b. or 4.c. may be appealed by any Member to the Commission or its designee(s).

C. DEFINITIONS:

- a. "Affiliate" of a Contractor/Consultant means (i) any member, partner or joint venture member of the Contractor/Consultant; (ii) any shareholder of the Contractor/Consultant having an interest of at least ten percent in any class of stocks; (iii) any Person which directly or indirectly through one or more intermediaries Controls (as hereinafter defined), or is Controlled by, or is under common Control with, the Contractor/Consultant or any of their shareholders, members, partners or joint venture members; and/or (iv) any entity for which ten percent or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by (a) the Contractor/Consultant, (b) any of the shareholders, members, partners or joint venture members of the Contractor/Consultant, or (c) any affiliate of the Contractor/Consultant.
- b. "Biased Ground Rules" means the requirements for a contract or prerequisites for competition for a contract that have been written by a Person who, as a part of its performance of a State contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the Person who established the requirements or prerequisites, or any of its Affiliates, seeks to compete.
- c. "Contractor" means any Person, or its Affiliates or subcontractors, retained by the State to perform program implementation services for the State, or proposing to perform such services.
- d. "Consultant" means any Person, or its Affiliates or sub-consultants, retained by the State to perform Procurement Services and also retained to perform, or proposing to perform, other services for the State, which other services performed or to be performed include, but are not limited to, architecture, safety, quality, information technology, real estate acquisition or disposal, leasing, engineering, environmental, systems integration, land surveying, project management, program management, planning, construction management, or management assistance.
- e. "Control" means the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting securities, by contract, family relationship or otherwise.

- f. "Impaired Objectivity" means when a Person evaluates proposals or contract performance for its own products or services or for the products or services of competitors. Impaired Objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the Person – as broadly construed- will be harmed through the free and unbiased exercise of that judgment.
- g. "Organizational Conflict of Interest" means, as to contracts or proposed contracts with the State, a circumstance arising out of a Contractor's/Consultant's existing or past activities, business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results in:
 - (i) Impaired Objectivity of a Contractor/Consultant;
 - (ii) An Unfair Competitive Advantage (as hereinafter defined), for any bidder or proposer with respect to a State procurement;
 - (iii) Biased Ground Rules; and/or
 - (iv) A perception or appearance of impropriety, as determined by a Member or the State Architect, with respect to any of the State's procurements or contracts, or a perception or appearance of Unfair Competitive Advantage with respect to a State procurement.
- h. "Person" means any individual, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, government (or any agency or political subdivision thereof), other business entity, or other organization recognized by law.
- i. "Procurement Services" mean services provided by a Contractor/Consultant for the benefit of the State that relate to, but are not limited to any of the following:
 - (i) Development and preparation of procurement documents;
 - (ii) Development of offer/proposal evaluation criteria, processes and/or procedures;
 - (iii) Management of or administration of a procurement;
 - (iv) Evaluation of bidder/proposer submittals;
 - (v) Negotiation of a contract;
 - (vi) Advising the State or performing any other services that relate to any aspect of the procurement.
- j. "Unfair Competitive Advantage" exists when a Person competing for the award of a contract has obtained:
 - (i) Access to proprietary and/or confidential information, or information that is not available to the public or other competitors, and that would assist the offeror or proposer in responding to a procurement solicitation or in obtaining the contract; and/or
 - (ii) Scoring criteria or points allocation information, or other source selection information, that is relevant to the contract but is not available to all offerors or proposers and that would assist the offerors or proposers in responding to a procurement solicitation or in obtaining the contract.

D. FURTHER POLICIES AND PROCEDURES

The Office of the State Architect may develop policies and procedures that further define requirements to fulfill this policy.

POLICY and PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

13.01 METRO NASHVILLE DISTRICT ENERGY SYSTEM

The Commission, in accordance with the Metropolitan Government of Nashville and Davidson County requirements relating to the Metro Nashville District Energy System, will appoint for a term of two years, by name and State title, an individual to serve as the Representative of the government of the State of Tennessee on the Advisory Board for the Metro Nashville District Energy System, and the Representative shall report on the meetings of the Advisory Board to the Commission on a quarterly basis, or at any other such times the Commission requests.

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POLICY and PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

14.01 MANAGEMENT OF FACILITIES REVOLVING FUND

- A. The Facilities Revolving Fund (FRF), pursuant to T.C.A. 9-4-901 et seq., will charge each State agency its proportionate share of the cost of housing. The amount charged will be based on a rate per rentable square foot, determined by evaluating current market rental rates and other related market factors. This rate will then be multiplied by the amount of space occupied by the agency. Different rates will be charged for various types of office space and support facilities and for various geographic regions. Special use facilities: driver's license testing centers, laboratories, and farms will be charged rates which reflect their respective (total) occupancy expense, not to be less than the current applicable FRF rate for that region. RPA will assess all rate factors annually, then submit FRF rates for all of the various categories of space to the Commissioner of Finance and Administration for his review and recommendation to the State Building Commission (SBC).
- B. The Commissioner of Finance and Administration will administer the Facilities Revolving Fund. The Commissioner of Finance and Administration has empowered RPA to recommend policy, develop procedures and operational guidelines, and direct the day-to-day operation of the fund. RPA shall:
1. Work as a liaison between the respective agencies and the SBC;
 2. Develop procedures to charge State agencies appropriate lease amounts based on rates established in accordance with this policy;
 3. Develop procedures to implement approved FRF policy, with the assistance of appropriate State agencies; the procedures will include guidelines for the review of all plans, costs and revenues related to the use, purchase, sale or construction of a FRF asset to insure consistent and equitable treatment for all State agencies and, further, to insure the efficient and effective use of all FRF assets;
 4. Annually present to the SBC:
 - a. A comprehensive budget projecting both revenues and expenditures of the Fund;
 - b. A report reflecting the expenditures and fiscal year-end condition of the FRF;
 5. Develop methodologies to determine which facilities shall be included in the fund.
- C. With full implementation, all State-occupied space may be included in the fund. Facilities currently not in the fund include, but are not limited to, parks and open land, military installations, institutional space and Department of Transportation regional and local facilities.

- D. The FRF will be used to maintain and operate State-owned facilities, to provide debt service for existing buildings and future acquisitions, to pay relocation expenses of State agencies (including standard office furniture and partitions), to pay lease costs for non-State owned facilities, and to fund needed renovation work, capital maintenance and energy management improvements.

Housing related expenditures will be classified in three categories: non-discretionary, discretionary, and administrative. All expenditures associated with a building in the FRF will be charged to the fund. Agencies will, however, be required to reimburse the fund for discretionary expenditures.

- Non-discretionary: Required expenditures for **normal** operation, management and/or construction of a facility. Non-discretionary expenditures will generally include such items as debt service on general obligation bonds authorized for building repairs and/or construction, lease expenses for non-State owned buildings, and normal operational expenditures such as utilities, janitorial services, and maintenance, as decided by approved SBC policy and FRF procedures and guidelines. Agencies will not reimburse the fund for non-discretionary expenditures.
 - Discretionary: Expenditures that are not considered **normal** for the operation of a facility, as determined by SBC policy and FRF procedures and guidelines. Generally, a discretionary expense is one that is required or requested by the agency, but is not necessary for the general use of a facility. Agencies will reimburse the fund for these type expenditures. The budget office will be asked to verify that agency funds are available prior to approval of these expenditures.
 - Administrative: Direct administrative expenditures including fund administration, architectural, design, construction and renovation, and expenditures associated with building management and operations will be paid by the fund. Costs, that are necessary to facilitate the direct services provided by the fund's service providers, may also be paid by the fund. Such expenses shall be defined and identified by RPA. No current or future positions are to be directly funded under the FRF allotment code; however, the fund may reimburse those agencies where necessary and appropriate services and positions are budgeted and provided.
- E. The following will require SBC examination and/or approval:
1. The lease rates to be charged State agencies will be developed in accordance with Section A above, and be submitted to the SBC for approval, prior to implementation.
 2. The annual report of revenue and expenditures of the fund, prepared in accordance with this policy, will be submitted to the SBC for examination, no later than 60 days after the submission of the Budget to the Legislature.
 3. The annual FRF budget will be submitted to the SBC for approval, prior to the beginning of the respective fiscal year, by coordinating the proposed spending plans of the fund's service providers: General Services and RPA unless the annual FRF budget has been presented to the General Assembly in the Governor's budget document for that fiscal year.
 4. All FRF policies, and any recommended changes to such policies, shall be approved by the SBC.

- F. This policy is intended to allow all agencies housed in FRF properties, and all FRF service providers and facilitators, to continue to work within federal government guidelines, regarding circular A/87 funding issues and other federal programs.
- G. Fund revenue is dedicated for facility and housing related expenditures, and fund balances will be carried over from year to year.
- H. All items that currently fall under the SBC's purview will continue to require its examination and approval.
- I. The above stated policy pertains to FRF resources and issues only.

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POLICY and PROCEDURE

of the

STATE BUILDING COMMISSION

of

TENNESSEE

**15.01 QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR PERFORMING
WORK ON STATE OF TENNESSEE PROJECTS SUBJECT TO STATE BUILDING COMMISSION
APPROVAL**

A. PURPOSE

1. It is the intent of the State Building Commission that construction contracts for projects under its supervision be procured through procedures promoting competition to the greatest extent possible.
2. Whereas the competitive sealed bid process is used, it is the intent of the State Building Commission to award contracts to a responsible bidder submitting the lowest responsive bid.
3. As used in subparagraph A (2) herein, “responsible” refers to the qualifications required of a contractor or subcontractor as determined by the Commission, including but not limited to considerations of the skill and ability for the performance of the work called for in the particular project and whether the contractor or subcontractor is disqualified pursuant to this policy.
4. As used in subparagraph A(2) herein, “responsive” refers to the form and content of the bid meeting any and all requirements of the bidding documents.

B. POLICY

1. Requirements Contained in Bid Documents
 - a. Bidding documents, primarily the specifications, may include requirements for contractors and subcontractors to possess certain qualifications to perform the work.
 - b. If a contractor does not meet the requirements as contained in the bid documents then said bid shall be rejected. If a subcontractor is required to be listed in the bid, and no substitution has otherwise been authorized by the State Building Commission, and such listed subcontractor does not meet the requirements contained in the bid documents for the work they are to perform, then the contractor’s bid shall be rejected. Failure of a contractor or subcontractor to meet the requirements contained in the bid documents shall not be the only grounds to reject a bid.
 - c. Rejection by the State Architect of a bid for failure to meet any requirement under this Section B(1) shall be final and binding. The contractor or

QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS

subcontractor rejected under this Section B(1) shall not be entitled to the procedures specified in Section B(5) herein.

2. Disqualification Due to Failure to Have Requisite License
 - a. An unlicensed contractor or subcontractor shall be disqualified to bid on or be awarded a contract for any State Building Commission project and any bid containing an unlicensed contractor or subcontractor as a required listed subcontractor shall be rejected. As used in this Section B(2), unlicensed means failure to be licensed or improperly licensed pursuant to the Tennessee Contractors Licensing Act, T.C.A. Sections 62-6-101 et seq., as it may be amended, if applicable, or pursuant to any other Tennessee statute which requires a license for the work to be performed.
 - b. If a bid is rejected by the State Architect under this Section B(2), subsequently obtaining the requisite license shall not in any way affect a rejected bid.
 - c. The State Architect shall notify the contractor or subcontractor in writing if a bid is rejected solely due to failure to be adequately licensed. If a contractor or subcontractor disagrees with this finding, it must present written evidence of adequate licensure to the State Architect within seven days of receipt of notice from the State Architect. If the State Architect then determines the contractor or subcontractor is adequately licensed, the bid may then be considered.
 - d. The period of disqualification to bid on or be awarded contracts for State Building Commission projects under this Section B(2) shall continue until the requisite license is obtained.
 - e. Rejection by the State Architect of a bid due to absence of the requisite license under this Section B(2) shall be final and binding. The contractor or subcontractor whose bid is rejected under this Section B(2) shall not have available the procedures specified in Section B(5) herein.
3. Disqualification Pursuant to T.C.A. Section 12-4-601 et seq.
 - a. Contractors or subcontractors shall be disqualified to bid on or be awarded contracts for any project under the supervision of the State Building Commission if it is unlawful for any contractor or subcontractor which submitted the bid to solicit employment on any contract associated with the State pursuant to T.C.A. Section 12-4-601 et seq., as it may be amended and any bid so submitted shall be rejected. If a subcontractor which may not solicit employment with the State pursuant to T.C.A. Section 12-4-601 et seq., is nevertheless included in a bid as a required listed subcontractor and no substitution has been authorized by the State Building Commission then the bid shall be rejected as non-responsive. If a subcontractor which may not solicit employment with the State pursuant to T.C.A. Section 12-4-601 et seq., is included in a bid and is not a required listed subcontractor then the bid may be accepted but the affected subcontractor shall be rejected and the contractor must substitute an acceptable subcontractor at no change in cost under the contract.
 - b. The period of disqualification to bid on projects under the supervision of the State Building Commission or to be included in a bid on such projects under this

Section B(3) shall extend to the period of time specified in T.C.A. Section 12-4-601 et seq., as it may be amended.

- c. The State Architect shall notify the contractor or subcontractor in writing if a bid is rejected under Section B(3). If a contractor or subcontractor disagrees with this finding, it must present its position in writing to the State Architect within seven days of receipt of notice from the State Architect. If the State Architect determines disqualification is not appropriate under this Section B(3), then the bid may be considered.
 - d. Rejection of a bid by the State Architect under this Section B(3) shall be final and binding. The contractor submitting a bid which has been rejected under this Section B(3) or the subcontractor rejected under this Section B(3) shall not have available the procedures specified in Section B(5) herein.
4. Disqualification Pursuant to Unsatisfactory Performance
- a. A contractor or subcontractor that has demonstrated unsatisfactory performance on current or past State projects may be disqualified by the State Building Commission, from bidding on or being allowed to work on future projects under the supervision of the State Building Commission.
 - b. The period of disqualification may continue for a period of time determined by the State Building Commission. However, said period of time may not exceed three (3) years. Said period of disqualification shall be deemed to begin upon the date the State Building Commission finds a contractor or subcontractor to be disqualified.
 - c. A contractor or subcontractor may be deemed to have demonstrated unsatisfactory performance on current or past State projects if any one of the following criteria is met:
 - (1) Performance of work without proper licenses from the State;
 - (2) Non-payment of prevailing wages or unemployment insurance;
 - (3) Non-payment of, or failure to promptly pay monies due subcontractors or material suppliers unless there exists a good faith dispute regarding the amount owed;
 - (4) Failure to timely meet the financial requirements of a contract (including but not limited to insurance requirements);
 - (5) Use of unlicensed or improperly licensed subcontractors;
 - (6) Use of subcontractors which is inconsistent with the bid documents or subcontractors who were unapproved in accordance with requirements of the contract documents;
 - (7) Providing false or incomplete information on qualification, bidding, or contract documents (including subsequent documentation required by the contract) either when the contractor or subcontractor actually knew the information was false or incomplete or with the exercise of reasonable diligence should have known said information was false or incomplete;
 - (8) Requesting or obtaining State funds on current or past contracts which the contractor or subcontractor knew were not due under the contract or with

the exercise of reasonable diligence should have known were not due under the contract;

(9) Acting in any manner, whether willful or negligent, including but not limited to misrepresentation or failure to act, which allows contractors or subcontractors, State personnel, design professionals or any other party associated directly or indirectly with a State project to obtain funds from the State which were not properly due under a contract;

(10) Failure to submit or adhere to contractually required schedules when failure is fault of contractor or subcontractor;

(11) Failure to cooperate in accordance with terms of contract; or

(12) Unsatisfactory performance of work on State or other projects, including but not limited to, refusal to correct workmanship not in accordance with the contract documents, termination for cause, or failure to provide supervision required by the contract documents.

- d. The foregoing list contained in subsection B(4)(c) is not an exhaustive enumeration of instances of unsatisfactory performance by a contractor or subcontractor. The State Architect and CQRP may recommend and the State Building Commission may disqualify a contractor or subcontractor from bidding on future projects under its supervision if the Commission determines that the contractor or subcontractor has not performed satisfactorily on current or past State projects although the basis for disqualification is not enumerated in subsection B(4)(c) above.
- e. A Contractor's Evaluation Report (Form CER-1), will be completed by the contracting agency on all finished projects under the supervision of the State Building Commission and kept on file. However, a CER-1 must be initiated and maintained as soon as it has come to the attention of a State department or agency that a contractor or subcontractor has performed unsatisfactorily on a State project. Such reports are to be produced by anyone having reasonable knowledge of or familiarity with the project involved, such as State facility managers, project managers, and design professionals. Completed CER-1 forms should be sent immediately to the State Building Commission in care of the State Architect for action. A copy of completed CER-1 forms shall be kept on file in the State Architect's Office and available for review by interested parties.
- f. Failure for State personnel to timely initiate, maintain, complete, or submit a CER-1 form shall not affect whether the State Building Commission may disqualify a contractor or subcontractor under this policy.
- g. The State Architect, CQRP, and State Building Commission may consider information regarding the performance of a contractor or subcontractor on projects not involving the State, such as documented pre-qualification submittals, reference checks, and documented performance on other than State projects.

5. Disqualification Procedures

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- a. If the State Architect has received information which leads the State Architect to conclude that a contractor or subcontractor should be disqualified from work on future State projects pursuant to Section B(4) herein, the State Architect shall prepare a recommendation of disqualification to the Contractor Qualifications Review Panel (CQRP). The information referred to in this subsection (a) may be derived in whole or in part from CER-1 forms or may be derived in whole or in part from other sources. The State Architect may not recommend disqualification if such recommendation is solely based upon a CER-1 form completed more than one year prior to the notice required in subsection B(5)(d) of these Disqualification Procedures. Failure of the State Architect to act promptly upon receipt of information regarding possible disqualification shall have no effect upon the recommendation of disqualification and any subsequent disqualification.
- b. The CQRP will be composed of the following:
 - (1) A representative of State government, selected by RPA. Such representative shall have no direct relationship to the incidences relied upon by the State Architect for the initiation of disqualification procedures against the contractor or subcontractor.
 - (2) A volunteer representative of the contracting community of Tennessee, who has no direct or indirect interest in the outcome of these proceedings, in the parties involved, or in the situation or events relied upon by the State Architect for his or her disqualification recommendation. The selection of this representative will be the responsibility of the representative professional associations of the Tennessee building contracting industry.
 - (3) A volunteer representative of the professional design community of Tennessee who has no direct or indirect interest in the outcome of the proceedings, in the parties involved, or in the situation or events relied upon by the State Architect for his or her disqualification recommendation. The selection of this representative will be the responsibility of the representative professional associations of the Tennessee design profession.
- c. It will be the responsibility of the State Architect to contact RPA and industry organizations to provide their representatives for the purpose of empanelling a CQRP, convene meetings of the CQRP and set date, time and place for each.
- d. The State Architect shall notify the contractor or subcontractor in writing of any recommendation, and the grounds therefore, to be presented to the CQRP and the State Building Commission regarding its disqualification from bidding State work. Said notice shall include copies of all completed CER-1 forms that are relied upon by the State Architect's recommendation. The contractor or subcontractor shall be provided other documentation relied upon by the State Architect upon request.
- e. The contractor or subcontractor may file written objections to the State Architect's recommendation within ten (10) working days from receipt of the notification in subsection B(5)(d) hereof. Upon written request within said ten (10) day period by the contractor or subcontractor and for good cause shown, a reasonable extension of time to file written objections shall be granted provided

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an agreed upon extension of time must be in writing and signed by the State Architect.

- f. If timely objections are filed by the objecting party, the State Architect shall, within ten (10) working days of receiving the objection, notify the objecting party in writing of its opportunity to present its position to the State Architect regarding the recommendation of disqualification. Presentation of the objecting party's position to the State Architect shall be held as soon as is practical. The time, place, and manner of the objecting party's presentation to the State Architect shall be determined by the State Architect but in no event shall it be held more than twenty (20) working days after receipt by the State Architect of the party's objections, unless the objecting party and the State Architect agree on a later date.
- g. Any failure by the State Architect to give notice within the time periods specified in subsection B(5)(f) shall not affect the recommendation of disqualification by the State Building Commission but such information will be available to the State Building Commission for consideration. Failure of the contractor or subcontractor to present timely written objections to the State Architect's recommendation or failure of the objecting party to present evidence to the State Architect at the time and place as required in subsections (e) and (f) above shall have the following consequences:
 - (1) The State Architect is not required to notify the contractor or subcontractor of the scheduled CQRP or State Building Commission meeting at which the recommended disqualification of the contractor or subcontractor is an agenda item;
 - (2) The State Architect shall present his or her recommendation to the CQRP at its next meeting and notify the panel that there is no objection to the recommendation of disqualification; and
 - (3) The contractor or subcontractor recommended for disqualification shall have waived any and all objections to the disqualification and shall not present objections to the CQRP or State Building Commission.
- h. If the contractor or subcontractor presents written objections and makes a presentation to the State Architect as permitted under subsections (e) and (f) above, the State Architect may withdraw his or her proposed recommendation of disqualification to the CQRP if he or she determines disqualification would not be appropriate. Such withdrawal is to be at the discretion of the State Architect.
- i. If the contractor or subcontractor has complied with subsections (e) and (f) herein and the State Architect has not withdrawn his or her recommendation of disqualification, the State Architect shall give the objecting party ten (10) calendar days' prior written notice of the next CQRP meeting and the State Architect shall present his or her recommendation to the panel for consideration at that meeting. Upon written request by the contractor or subcontractor and for good cause shown the presentation before the CQRP may be postponed for a reasonable period of time. The objecting party shall present its objections to the panel at the meeting specified in the notice in whatever

manner the panel allows; provided, however, that the State Architect and contractor or subcontractor shall be entitled to present witnesses and to cross-examine adverse witnesses. Failure of the contractor or subcontractor to present its objections to the CQRP shall operate as a waiver of any recommendation by the State Architect or CQRP to the State Building Commission. The CQRP, after consideration of all evidence and arguments presented, may recommend approval, disapproval or modifications to the recommendations of the State Architect. If the CQRP unanimously rejects the recommendation for disqualification, the State Architect shall file a written report of the action with the State Building Commission; and if the State Building Commission accepts the recommendation, then no further action shall be taken. If the CQRP recommends disqualification, or if the CQRP fails to act unanimously, or if the Building Commission rejects the CQRP's unanimous recommendation not to disqualify then the action of the CQRP, including the tally of votes, will be presented at the next scheduled meeting of the State Building Commission. The objecting party will be notified in writing of this meeting ten (10) days in advance and may present its objections to the Commission at that meeting in whatever manner the Commission allows; provided, however, upon written request of the contractor or subcontractor the presentation before the Building Commission may be postponed for a reasonable period of time and the Building Commission may hear the presentation at a special meeting if it chooses to do so in its discretion.

- j. In the proceeding before the Commission, the following shall apply:
- (1) the State Architect and contractor or subcontractor are entitled but not required to submit a written summary of their respective positions to each member of the Commission, and said summary submitted by the contractor or subcontractor shall be delivered to the State Architect for distribution to the Commission not less than five (5) days before the Commission meeting and said summary submitted by the State Architect shall be delivered to the contractor or subcontractor not less than five (5) days before the Commission meeting;
 - (2) The proceeding before the Commission shall be recorded by a court reporter or tape recorded with the expense of said reporter to be borne by the unsuccessful party;
 - (3) The State Architect and contractor or subcontractor shall be entitled to submit relevant information on the issue of disqualification and length thereof; the Commission shall determine the relevancy of any information;
 - (4) If requested, the contractor or subcontractor may be represented by counsel; and
 - (5) The State Architect and contractor or subcontractor are entitled to present witnesses and to cross-examine adverse witnesses.
- k. The State Building Commission shall act upon the recommendations of the State Architect and CQRP based upon the record of the presentation. A vote by a majority of the Commission shall be sufficient to disqualify a contractor or subcontractor. Within forty-five (45) days of the presentation, the State Building Commission shall submit to the State Architect and contractor or

subcontractor its written findings and conclusions regarding whether it finds adequate evidence to disqualify the contractor or subcontractor and the effective dates of any disqualification, provided, however, said period of disqualification shall not exceed three (3) years. The decision of the Commission is final and binding.

- l. After State Building Commission action affirming disqualification, it shall be the responsibility of the State Architect, on behalf of the Commission, to notify those State departments, agencies or other entities involved in letting or funding State or other State entity contracts of those contractors or subcontractors disqualified from bidding on, or being awarded contracts for, projects under the supervision of the Commission and the extent of their disqualification.
 - m. Succeeding or related corporations, partnerships, joint ventures or other business organizations which have substantial factual or legal connections, continuity or identity with contractors or subcontractors that have been disqualified by the Commission shall be likewise disqualified from bidding, being awarded or performing work under, contracts for projects under the supervision of the State Building Commission. Whether an entity has “substantial factual or legal connections, etc.” shall be determined based upon the procedures under Section B(5) provided that the CQRP shall not be involved.
6. Miscellaneous
- a. The State Architect shall maintain a list of all contractors or subcontractors who have been disqualified from working on State Building Commission projects pursuant to Sections B(3), B(4) and B(5) herein. Such list, as is in effect on the date of advertisement for receipt of bids of any State Building Commission project, shall be included in the bidding requirements whenever practicable. A list of disqualified contractors or subcontractors for State Building Commission projects is a matter of public record and will be kept on file in the State Architect’s office. Any contractor which submits a bid for a project under the supervision of the State Building Commission shall not include in its bid any contractor or subcontractor disqualified pursuant to this policy. Furthermore, any contractor performing work on a project under the supervision of the State Building Commission shall not allow any contractor or subcontractor disqualified pursuant to this policy to perform work on said project.
 - b. If any bid is accepted which contains a contractor who has been disqualified pursuant to Sections B(3), B(4) and B(5) said bid may be reviewed and rejected by the State Architect at any time before the contract between the State and contractor is executed and delivered to the contractor.
 - c. If any contractor is disqualified pursuant to Sections B(3), B(4) and B(5) after the contract between the State and contractor is executed and delivered to the contractor, said disqualification shall not affect the contract with the contractor and said contract shall remain in full force and effect.
 - d. The conduct of the officers, directors, stockholders, employees, partners, joint venturers, or other individuals associated with the contractor or subcontractor

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may be imputed to the contractor or subcontractor if the conduct occurred on behalf of such party, or with its knowledge, approval or acquiescence.

- e. It is not the intent of this policy to create any sort of property interest on behalf of contractor or subcontractor whether express or implied and it shall not be interpreted to create any such interest.

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POLICY and PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

16.01 APPROVAL OF GRANTS MADE BY DEPARTMENTS OR AGENCIES TO ANY MUNICIPALITY, COUNTY, TOWN OR CITY, OR UTILITY IN ORDER TO ASSIST IN PROVIDING UTILITY SERVICE FOR STATE PURPOSES OR BY THE DEPARTMENT OF ENVIRONMENT & CONSERVATION PURSUANT TO TITLE 11, CHAPTER 1, T.C.A.

A. BACKGROUND

This policy sets forth the position of the State Building Commission on approval of the above such grants.

1. Departments or Agencies are authorized to participate in the construction of utility systems beneficial to the State of Tennessee subject to the approval of the State Building Commission. The head of the Department or Agency is hereby authorized to make grants, as funds are available, to any municipality, county, town or city, or utility in order to assist in providing utility service for State purposes. Such grant shall be for construction purposes only and shall be directly proportional to the benefits accruing to the State facility by the utility system. Utility systems are hereby defined as including water, sewerage, electric, gas and solid waste.
2. The Department of Environment & Conservation is authorized to participate in the construction of utility systems beneficial to the Tennessee outdoor recreation area system by Tennessee Code Annotated § 11-1-113: "Subject to the approval of the Building Commission, the Commissioner of Conservation is hereby authorized to make grants, as funds are available, to any municipality, county, town or city, or utility in order to assist in providing utility service to any State park, forest, or any unit of the Tennessee outdoor recreation area system authorized by § 11-3-303. Such grant shall be for construction purposes only and shall be directly proportional to the benefits accruing to the State facility by the utility system. Utility systems are hereby defined as including water, sewerage, electric and solid waste."

B. GENERAL POLICIES

1. It is the general policy of the State Building Commission to favor grants for construction of extensions of utility service upon terms that are fair and equitable to all parties. This would in the usual case include at least a partial recovery of the financial contribution of the Department or Agency to the project in the form of reduced water rates, rebate of tap-in fees, or otherwise, in accordance with the standard policies of the utility.

2. No approval will be granted unless the documents and information required by the following guidelines or reasons for absence are presented. All deviations from the standard policies of the utility district must be fully justified.

C. GUIDELINES

1. No commitment for participation shall be made by the Department or Agency until approval has been granted by the State Building Commission.
2. The Department or Agency shall conduct a feasibility study in conjunction with the staff of the State Building Commission Executive Sub-Committee staff which shall consider available alternatives, including installation and operation of a wholly-owned, independent system, and a report of such study shall be provided to the State Building Commission. The Department or Agency shall obtain the financial statements and consider the financial condition of the utility.
3. The Department or Agency shall provide to the State Building Commission a written agreement between it and the utility covering construction of the extension, and the quality of service to be provided by the utility, setting forth the maximum amount of funds to be paid by the State, and containing safeguards to ensure that the project is completed at or before the payment of all State funds. If the rates for water purchased and maintenance to be charged to the Department or Agency are other than the standard rates charged by the utility, the agreement shall specify the method of computing such rates. The agreement shall contain provisions setting forth any specific fees and the capacity that would exist for the State to tap into the line and a requirement that approval by the State be obtained if anyone else taps into the line and how that would affect the State's ability to tap into the line. The reason for these provisions being included is to ensure the State's capacity needs are not depleted in time and to ensure consideration is given to the State's capacity needs before allowing others to tap into the line. The agreement shall contain such provisions as are required by regulations of the Department of Finance and Administration for service contracts to the extent applicable.
4. The Department or Agency shall provide to the State Building Commission the following, either
 - a. A copy of the written policy of the utility with regard to extension of utility services, or
 - b. A written statement from the chief operating officer of the utility (1) stating that there is no written policy on extension of utility services and (2) describing in detail the practice as it is then in effect for all persons or classes of persons; and
 - c. A written statement from the Head of the Department or Agency stating either that (1) the agreement between the Department or Agency and the Utility is at least as favorable to the Department or Agency as the generally applicable policies, or (2) the agreement is less favorable than the generally applicable policies, together with the justification for deviation from the standard policies of the utility.
5. Prior to submission of the project to the State Building Commission, the Department or Agency shall obtain the approval of the State Architect for the proposed engineering plans and estimated costs.

6. The Department or Agency shall provide to the State Building Commission a worksheet showing the computation of the costs to be paid by the Department or Agency in connection with the extension of utility services, and the rates to be charged for service to the Department or Agency if other than the standard rates for persons in the same category, together with the assumptions upon which such computations were based and the sources of such assumptions.

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POLICY and PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

17.01 ISSUING DEBT FOR STATE BUILDING COMMISSION PROJECTS

- A. It is the policy of the State Building Commission that no budgeted operational expenditures (including employee labor cost) shall be reimbursed with debt proceeds unless such debt is issued pursuant to TCA 9-10-101 as tax revenue anticipation notes. This policy applies to proceeds of all State debt, whether issued by the State Funding Board, the Tennessee State School Bond Authority, or any other State debt issuer.

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POLICY and PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

18.01 PROTESTS

18.01 All construction and leasing procurements may be subject to an appeal process. Either The University of Tennessee, The Tennessee Board of Regents, or State of Tennessee Real Estate Asset Management will be the applicable State Procurement Agency (SPA) for these types of procurements.

- A. After a Request for Proposals (“RFP”) or a Request for Qualifications (“RFQ”) has been released to the public or posted on the SPA’s website, a potential proposer must submit any written questions and comments about the solicitation to the SPA no later than the questions and comments deadline set forth in the RFP or RFQ, as applicable. After the SPA responds in writing to any such written questions and comments, the State will allow seven calendar days for consideration of a protest from a potential proposer regarding any defects or ambiguities involving the RFP or RFQ, as applicable, the potential proposer knew or should have known giving rise to a protest. Any issues raised by the protesting party after the seven day period shall not be considered as part of the protest. No pre-proposal protest is allowed before a bid opening for design-bid-build construction projects or before the separate cost proposal phase of best value projects under this paragraph. A potential proposer must comply with the requirements set forth in subsections C through H below.
- B. After opening a procurement file for public inspection, which shall occur at least ten days prior to the date of the State Building Commission or Executive Sub-Committee meeting at which approval will be sought, the State will allow seven calendar days for consideration of protests from an actual proposer based on facts the proposer knows or should have known giving rise to the protest. Any issues raised by the protesting party after the seven-day period shall not be considered as part of the protest.
- C. Protests and a protest bond in accordance with Subsection D shall be submitted to the Head of the SPA who will evaluate the merits of the protest. Only written protests shall be acknowledged and considered. Protests shall be addressed to the Commissioner of the Department of General Services, the President of the University of Tennessee, or the Chancellor of the Tennessee Board of Regents, submitted on company letterhead, and be signed by a principal or company officer empowered to bind the proposer to the provisions of the procurement document. At a minimum, a protest shall identify the specific issue[s] and state justification[s] for the protest. If the SPA decides in favor of the protest then (1) the result may be disqualification of the violative bidder[s], cancellation of the procurement or other resolution and (2) the protest bond shall be returned to the proposer. If the SPA denies a protest, then the contract process proceeds unless further appealed under Subsection F.

- D. Upon the filing of a protest by an actual proposer, a stay of award shall automatically be in place. Such stay shall become effective upon receipt by the SPA of the protest and a protest bond that is in accordance with Subsection E. The SPA shall not proceed further with the procurement process or with the award of the contract until the protest has been resolved by the State in accordance with the provisions of this Policy, unless the State Architect makes a written determination that continuation of the procurement process or the award of the contract without delay is necessary to protect substantial interests of the State. It shall be the responsibility of the SPA by written request to seek such a determination by the State Architect.
- E. Neither a protest nor a stay of award shall proceed under this Policy unless the protesting party posts a protest bond. The protesting party shall post with the SPA, at the time of filing a protest, a bond payable to the State in the amount of five percent (5%) of the protester's bid amount, or, if the protest is filed relating to a procurement pursuant to an RFQ or a RFP, the bond shall be payable to the State in the amount of five percent (5%) of the Bid Target, Guaranteed Maximum Price, or other estimated maximum contract liability provided in the construction procurement document. If the protest relates to a lease procurement, the bond shall be in an amount of the greater of the sum of \$40,000 or five percent (5%) of the total value of the lease, calculated by multiplying the applicable current Facilities Revolving Fund Rate by the square footage anticipated in the procurement document, and then by multiplying the resulting number by the shortest lease term in the procurement document, stated in years. The protest bond shall be in form and substance acceptable to the State. The protesting party shall post the protest bond strictly in accordance with all requirements of this paragraph, or the protest shall be summarily dismissed.
- F. A proposer may appeal its denied protest to the Office of the State Architect ("OSA"), for further review within seven calendar days of the SPA's written decision. If after review of the protest through appeal, the State Architect decides in favor of the protest then (1) the result may be disqualification of the violative bidder[s], cancellation of the procurement or other resolution and (2) the protest bond shall be returned to the proposer. If the OSA's review of the appeal concurs with the SPA's decision to deny the protest, then the protest is considered denied and the award process proceeds. The State Architect's written determination of a denial is deemed final.
- G. If a protest is denied (i) by the SPA and the protest is not appealed to the OSA or (ii) by the State Architect, the protest bond penal sum, or any lesser amount agreed to by the State and the protesting party pursuant to G.(3) below, shall be paid to the State upon final determination or after the seven (7) day period for the appeal, conditioned upon a written decision by the State Architect that the denial was a result of:
- (1) The protest being brought or pursued in bad faith; or
 - (2) The protest not stating on its face a valid basis for protest; or
 - (3) The State suffering monetary losses based on the filing of the protest that should be recoverable as reasonably determined by the SPA and approved by the State Architect at the full or lesser amount of the penal sum of the bond provided.
- H. The protesting party must exhaust all administrative remedies provided in this policy prior to the initiation of any judicial review of the protest. Protests appealed to the chancery court from the OSA's written determination of a denial shall be by common law *writ of*

certiorari. The scope of review in the proceedings shall be limited to the record made before the OSA and shall involve only an inquiry into whether the OSA exceeded its jurisdiction, followed an unlawful procedure, or acted illegally, fraudulently, or arbitrarily without material evidence to support its action. Notwithstanding the foregoing two sentences, should a protest be received by an SPA or the State subsequent to a contract being completely executed pursuant to a procurement process, the Tennessee Claims Commission has exclusive jurisdiction to determine all monetary claims against the State.

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Attachment 1
to
BY-LAWS, POLICY, AND PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

Tennessee Wildlife Resource Agency

Disposal of Interest in Land
By Leasing of Surplus
Real Estate Property
For Crop Leases

TENNESSEE STATE BUILDING COMMISSION
Tennessee Wildlife Resources Agency

Procedures for Crop Lease

1. AN INVITATION FOR BIDS will be prepared specifying the location of the land to be crop leased, the terms and requirements of the lease and the bid opening date, place, and time. The invitation for bids will be mailed to all known prospective bidders.
2. ADVERTISEMENT
 - A. Land without legal access does not have to be advertised.
 - B. All other land to be crop leased will be advertised at least two (2) times in a two-week period in a local publication.
 - (1) All bids will be sealed and not opened until the advertised bid opening date.
 - (2) The terms, conditions, sealed bid opening date and person to contact for further information is to appear in the advertisement.
 - (3) Sealed bid opening to be no sooner than ten (10) days from the last advertisement excluding Saturdays, Sundays and holidays.
3. INSURANCE must be general liability with minimum limits of three hundred thousand dollars (\$300,000) per claimant and one million dollars (\$1,000,000) per occurrence for personal injury and property damage occasioned by the negligence or intentional acts of the lessee, its agents, servants or employees.
 - A. Less than 75 acres, general liability insurance is not required, but desirable.
 - B. More than 75 acres, general liability insurance is required. If after advertisement on 75 or more acres no bids are received, the insurance requirement may be dropped.
4. IF NO BIDS ARE RECEIVED, Tennessee Wildlife Resources Agency has the right to negotiate under the same lease terms and conditions. If terms and conditions change, a new Invitation for Bids and re-advertisement must be done.
5. WRITTEN RECORDS will be maintained regarding the evaluation and award activities.
6. FILES will be maintained in a manner that allows an accurate audit of the program.
7. WRITTEN RECORDS will be maintained at the Wildlife Management Area and in the TWRA central office, showing a minimum of:
 - A. Advertising affidavit of publication
 - B. Successful bidder
 - C. Amounts of various bids in like units (percentage of crop/dollars)
 - D. How much crop/dollars received at harvest
 - E. Record of any personal injury or property damage incidents
 - F. A lease property list showing all leases broken down into all categories
8. MULTI-YEAR LEASES not to exceed five (5) years are acceptable.
9. LEASES are to be signed and notarized by lessee and Executive Director of the Tennessee Wildlife Resources Agency.

Attachment 2
to
BY-LAWS, POLICY, AND PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

General Acquisition and Disposal
Rules and Regulations

GENERAL ACQUISITION AND DISPOSAL
RULES AND REGULATIONS
Department of Finance and Administration
Effective September 30, 2008

Fee Structure for Acquisitions and Disposals

\$0 - \$10,000	Minimum charge	\$ 500
\$10,001 - \$999,999	5% of transaction amount	
\$1,000,000 or greater	Maximum	\$10,000

Transactions that will require payment of a fee are acquisitions and disposals in fee simple, easements, land leases and some licenses. All fees will be payable at closing or at the execution of the instrument except leases which may be collected as each annual payment becomes due.

Transfers of jurisdictions, inter-agency agreements and rights of entry will be processed at no cost unless federal program requirements conflict with that policy.

The fee on an exchange of property will be based on the value of the property to be exchanged or the higher of the values, if different. The fee on gift property to the State will be based on the minimum charge.

Where disposals of State property are anticipated with outside parties requesting the disposal, the payment of an estimated fee or estimated cost of any required appraisal, whichever is greater, will be collected at the beginning of the transaction to insure follow through.

The Executive Subcommittee shall receive annual recommendations from the Commissioner of Finance and Administration regarding situations where waiving the fee seems appropriate. The Executive Subcommittee will then determine which fees could be waived. Because of the public policy or interest served, fees may be waived when:

1. The transaction results from action by the Legislature and no funds have been appropriated to cover costs associated with the transaction.
2. An outside party to primarily benefit the State initiated the transaction and the agency has no revenues other than appropriations.
3. A prior agreement states that consideration or costs will be waived.
4. Those transactions initiated by and benefiting a governmental entity or nonprofit group who is paying the fair market value, if any, and all out-of-pocket costs associated with the transaction and payment of the fee would not be in the interest of the program.

--END OF DOCUMENT--