

**BY-LAWS, POLICY AND PROCEDURE**

of the

**STATE BUILDING COMMISSION**  
of  
**TENNESSEE**

Revised ~~August 2020~~ October 2020

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The following by-laws and statements of policy and procedure are consistent with 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**  
of  
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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 (the "Commission").

**I-2 AUTHORITY**

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

**I-3 PURPOSE OF THE COMMISSION**

As a statutorily- created body, the Commission seeks to ensure that actions and decisions affecting real property in which the State has an interest are made in the best interest of the State. This role includes promoting quality in design and construction, sound fiscal management, fair competition for work, and proactive planning and decision making.

- 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 Annotated.
- 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 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 by a Higher Education Institution (as defined in Section 2.01 of the Policy and Procedure of the Commission) unless such gift or devise obligates the State to expend State funds for capital

improvements or continuing operating expenses; and, Tennessee 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 may 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 Treasury for all administrative purposes except the discharge of duties and functions directly required of such personnel by the Commission.



## **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 Sub-Committee to elect a Secretary for the Commission and Executive Sub-Committee 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 Sub-Committee 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 Treasury, 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. An Assistant State Architect shall, in the absence or disability of the State Architect, perform the duties and exercise the powers of the State Architect.

#### 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 Finance and Administration. The Executive Sub-Committee shall elect its own officers as follows:

- 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 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 Sub-Committee, 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 Sub-Committee, 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 Sub-Committee 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 the members of the Commission. The by-laws may not be in conflict with the statutes of the State or other applicable law.

\* \* \* \* \*

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**2.01 DEFINED TERMS USED IN THIS POLICY**

As used in this Policy, the following capitalized terms shall have the meanings set forth below:

- A. "Capital Grant" means an agreement whereby the State agrees to provide funds to any entity in order to fulfill an appropriation set forth in an annual Appropriations Bill or Bond Bill passed by the Legislature for capital outlay or capital maintenance.
- B. "Capital Improvement" means, regardless of Total Project Cost and funding source (public or private funds or both) a project on State Property, excluding Highway Projects, that involves:
  - 1. The construction or erection of new buildings or Structures, including prefabricated and modular buildings and Structures that are or will be attached to a permanent foundation;
  - 2. The demolition of a building or structure;
  - 3. A Renovation; or
  - 4. A project funded in an Appropriations Bill or Bond Bill passed by the Legislature with outlay dollars, or a project funded with residual funds.
- C. "Capital Maintenance" means:
  - 1. Work meeting the definition of Major Maintenance (defined in subsection P below); or
  - 2. Maintenance or construction in a single building or structure, within a six (6) month period or less, and having a Total Project Cost, taking into account all contracts pursuant to which the work was performed, in excess of \$100,000 funded by sources other than capital appropriations; or
  - 3. A project funded in an Appropriations Bill or Bond Bill passed by the Legislature with maintenance dollars, or a project funded with residual funds.
- D. "Capital Project" means, collectively, any project that is a Capital Improvement or Capital Maintenance, whether overseen by the State or performed as a gift in place.

For clarification purposes:

1. It is the express intent of the Commission that Capital Project work will not be split into separate projects to avoid any thresholds.
  2. Highway Projects (as defined in subsection J below) are not “Capital Projects”, but the construction of buildings or structures on Highway Right-of-Way is a “Capital Project”.
- E. “Head of the Higher Education Institution” means: (i) as to the Tennessee Board of Regents and any institution thereunder, the Chancellor, and (ii) as to any other Higher Education Institution, the President.
- F. “Head of the SPA” means:
1. As to STREAM, the Deputy Commissioner of the Department of General Services for STREAM;
  2. As to the University of Tennessee, the Executive Director of the Office of Capital Projects;
  3. As to Tennessee Board of Regents, the Executive Director of the Department of Facilities Development;
  4. As to East Tennessee State University, the Associate Vice President for the Office of Facilities Management, Planning, and Construction;
  5. As to Austin Peay State University, the Director of the Office of University-Capital Planning, Design and Construction;
  6. As to Tennessee Technological University, the Director of the Office of Capital Projects and Planning;
  7. As to Middle Tennessee State University, the Assistant Vice President of the Department of Campus Planning; and
  8. As to University of Memphis, the Chief University Planning Officer.
- G. “Higher Education Donated Property” means the fee, easement, remainder and reversionary interests in real property acquired by a Higher Education Institution by gift or devise.
- H. “Higher Education Foundation” means a foundation created for the primary purpose of benefitting a Higher Education Institution.
- I. “Higher Education Institution” means the University of Tennessee, the Tennessee Board of Regents, Austin Peay State University, East Tennessee State University, Middle Tennessee State University, Tennessee State University, Tennessee Technological University, the University of Memphis, or a campus or institution of one of the aforementioned.
- J. “Highway Project” means (i) a demolition of a building or structure acquired by the Department of Transportation for Highway Right-of Way; or (ii) design and/or construction of roads or bridges by the Department of Transportation in accordance with T.C.A. § 54-5-101 et seq.



- K. "Highway Right-of-Way" means land acquired by the Department of Transportation for use in connection with roads and bridges constructed by the Department of Transportation in accordance with T.C.A. § 54-5-101 et seq.
- L. "Interest" means an interest in real property such as a fee interest, leasehold interest (excluding work by a landlord pursuant to a lease approved by the Commission) or easement interest.
- M. "Land Acquisition" means the acquisition of a fee, easement, or remainder interest in real property by any agency, department, or institution of State government, except when the real property is in the Highway Right-of-Way.

For clarification purposes, it is the express intent of the Commission that no Land Acquisition be split into separate transactions to avoid any thresholds.

- N. "Land Disposal" means the disposal of an Interest in State Property, including an interest or right in minerals, coal, natural gas, oil, timber and any other energy related resources, by any agency, department, or institution of State government, except for disposals by the Department of Transportation that do not need to be approved by the Commission pursuant to T.C.A. § 12-2-112(a)(8).
- O. "Land Transactions" means Land Acquisitions and Land Disposals.
- P. "Major Maintenance" means, pursuant to T.C.A. § 4-15-107, the repair or renovation of any building or Structure or any portion thereof on State Property that is being funded by direct appropriations for "major maintenance" or that is estimated to have a Total Project Cost in excess of \$100,000.
- Q. "On a Quarterly Basis" means no later than the twenty fifth (25<sup>th</sup>) day of each January, April, July, and October.
- R. "Renovation" means, pursuant to T.C.A. § 4-15-107 the change in the functional use or operation of space in existing buildings or structures on State Property such that its occupancy changes for building code, insurance, funding, or bond purposes.
- S. "State" means, the State of Tennessee and all of its agencies, departments, institutions or boards.
- T. "State Procurement Agency" or "SPA" means, as appropriate, the Department of General Services, State of Tennessee Real Estate Asset Management ("STREAM"); the University of Tennessee, Office of Capital Projects ("UT"); the Tennessee Board of Regents, Department of Facilities Development ("TBR"); East Tennessee State University, Office of Facilities Management, Planning, and Construction ("ETSU"); and Austin Peay State University, Office of University Design and Construction ("APSU"); the Tennessee Technological University, Office of Capital Projects and Planning ("TTU"); the Middle Tennessee State University, Department of Campus Planning ("MTSU"); and the University of Memphis, Department of Campus Planning and Design ("UofM").
- U. "State Property" means property in which the State of Tennessee or any of its departments, institutions, or agencies has an Interest.
- V. "STREAM" means the State of Tennessee Real Estate Asset Management division of the Department of General Services.

- W. “Structure” means any monument or construction attached to State Property having health, safety, and welfare regulatory considerations; requiring State Fire Marshal approval; or designed to accommodate eight or more people.
- X. “THEC” means the Tennessee Higher Education Commission.
- Y. “THC” means the Tennessee Historical Commission.
- Z. “Total Project Cost” means the total cost of a project including, construction cost, design cost, furniture and moveable equipment, contingency, and all other hard and soft costs associated with the completion of the project. The following are not included in the “Total Project Cost”: the costs of monthly utilities; recurring, every day and routine maintenance of existing buildings, systems and grounds; telephones/network installations and relocations, except those included in the Capital Project; custodial services; and personnel and operating costs associated with the aforementioned items.

## 2.02 ITEMS UNDER THE AUTHORITY OF THE COMMISSION

Pursuant to T.C.A. §§ 4-15-102, 4-15-104, 4-15-107, 12-2-112, 12-2-114, 12-2-115, or the applicable statute listed below, the following matters are under the authority of the Commission and addressed in this Policy and Procedure document.

- A. Design and Construction Projects. The Commission has authority to approve and supervise in accordance with statutes and policies the following two categories:
  - 1. All Capital Projects and other matters described below.
    - i. The authority of the Commission with respect to Capital Projects includes authority:
      - a. To proscribe standards and promulgate rules and regulations for the construction of State buildings and the procedure to be followed with respect thereto;
      - b. To approve designer, consultant, and contractor selections; delivery methods; project budget allocations; project funding; project descriptions; high performing building and sustainability criteria; and other standards;
      - c. Over all advertisements and awards of contracts for (i) the construction, erection and demolition, and to furnish, install or provide goods or materials that are incidental to Capital Projects; and (ii) for professional design, surveying, or planning services. Specifically included herein are contracts for master planning and for consulting services provided by architects, engineers and other specialty consultants; and
      - d. Pursuant to T.C.A § 4-15-102(c)(2), to waive any rule, regulation, specification or policy regarding the manufacturer of the material to be utilized in a Capital Project so long as the State receives an equivalent warranty or guarantee from the requesting manufacturer and evidence that such manufacturer is financially capable of performing such warranty or guarantee or for any other reason within the discretion of the Commission.

- ii. The Commission shall consider the comments of the Tennessee Historical Commission prior to approving or disapproving plans for Capital Projects on State owned real property, buildings or structures that may be of historical, architectural or cultural significance in compliance with T.C.A § 4-11-111(e).
    - iii. No contract for work associated with a Capital Project shall be awarded until the project has been submitted to and approved by the Commission.
  2. Improvements to real property by a Higher Education Foundation where it is the documented intent of the Higher Education Foundation (as evidenced by meeting minutes or otherwise) to transfer the real property or the operation of the real property to a Higher Education Institution and the cost is in excess of \$500,000. Furthermore, no contract for the improvement of State Property or the demolition of structures on State Property by a Higher Education Foundation shall be awarded until the project has been submitted to and approved by the Commission.
- B. Acquisitions of State Property (Fee, Lease, Easement, Other). All Land Acquisitions are under the authority of the Commission. Considerations related to Land Acquisitions include:
  1. The approval of the Commission is not required for the acquisition of Higher Education Donated Property where it is the intent of the Higher Education Institution to promptly sell the Higher Education Donated Property or such gift or devise does not obligate the State to expend funds for capital improvements or operating expenses. However, information about such gift or devise shall be reported to the Commission.
  2. The authority of the Commission includes authority over all proposals to utilize a third party to facilitate a Land Acquisition.
  3. The authority of the Commission includes authority over all leases in accordance with T.C.A. §§ 12-2-114 and 12-2-115.
  4. Leases to the Tennessee Wildlife Resources Agency do not require approval of the Commission unless they are of the type described in T.C.A. §4-15-102(d)(1)(D), but copies of such leases shall be provided to the Commission for their review.
- C. Disposals of State Property (Fee, Lease, Easement, Other). All Land Disposals are under the authority of the Commission. Considerations related to Land Disposals include:
  1. The authority of the Commission with respect to disposals of State Property includes authority over all leases described in T.C.A. §12-2-115(b).
  2. The approval of the Commission is not required for the disposal of Higher Education Donated Property, the acquisition of which was not approved by the Commission (See subsection B.1 above).
  3. The Commission shall consider the comments of the Tennessee Historical Commission prior to approving or disapproving plans for disposals of a fee interest in State real property, buildings or structures that may be of historical, architectural or cultural significance in compliance with T.C.A. §4-11-111(e).

4. Where the Interest being disposed of is pursuant to a crop lease by the Tennessee Wildlife Resources Agency pursuant to T.C.A. §12-2-112(d), such crop leases shall be reviewed on a cumulative annual basis so long as the leases were procured pursuant to procedures and utilizing forms approved by the Commission. Additionally, leases by the Tennessee Wildlife Resources Agency do not require approval of the Commission unless they are of the type described in T.C.A. §4-15-102(d)(1)(D), but copies of such leases shall be provided to the Commission for their review.
- D. Capital Grants. All Capital Grants are under the authority of the Commission.
  - E. Private Funding. All leases and other contracts that may involve the use of private funds for construction or improvements situated on State Property, are under the authority of the Commission.
  - F. Construction at Local Schools under State Responsibility. Expenditures of educational capital outlay funds for local school systems or schools whenever the Commissioner of Education is authorized by the State Board of Education to take responsibility for the operation of any local school system or school that has been placed on probation pursuant to T.C.A. §49-1-602 et. seq. are under the authority of the Commission.
  - G. Other Statutorily Delegated Matters. The Commission also has authority over all other matters delegated to the Commission by statute, including, but not limited to: approvals of lease agreements related to lands under the control or supervision of the Department of Environment and Conservation pursuant to T.C.A. § 11-3-111; approvals of tourism development zones pursuant to T.C.A. § 7-88-108; approvals of leases of Department of Correction land and facilities to private enterprise pursuant to T.C.A. § 41-6-207; and approvals of contracts for correctional services pursuant to T.C.A. § 41-24-104.

### **2.03 STATUS UPDATE REQUIREMENTS FOR ITEMS UNDER THE AUTHORITY OF THE COMMISSION**

It is the intent of the Commission that the real time status of approved items under the authority of the Commission be available to the Office of the State Architect and the offices of the members of the Commission.

Until such real time status information is made available, each SPA shall submit a document indicating the status of all items approved by the Commission, including under the delegated authority of the Commission, in a form approved by the State Architect On a Quarterly Basis. The State Architect shall distribute submitted documents to the offices of the members of the Commission upon receipt and maintain copies in the State Architect's files. The Executive Sub-Committee shall acknowledge, in its meetings, the receipt of documents or the failure to provide the documents required to be submitted On a Quarterly Basis. The status requirements detailed below are in addition to any other reports set forth in other sections of this Policy.

- A. Capital Projects. Information on Capital Projects shall include:
  1. A color coded designation system to show if projects are proceeding on the approved schedule, delayed beyond the approved schedule, or on hold and not proceeding forward, with an explanation for any delayed or on hold projects. It is the intent of the Commission

that the “approved schedule” be the schedule agreed to by the SPA, the intended user agency(s)/tenant(s), and the project delivery team (designers, contractors and consultants).

2. A statement if a designer agreement has not been executed within six (6) months of an Executive Sub-Committee approved designer selection.
  3. A statement if construction has not commenced within twelve (12) months of approval of a construction project by the Commission.
- B. Land Transaction Reporting. Information on Land Transactions shall include all acquisitions and disposals in fee or by easement that have been approved by the Commission or the Executive Sub-Committee that are active but have not closed. Any acquisition or disposition transaction not included on the status update on which the SPA desires to pursue must be reapproved by the Commission. Land Transactions that are no longer being pursued should be noted as being abandoned and removed from the list.

Furthermore, for all acquisitions and disposals of interest in real property, closed in the previous quarter, that have been previously approved by the Executive Sub-Committee, the following information shall be reported back to the Executive Sub-Committee by STREAM within one (1) month after the end of the quarter:

1. Resulting appraised value(s);
  2. Final purchase or sale price;
  3. Amount(s) and source(s) of funding used or received;
  4. Address of the property; and
  5. Entity with jurisdiction over the property.
- C. Acquisition Leases. Information on the status of leases where the State is the tenant shall include:
1. The status of all leases which are effective between the State and a landlord. This status reporting would include the effective date of the lease, the commencement date of the term, the expiration of the term set forth in the lease (taking into account any exercised extensions or renewals approved by the Commission or Executive Sub-Committee, as applicable), and include information about status of a procurement, renewal options or holdover status.
  2. The status of procurement efforts of all leases with less than eighteen (18) months remaining in the term specifically approved by the Commission.
  3. On a Quarterly Basis, each SPA must provide the information required by T.C.A. § 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.
- D. Disposal Leases. Information on the status of all leases where the State is the landlord shall include:
1. The status of all leases which are effective between the State and a tenant. This status reporting would include the effective date of the lease, the commencement date of the term,

the expiration of the term set forth in the lease (taking into account any exercised extensions or renewals approved by the Commission or Executive Sub-Committee, as applicable), and include information about status of a re-procurement, renewal options or holdover status.

2. On a Quarterly Basis, each SPA must provide the information required by T.C.A. § 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.
- E. Other Items. Information on the status of all procurements and other items shall be provided to ensure that reporting is comprehensive of all items approved by the Commission and the Executive Sub-Committee, including those items approved under a delegation of authority. Additionally, reporting will be provided to the Commission On a Quarterly Basis of Higher Education Donated Property where it is the intent of the Higher Education Institution to promptly sell the Higher Education Donated Property or such gift or devise does not obligate the State to expend funds for capital improvements or operating expenses.

#### **2.04 DELEGATION OF APPROVAL AUTHORITY OF ITEMS UNDER THE AUTHORITY OF THE COMMISSION**

In addition to the delegations expressly set forth in other sections of the Policy, approvals of items meeting the conditions set forth below are delegated to the parties described in each item and, unless otherwise noted, will be effective upon issuance of written approval by all of the specified parties. For purposes of clarification, the State Architect and the Commissioner of Finance and Administration may delegate their signature authority under this Section 2.04 to members of their staff.

The Commission reserves the right to alter, amend, cancel or revoke any of the delegations under this Section 2.04 at any time, and any member of the Commission shall have the right to revoke a delegation under this Section 2.04 as to a specific requested item and require that such item be presented to the Commission or Executive Sub-Committee, as appropriate, for review and approval. Except as permitted in the previous paragraph, all matters delegated in this Section 2.04 may not be further delegated without the express approval of the Commission.

Any approvals made pursuant to delegations under this Section 2.04 shall be reported to the Commission or the Executive Sub-Committee at its next regularly scheduled meeting using a form approved by the State Architect. Transactions not fully consistent with established Commission policies and transactions which, in the judgment of one of the delegated parties merit consideration by the Commission or Executive Sub-Committee, as applicable, shall be submitted to the appropriate body.

##### **A. Initial Approvals of Capital Projects.**

1. The authority of the Commission to approve Capital Improvements with a Total Project Cost of less than \$100,000 is delegated to the Head of the SPA managing the Capital Project so long as all of the following conditions are met:
  - i. If the determination of the THC is required by statute, the THC has determined that the Capital Improvement will not adversely impact a historic structure;

- ii. The Capital Improvement will not be funded in any part by bond proceeds or residual proceeds from bond funding; and
- iii. The Capital Improvement is not being provided by a Higher Education Foundation.

If the Capital Improvement is the construction or erection of a new building or structure or for the demolition of a building or structure, the approval is **not** effective until the Capital Improvement has been reported to the SBC or ESC. No contracts may be fully executed and no work may commence prior to such reporting.

2. The authority of the Commission to approve Capital Projects with a Total Project Cost of \$100,000 up to \$500,000 is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all of the following conditions are met:
  - i. If the determination of the THC is required by statute, the THC has determined that the Capital Project will not adversely impact a historic structure;
  - ii. The Capital Project will not be funded in any part by bond proceeds or residual proceeds from bond funding; and
  - iii. The designer and contractor for the Capital Project were procured through a process approved by the Commission for projects of this value; and
  - iv. The Capital Project is not being provided by a Higher Education Foundation.

If the Capital Project is the construction or erection of a new building or structure or for the demolition of a building or structure, then the approval is **not** effective until the Capital Project has been reported to the SBC or ESC. No contracts may be fully executed and no work may commence prior to such reporting.

B. Approvals of Revisions to Existing Capital Projects.

1. The authority of the Commission to approve the use of a construction delivery method other than design/bid/build for Capital Projects is delegated jointly to the State Architect and the Head of the SPA managing the Capital Project.
2. The authority of the Commission to approve revisions in funding for Capital Projects is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all of the following conditions are met:
  - i. There is no increase in the funding previously approved by the Commission;
  - ii. The Capital Project will not be funded in any part by bond proceeds or residual proceeds from bond funding; and
  - iii. If the change in funding affects the amount of gift funds in a project, then the approval is not effective until the revision has been reported to the SBC or ESC.
3. The authority of the Commission to approve the addition of scope in a Capital Project is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all of the following conditions are met:



- i. The original scope and the added scope can be completed without an increase in the funding previously approved by the Commission;
    - ii. The cost of the additional scope is less than \$500,000;
    - iii. The Capital Project will not be funded in any part by bond proceeds or residual proceeds from bond funding;
    - iv. The additional scope is not contrary to the originally approved project intent (Ex. the addition of an additional building to a campus-wide project or the addition of carpet replacement to an interior renovation project are additions that are in keeping with the original project intent but the addition of carpet replacement to an exterior renovation project is an addition that would not be in keeping with the original project intent); and
    - v. If the determination of the THC is required by statute, the THC has determined that the additional scope will not adversely impact a historic structure.
  4. The authority of the Commission to approve a guaranteed maximum price (“GMP”) for a construction manager/general contractor (“CM/GC”) construction contract is delegated jointly to the State Architect and the Head of the SPA managing the Capital Project so long as funds are available within the existing project funding to fund the guaranteed maximum price and other components of the Capital Project without the need for additional funds.
  5. The authority of the Commission to approve a construction cost established by a bid that exceeds the previously approved maximum allowable construction cost is delegated jointly to the State Architect and the Head of the SPA managing the Capital Project so long as funds are available within the existing project funding to fund the bid established construction cost and other components of the Capital Project, including future subprojects, without the need for additional funds.
- C. Approvals of Contract Amendments.
1. The authority of the Commission to approve amendments to consultant contracts previously approved by the Commission is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all of the following conditions are met:
    - i. If the amendment includes an extension of the term, the original contract specifically allows for extensions of term; and
    - ii. If the amendment includes an increase in the maximum liability of the contract, the increase in funding is proportionate to the original funding amount and from a funding source identical to or substantially similar to the original funding source.
  2. The authority of the Commission to approve amendments to a previously approved master plan for a Higher Education Institution is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all of the following conditions are met:
    - i. The master plan amendment has been approved by THEC;



- ii. The master plan being amended was originally approved by the Commission and THEC within the previous ten (10) years; and
    - iii. The amendment does not affect the real estate usage or land acquisition component of the master plan.
  3. The authority of the Commission to approve amendments to Capital Grants is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all of the following conditions are met:
    - i. The purpose of the amendment is solely to reallocate approved funding, add line item funding from an approved capital appropriation, or extend the term of the Capital Grant by one (1) year or less;
    - ii. The Capital Grant is not and will not be funded in any part by bond proceeds or residual proceeds from bond funding; and
    - iii. The Capital Grant is not provided through or in connection with the Department of Economic and Community Development.
- D. Approvals of Emergency Capital Projects. In the event of an emergency requiring a Capital Project at a State-owned facility that is not used by a Higher Education Institution, 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. Higher Education Institutions are responsible for their own emergency response procedures, a copy of which shall be kept updated on the website of the Office of the State Architect.
- E. Approvals of Acquisitions and Disposals of State Property.
  1. The authority of the Commission to approve acquisitions of land in fee or by permanent easement is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all of the following conditions are met:
    - i. The land being acquired: (A) does not contain more than 250 acres, (B) is contiguous with other State owned property, and (C) is vacant or has structures located thereon that will be demolished within one (1) year of acquisition;
    - ii. The land being acquired is listed on a master plan for a Higher Education Institution that has been approved by the Commission, or is listed on the State Lands Acquisition Fund Priority List, or the Wetlands Priority List;
    - iii. The purchase price for the land is not reasonably anticipated to exceed \$500,000 based on discussions with the prospective seller or value analysis performed by State employees;
    - iv. The acquisition will not be funded in any part by bond proceeds or residual proceeds from bond funding; and
    - v. The acquiring entity has certified in writing that no additional management costs are anticipated if the land is acquired.

2. The authority of the Commission to approve the disposal in fee of surplus property held by the Department of Transportation is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all requirements of T.C.A. § 12-2-112(a)(9) have been satisfied and the grantee will be the sole adjoining landowner or the only landowner who responded to the notification sent by the Department of Transportation to all adjoining landowners.
3. The authority of the Commission to approve disposals of State Property for public use easements and utility easements to governmental entities and/or public utility companies is delegated jointly to the State Architect and the Commissioner of Finance and Administration so long as all of the following conditions are met:
  - i. The consideration for the conveyance is mutual benefit or an amount not to exceed \$100,000 based on an appraisal; and
  - ii. The property being affected by the easement was not acquired with bond proceeds or residual proceeds from bond funding.
4. The authority of the Commission to approve timber sales is delegated to the State agency having jurisdiction over the State Property where the timber is located so long as all rules and requirements of the Department of General Services and said agency are followed and satisfied.

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**POLICY and PROCEDURE**  
of the  
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of  
TENNESSEE

**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 SPA.
- 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, Commission approval of all typical 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 to establish a designer selection policy meeting the goal set forth below**

*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 and 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 and reliable and accurate cost estimates on State capital projects.
- Encourage clear communication between the State and design professionals interested in working on State projects.

**POLICY and PROCEDURE**

of the

**STATE BUILDING COMMISSION**

of

**TENNESSEE****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 posted on the website of the Office of the State Architect ([www.tn.gov/osa](http://www.tn.gov/osa)).
- B. The following sets forth the signature and other requirements for a binding designer agreement:
1. STREAM Designer Agreements. A designer (architect, engineer, or other licensed professional) agreement must be signed by the designer, the Head of the SPA, and the State Architect (for conformance with Commission Policy). The availability of funds to pay amounts under the designer contract must be 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 to ensure compliance with statutes, policies and procedures. All such contracts over \$100,000 must also be approved by the signature of the Attorney General to ensure form and legality.
  2. Higher Education Institution Designer Agreements. A designer (architect, engineer, or other licensed professional) agreement must be signed by the designer, the Head of the SPA, and the State Architect. The Head of the SPA is signing to document compliance with statutes, policies and contracting procedures. Additionally, the following signatures are required:
    - a) Head of the Higher Education Institution.
    - b) Head of the Financial Office of the Higher Education Institution for certification of funding.
    - c) Head of the Legal Office of the Higher Education Institution as to form and legality.
- C. All supplements to designer agreements must be approved and executed by the same parties approving and executing the original agreement and any previous supplement(s).

**4.02 MILITARY NATIONAL GUARD BUREAU DESIGNER AGREEMENTS**

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

**4.04 CONSULTANT CONTRACTS**

The following sets forth the signature and other requirements for a binding consultant agreement:

- A. STREAM Consultant Agreements. An agreement for consulting services must be signed by the consultant, the Head of the SPA, and the State Architect (for conformance with Commission Policy). The availability of funds to pay amounts under the consultant contract must be 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 to ensure compliance with statutes, policies and procedures. All such contracts over \$100,000 must also be approved by the signature of the Attorney General to ensure form and legality.
- B. Higher Education Institution Consultant Agreements. An agreement for consulting services must be signed by the designer, the Head of the SPA, and the State Architect. The Head of the SPA is signing to document compliance with statutes, policies and contracting procedures. Additionally, the following signatures are required:
  - 1. Head of the Higher Education Institution.
  - 2. Head of the Financial Office of the Higher Education Institution for certification of funding.
  - 3. Head of the Legal Office of the Higher Education Institution as to form and legality.
- C. All amendments to consultant agreements must be approved and executed by the same parties approving and executing the original agreement and any previous amendment(s).

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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 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 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 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 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; and
  - 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**

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.

## ITEM 5

## CONSTRUCTION PROCUREMENT

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.
4. For projects for a Higher Education Institution, bids or proposals may be received and publicly opened and read in the city and county where the office of the Head of the Higher Education Institution is located.

### C. Advertisement and invitation

1. Following review and approval of Bidding or Proposal Documents, the SPA shall make solicitations for bids publicly known. To this end, the following procedures shall be followed:
  - a) The SPA will notify the Designer in writing to proceed to the Bidding Phase of the project.
  - b) The SPA shall provide an Advertisement for Bids or Invitation to Bid for each project bid.
  - c) The SPA will furnish necessary information regarding the project to appropriate trade organizations for publication in their respective bulletins when appropriate. The SPA 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 SPA'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; and
  - e) Contractor License requirements.
3. The time, date, and place of bid or proposal opening may be changed, if the SPA 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 SPA 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 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 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 Commission.

### 5.03 PROCUREMENT THROUGH IN-PLACE GIFT

The purpose of these guidelines is to establish the conditions precedent for approval by the Commission 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 Commission's authority to approve and supervise all projects involving public or private funds in which the State has an interest granted in T.C.A. § 4-15-102(a)(1), the following criteria shall apply:

1. The Commission must be presented documentation from the Donee (State entity with jurisdiction over the property) 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 together with evidence that all necessary funding is in place and available prior to the commencement of construction.
2. The Commission 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 Commission in accordance with Item 3 of the 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 Commission:
  - 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 Commission 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 Commission, 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 Commission 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 Commission projects.

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**POLICY and PROCEDURE**  
of the  
**STATE BUILDING COMMISSION**  
of  
**TENNESSEE**

**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. Change Order Requirements
  - 1) Prior to execution of a change order, the availability of funds shall be certified by the Commissioner of Finance and Administration as required by T.C.A. § 9-4-5113 or, in the case of a Higher Education Institution, by the Head of the Financial Office of the Higher Education Institution.

- 2) 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 the SPA.
- 3) Change orders which result in a net aggregate increase or decrease in excess of ten percent (10%) 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 Commission.
- 4) The above provisions will be inserted by the appropriate SPA 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), State Architect(s) and all Commission members from the date of Commission approval of a specific project to the date of completion of the project.

**6.07 TEAM EVALUATION**

Upon completion of any State project under the jurisdiction of the Commission for which the State has employed a Designer or a Contractor, evaluation forms prepared by the OSA shall be completed by appropriate SPA personnel responsible for the administration of the project, and filed with the OSA. At the option of the appropriate design, construction and State personnel, under the direction of SPA personnel, evaluation forms may be completed for the major consultants of the Designer for the project. Evaluation forms and procedures are on file with the OSA.

**6.08 DESIGNER ADDITIONAL SERVICES**

When the total amount of additional services, as defined in the Standard Terms and Conditions for Agreements Between Owner and Designer (SBC-6a), approved for an individual project exceeds twenty percent (20%) 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 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 Commission.

**6.10 JOB ORDER CONTRACTING (JOC)**

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

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**POLICY and PROCEDURE**  
of the  
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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 T.C.A. §§ 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 SPA. 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 Commission 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 SPA that is a Higher Education Institution must be submitted to the THEC 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 THEC 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 Commissioner of General Services, the Head of the Higher Education Institution or the Chief Financial Officer for the University of Tennessee , 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 Commissioner of General Services, the Head of the Higher Education Institution or the Chief Financial Officer for the University of Tennessee, 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 as 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 Commissioner of General Services or the Head of the Higher Education Institution, 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, or by the Head of the Higher Education Institution procuring the lease, except in the case of the University of Tennessee, which shall be executed by the Chief Financial Officer.

### 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 STREAM or other agency procured 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 Higher Education Institution procured 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 or Finance and Administration office of the Higher Education Institution (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 GENERAL LEASES WHERE THE STATE IS LESSOR

- A. In the disposal of leasehold interest in any State 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 disposal leases 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 lease out State Property, it shall notify the Department of General Services using forms prepared by STREAM. 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 lease.
  - 2. STREAM shall review the request and determine whether any other State agency or institution has a need for the property. After determining that the disposal is in the State's best interest, STREAM shall submit a recommendation to the Executive Sub-Committee, which shall have authority to take appropriate action in accordance with the above policy.
  - 3. Qualified State employees may assess the value of leases 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 in compliance with T.C.A. § 12-2-112(a)(3). A minimum of two (2) weeks shall be allowed for responses to such advertisement.

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

- A. In accordance with T.C.A. § 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 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 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 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**

of the

**STATE BUILDING COMMISSION**

of

**TENNESSEE****8.01 GENERAL ACQUISITION AND DISPOSAL**

A. Acquisitions and dispositions of interests in real property under T.C.A. § 4-15-101, et seq., and T.C.A. § 12-2-112, et seq., shall be submitted to the Executive Sub-Committee prior to any commitment to complete a transaction. 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 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 Commission 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.

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.

## ITEM 8

# REAL PROPERTY ACQUISITION AND DISPOSAL

- 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 STREAM's compliance with the laws, policies, rules and regulations governing the acquisition and disposal of interests in real property. 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 T.C.A. § 12-2-112(a)(8), the Commissioner of Transportation may execute deeds to convey surplus right-of-way property without Commission approval, contingent upon (i) all current procedures remaining the same, (ii) the fair market value being \$75,000 or less, (iii) with the transaction being submitted to STREAM 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 General Services. 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.

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 Subsection 8.01.G or Section 8.02 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 and Administration and approved by the Commission, and any incidental costs such as dismantling, removal, the cleaning up of the premises, survey, appraisal, etc.



## ITEM 8

# REAL PROPERTY ACQUISITION AND DISPOSAL

- I.
  1. If any property is conveyed under Subsection 8.01.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 Commission to be necessary to safeguard the interest of the State.
  2. The Commissioner of General Services 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. Intentionally Deleted
- 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 or for a purchase price less than the fair market value of the land.
  2. In the event that a Facilitator is used pursuant to Subsection 8.01.K.1, 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 Subsection 8.01.K.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 easement or other less than fee interest in any State 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. Disposals of leasehold interests are addressed in Item 7 of this Policy.
- 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 General Services, using forms prepared by STREAM. 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. STREAM 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 General Services 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 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 in compliance with T.C.A. § 12-2-112(a)(3). 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, agency or institution of the State of Tennessee (each an “entity” as used herein), the following procedures are to be followed:
  - a) If a boundary problem is discovered, the State entity having jurisdiction over the disputed property will have a staff real estate professional investigate the problem.
  - b) The entity’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 entity will contact and work in conjunction with STREAM to resolve the dispute.
  - d) STREAM 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 entity having jurisdiction over the property and STREAM will devise a potential solution to the problem. Approval to proceed will be required by both STREAM and the State entity having jurisdiction before contacting the affected property owner(s).
  - e) Upon receiving approval, STREAM 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 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, STREAM will approve the settlement of the boundary and report the settlement to the 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 entity 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:

## ITEM 8

## REAL PROPERTY ACQUISITION AND DISPOSAL

- a) Once a claim has been made by an adjoining property owner against State Property, the State entity 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 entity 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 entity'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 entity'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 entity determines in its discretion that the claim has possible merit, then the entity will contact STREAM who will review all the documentation presented and make any independent investigation deemed necessary.
- f) STREAM will conduct an investigation of all the records and testimonies associated with the disputed tract and make a boundary line determination.
- g) The entity and STREAM 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 entity having jurisdiction over the property, STREAM and the Commission. Any agreements that involve five acres or less can be approved by the entity and STREAM and will be reported to the Commission at the next scheduled meeting.
- i) Once a boundary line agreement has been reached and approved, STREAM 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, sharing of the surveying, deed preparation and recording fees is encouraged by the requesting agency and the affected property owner. The entity and the property owner may negotiate the fees before any work is begun.

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**POLICY and PROCEDURE**

of the

**STATE BUILDING COMMISSION**

of

**TENNESSEE**

**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:

	<b>PERCENT SHARES OF TOTAL</b>		
<b>CONSTRUCTION COSTS:</b>	<b>FEDERAL</b>	<b>STATE</b>	<b>LOCAL</b>
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
Extension of utilities from Armory to property line	75	12.5	12.5

## ITEM 9

## STATE / LOCAL FUNDING OF ARMORIES

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 General Services 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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**POLICY and PROCEDURE**  
of the  
**STATE BUILDING COMMISSION**  
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**10.01 STATE PARTICIPATION FOR CONSTRUCTION OF CHAPELS AT FACILITIES OF THE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES 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 AND SUBSTANCE ABUSE SERVICES 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 and Substance Abuse (TDMH) or the Department of Intellectual and Developmental Disabilities (DIDD) for 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 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 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 Commission on such forms and in such manner as the 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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**POLICY and PROCEDURE**  
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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 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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**POLICY** and **PROCEDURE**  
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**12.01 INDIVIDUAL CONFLICTS OF INTEREST**

Commission members (“Members”), representatives to the Commission for Members, the Office of the State Architect, the 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 OCIs 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.

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**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**  
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**14.01 MANAGEMENT OF FACILITIES REVOLVING FUND**

- A. The State Office Buildings and Support 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. STREAM 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 Commission.
- B. The Commissioner of General Services will administer the FRF. The Commissioner of General Services has empowered STREAM to recommend policy, develop procedures and operational guidelines, and direct the day-to-day operation of the fund. STREAM shall:
1. Work as a liaison between the respective agencies and the Commission;
  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 Commission:
    - 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 Commission 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 Commission 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 STREAM. 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 Commission 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 Commission 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 Commission 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 Commission 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 STREAM 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 Commission.

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 funding issues and other federal programs, such as the Federal Office of Management & Budget's Uniform



Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (OMB's Uniform Guidance).

- 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 Commission'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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**QUALIFICATIONS OF CONTRACTORS  
AND SUBCONTRACTORS**

**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 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 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 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 subcontractor

## QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS

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 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 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 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 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 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.

## QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS

- 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 Commission, from bidding on or being allowed to work on future projects under the supervision of the Commission.
  - b. The period of disqualification may continue for a period of time determined by the 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 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;

## QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS

- (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 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 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 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 Commission may disqualify a contractor or subcontractor under this policy.
  - g. The State Architect, CQRP, and 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
- 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. The information referred to in this subsection (a) may be derived

## QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS

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 Contractor Qualifications Review Panel (“CQRP”) will be composed of the following:
  - (1) A representative of State government, selected by STREAM. 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 STREAM and industry organizations to provide their representatives for the purpose of empaneling 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 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 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

## QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS

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 Commission but such information will be available to the 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 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 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 Commission. The CQRP, after consideration of all evidence and arguments presented, may recommend approval, disapproval or modifications to the

## QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS

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 Commission; and if the 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 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 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 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 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



## QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS

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 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 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 Commission project, shall be included in the bidding requirements whenever practicable. A list of disqualified contractors or subcontractors for 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 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 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 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 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 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 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 Commission.
2. The Department or Agency shall conduct a feasibility study in conjunction with the staff of the 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 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 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 General Services for service contracts to the extent applicable.
4. The Department or Agency shall provide to the 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 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 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 COMMISSION PROJECTS**

- A. It is the policy of the Commission that no budgeted operational expenditures (including employee labor cost) shall be reimbursed with debt proceeds unless such debt is issued pursuant to T.C.A. § 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 procurements may be subject to an appeal process.

- 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 (7) 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 (10) days prior to the date of the Commission or Executive Sub-Committee meeting at which approval will be sought, the State will allow seven (7) 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 (7) 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: (i) submitted on company letterhead, (ii) signed by a principal or company officer empowered to bind the proposer to the provisions of the procurement document; and (iii) addressed as follows: to the Commissioner of the Department of General Services for STREAM procurements or the Head of the Higher Education Institution associated with the SPA that handled the procurement. 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. 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 (7) 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.

\* \* \* \* \*



**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 Sub-Committee shall receive annual recommendations from the Commissioner of Finance and Administration regarding situations where waiving the fee seems appropriate. The Executive Sub-Committee 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--