



MIKE KRAUSE  
Executive Director

BILL HASLAM  
Governor

STATE OF TENNESSEE  
**HIGHER EDUCATION COMMISSION**  
PARKWAY TOWERS, SUITE 1900  
NASHVILLE, TENNESSEE 37243-0830  
(615) 741-3605

**TO:** President Glenda Glover  
President Sidney McPhee  
President Brian Noland  
President Phil Oldham  
President David Rudd  
President Alisa White

**FROM:** Mike Krause  
THEC Executive Director

**DATE:** April 26, 2017

**RE:** Procurement Severance Process

It is the intent of the Tennessee Higher Education Commission (THEC) that this document provides an overview of the general conditions necessary for independence on procurement, including understanding all reporting requirements, mandated interactions with fiscal review, and continued participation in current master contracts. The requirements outlined below are not exhaustive. State law and administrative procedures may require additional actions as an LGI engages in procurement management on its own.

Independence for procurement will allow a Locally Governed Institution (LGI) to enter bilateral contracts with vendors, but will not prohibit an institution from joining master, group, or statewide contracts initiated through the Tennessee Board of Regents (TBR), consortia, or partnerships. Beyond management of vendor relationships, an LGI will need to undertake full responsibility for all contract and reporting requirements, including annual reporting to the Senate Finance, Ways and Means Committee and quarterly reporting to the Fiscal Review Committee and Governor's Office of Diversity Business Enterprise (GoDBE).

Per the FOCUS Act, an LGI may sever from the Tennessee Board of Regents for the purposes of procurement beginning on December 1, 2017, or any time thereafter, pending the approval of THEC. Each LGI shall inform THEC in writing six months prior of its intent to sever from TBR.

## **Requirements for Severance on Procurement**

### *Procurement and Contract Policy Development*

Each LGI will be required to show that proper policies, procedures and guidelines associated with the process of procurement and contracting have been developed on their campuses and approved by their governing boards. As a higher education agency, an LGI is exempt from the purchase and service requirements governed by the State's Central Procurement Office, including the presentation of rules to the Procurement Commission. However, each institution is still held to the same state laws related to contracts and purchasing, required reporting on contracting, and representation at fiscal review for any non-competitive contracts.

*Action Required for Severance:* LGI will provide links to policies and procedures for procurement and contracting on their website. LGI will also make available pro forma contracts and templates for RFPs, RFQs, amendments, monitoring, and any other purchasing and contracts forms or templates on their website. The LGI's governing board shall certify that the policies and procedures approved by them meet at minimum all requirements of state and federal law.

### *Fiscal Review Committee*

Pursuant to Tennessee law, the Fiscal Review Committee of the Tennessee General Assembly is required to review and comment on proposed non-competitive contracts with a term (time period) of more than one year and a cumulative payable value of \$250,000 or more. Institutions are also required to submit amendments to payable contracts that are equal to or exceed \$250,000 and have a term longer than one year to the Fiscal Review Committee, even if the original contract was procured competitively. Contracts and amendments that require action by the Fiscal Review Committee must be submitted to the Committee at least 60 days prior to the start date.

Institutions are required to provide any information requested by Fiscal Review to allow the Committee to complete their review process. The Fiscal Review Committee requires that most contracts be formally presented in person by a representative. Institutions are responsible for identifying appropriate agents to present contracts before Fiscal Review. Several contracts are exempt from the Fiscal Review Committee reporting requirement, including contracts submitted to the State Building Commission, any sponsored grants or contracts, and revenue-producing contracts.

For more information on what must be included in a request to Fiscal Review, please see TCA § 4-56-107.

Action Required for Severance: LGI will provide a checklist outlining all proper documents that must be submitted to Fiscal Review when a contract or amendment is under review. LGI will also make available online the Fiscal Review forms required to address non-competitive contracts and amendments and will provide written documentation to THEC identifying who will represent the LGI in front of the Fiscal Review Committee.

### *Reporting Requirements*

Each LGI must exhibit the ability to file appropriate reports as required by Tennessee State Code or the bylaws and policies of the identified reporting body, including but not limited to the following:

- Governor's Office of Diversity Business Enterprise Diversity Report  
Any requests for proposals administered in a given quarter where small, minority-, and/or women-owned businesses participated must be reported on a **quarterly basis** to the Governor's Office of Diversity Business Enterprise.
- Governor's Office of Diversity Business Enterprise Small, Minority, Women-Owned Business Report  
Any expenditures made on small, minority-, or women-owned businesses must be reported on an **annual basis** to the Governor's Office of Diversity Business Enterprise.
- Fiscal Review Goods and Services Contract Report  
All personal, professional, and consultant contracts that are (1) awarded in a competitive or non-competitive method totaling from \$2,000 to \$50,000 and (2) contracts awarded in a non-competitive method that total over \$50,000 must be reported on a **quarterly basis** to the Fiscal Review Committee. Refer to TCA § 4-56-107 for further information on the requirements of this report.
- Governor's Office of Diversity Business Enterprise Goals Report  
Each state procurement agency is required to establish annual state agency level internal goals for minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business contracting. These internal goals and results must be reported on an **annual basis** by the Go-DBE at the end of the calendar year.
- Senate Finance, Ways and Means Committee Contract Reporting Requirements  
All contracts for expenditures (both goods and services) in a given fiscal year that exceed \$49,999 must be reported. This report must include all contracts

currently active and is reported on an ***annual basis*** as part of the legislative session reporting requirements for budget review.

It is the responsibility of each LGI to guarantee all reporting requirements for state procurement agencies are met in a timely manner.

*Action Required for Severance:* LGI will provide THEC with the contact information for those responsible for meeting these reporting requirements. The LGI will also provide examples of the most recent versions of these reports for review.

#### *Master Contracts Severance*

If not already in practice, the LGI is encouraged to review and evaluate existing contracts for cost, performance, and benefits that accrue from participation in master, group, or statewide contracts. The full term of master contracts includes all renewals indicated at the time that the contract was executed. With this in mind, THEC encourages each LGI to remain in master contracts in which they participate until the full term is concluded. If an LGI determines it intends to exit a master contract agreement when the full-term expires, the institution shall notify TBR at least six months before the full contract term ends. An LGI that has been granted severance and that has properly notified TBR of its intention to leave a completed master contract may do so with no penalty. Please see the attached file indicating when each current master contract's full-term will conclude.

An LGI that has been granted severance from TBR by THEC that determines it desires to exit a master, group or statewide contract agreement before the full-term concludes shall work with TBR and THEC to determine the process for exiting the contract. This process shall be determined on a case-by-case basis. An early exit shall be granted to an institution unless doing so causes undue injury to other institutions or state procurement agencies involved in that contract. If it is determined that exiting a master contract early will lead to injury to other participants, the LGI will be provided with written cause for the decision.

*Action Required for Severance:* Each LGI agrees to work with TBR and THEC on a case-by-case basis to identify the terms under which the LGI may exit a master contract before the full-term is completed. The LGI understands that TBR will determine if exiting a master contract early will cause injury to the remaining participating institutions or procurement agencies, and agrees to abide by the determination of TBR on exit strategies. The LGI acknowledges that it will notify the Assistant Vice Chancellor for Purchasing and Contracts at TBR which master contracts the institution intends to leave at the end of the full contract term at least six months in advance of the contract expiring.

**Intent to Sever**

*The FOCUS Act (amending TCA § 49-8-101) authorizes THEC to “solicit and receive requests from state university boards to assume the performance of [data systems, capital project planning and management, and procurement].” The signature of the Chairman of the Board (or President with proper Board authorization) below indicates that the Locally Governed Institution understands the reporting, compliance, and existing contract requirements associated with procurement severance and that the indicated Locally Governed Institution intends to sever on December 1, 2017 for the purposes of procurement. The board of the Locally Governed Institution understands and agrees that it shall not be permitted to assume the performance of the procurement functions until such time as severance is granted.*

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**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Institution:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**cc: Mitch Robinson, APSU  
Judy Blain, APSU  
BJ King, ETSU  
Doris Lowe, ETSU  
Alan Thomas, MTSU  
Shirman Thomas, MTSU  
Cynthia Brooks, TSU  
Joel Sims, TSU  
Claire Stinson, TTU  
Judy Hull, TTU  
Jeannie Smith, UM  
Canty Robbins, UM**