

**Tennessee Technological University
Policy No. 583**



Effective Date: July 1, 2018

Policy No: 583

Policy Name: Lease Procurement Policy & Procedures

I. Purpose

The purpose of this policy is to establish a policy and procedure in accordance with State Building Commission of Tennessee By-laws, Policy and Procedure (“SBC Policy”) Item 7 that ensures equity, transparency and the maximum amount of competition in response to a Request for Proposal (“RFP”) procurement for leased space.

II. Review

This policy will be reviewed every three years or whenever circumstances require review, whichever is earlier, by the Director of Capital Projects and Planning in consultation with the Vice President for Planning and Finance, with recommendations for revision presented to the Administrative Council, and University Assembly. Revisions related to the Board’s authority can only be made by the Board.

III. Scope

These policies and procedures apply to all lease procurements, awards and amendments to such awarded lease when the solicitation and award are conducted by Tennessee Tech pursuant to SBC Policy.

IV. Procurement of Leases Where Tennessee Tech is Lessee

- A. Approval of the State Building Commission (SBC).** These policies and procedures are intended to clarify the requirements of TCA §§ 12-2-114 and 12-2-115. All leases (i) where the rent due to the lessor under the lease is in excess of \$150,000 per year or (ii) where the term of the lease, including all renewal and extension options contemplated in the lease, is greater than 5 years, must be approved by the SBC prior to execution by Tennessee Tech. 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 Tennessee Tech’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 Tennessee Tech.
- 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 SBC, the Office of the State Architect (OSA), and Tennessee Tech. Any exception from the SBC requirements in Section IV. of this policy must be requested in writing by the President of Tennessee Tech and approved by the SBC.

1. Prior to engaging in any activities to lease space, Tennessee Tech's Director of Capital Projects and Planning, or his/her designee, shall prepare a general statement of Tennessee Tech's space needs.
 2. Lease procurement documents shall be drafted in such a manner as to maximize competition and allow Tennessee Tech to make better informed decisions on leasing matters.
 3. Tennessee Tech shall procure leases using a form of request for proposal (including pro forma lease) that has been previously approved by the SBC unless advertisement is not required (See Section IV.E).
 4. No individual, company, or other entity involved in the evaluation or negotiation of proposals should have a financial interest or have the appearance of a conflict of interest unless disclosed and addressed in accordance with SBC Policy. 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 Tennessee Tech 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 President of Tennessee Tech to be (a) in the best interest of Tennessee Tech or (b) necessary to ensure consistent evaluation of lease proposals. 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.
 7. 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 SBC or the ESC at which approval of the lease will be sought.
- C. **Approval of Tennessee Higher Education Commission (THEC).** All leases with annual rents in excess of \$150,000 or with terms greater than five (5) years procured by Tennessee Tech must be submitted to 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 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, Tennessee Tech must advertise, at least two (2) weeks prior to the date the proposals are opened, Tennessee Tech's space needs prepared in accordance with Section IV. B: (i) on Tennessee Tech's Capital Projects and Planning website www.tntech.edu/capitalprojects; (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 Tennessee Tech or who have expressed an interest in leasing property to Tennessee Tech 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 Tennessee Tech and shall include the name and contact information for the Tennessee Tech 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 the federal government;
3. The space required by the entity has special and unique requirements as determined by the SBC;
4. The term of the lease will be one (1) year or less, although if SBC 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 SBC 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.
2. 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 Tennessee Tech to obtain a fair rental rate for the space; that there is no State owned space that will meet the need; and the approval of this special and unique nature of the space and proposed procurement method by the Chief Financial Officer of Tennessee Tech.
3. The SBC 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 President of Tennessee Tech 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 Tennessee Tech to obtain a fair rental rate for the space; and any other matters requested by the SBC.

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

1. Tennessee Tech only has need for space for one (1) year or less at which time Tennessee Tech'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 Tennessee Tech to obtain a fair rental rate for the space and to gain multiple proposals to lease space to Tennessee Tech.

H. Termination For Convenience of Tennessee Tech. All leases shall be terminable for convenience by Tennessee Tech on not more than 120 days written notice, unless approved by the SBC. Any request to deviate from the requirement of the preceding sentence shall be submitted in writing by the President of Tennessee Tech to the SBC 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

- I. 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 President of Tennessee Tech.
- J. **Lease Evaluation.** In evaluating lease proposals, Tennessee Tech 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 Tennessee Tech, 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 Tennessee Tech shall be those posted on the website of the OSA at the time the proposal is evaluated. Tennessee Tech may use other estimated cost factors in evaluating a lease proposal so long the lease procurement documents reflect that estimated cost factors may be used and how such estimated cost factors will be established. Tennessee Tech shall propose to enter into a lease with the proposed offering the proposal with the lowest total cost unless a statement of justification from the President of Tennessee Tech supporting award to a different proposer has been submitted to and approved by the SBC 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 President of Tennessee Tech.
- K. **Signatures Required.** Leases shall be executed on behalf of Tennessee Tech 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 President of Tennessee Tech

V. LEASE AMENDMENTS WHERE TENNESSEE TECH IS LESSEE

- A. **Approval by SBC.** Amendments to leases originally submitted to and recommended by the SBC shall receive SBC approval prior to execution of such amendments. Further, any amendment to a lease which was not submitted and approved by the SBC 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 SBC for approval prior to the execution of the lease amendment.
- B. **Advertising Requirement.** Advertising meeting the requirements of Section IV.D 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 Tennessee Tech time to transfer the occupants or purpose to an alternative location; or to allow Tennessee Tech to wind up its operations for which the space was leased.
3. Advertisement has been waived by the SBC.

VI. CERTIFICATION OF FUNDS WHERE TENNESSEE TECH 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. **Higher Education Requirements.** The requirements below shall be followed to satisfy the requirement for a certification of funds for leases that will replace expiring leases and for new leases, as applicable.
 - a. **Expiring Leases.** In August of each year, a list of existing leases which will expire during the next fiscal year for needs requiring the procurement of new leases shall be provided to Tennessee Tech's Vice President of Planning and Finance 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 Vice President of Planning and Finance 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 Vice President of Planning and Finance 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 Vice President for Planning & Finance 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 Vice President for Planning & Finance must certify the availability of funds prior to execution of the lease.

VII. Reporting Of Leases Where Tennessee Tech Is Lessee

On a quarterly basis, Tennessee Tech must provide the information required by TCA § 12-2-115 and any other information requested by the SBC for all leases entered into by Tennessee Tech, so that information on all leases to which Tennessee Tech is a party are posted on the website of the

OSA whether approved by the SBC or not. The Director of Capital Projects and Planning, or his/her designee, will prepare and submit the quarterly report.

VIII. Interpretation

The Director of Capital Projects and Planning has the final authority to interpret the terms of this policy.

IX. Citation of Authority for Policy

T.C.A. §§ 12-2-114-115; SBC By-laws, Policy and Procedures, Item 7; T.C.A. § 49-8-203(a)(1)(C)

Approved By:

Administrative Council: February 21, 2018

University Assembly: April 18, 2018

Board of Trustees: March 22, 2018