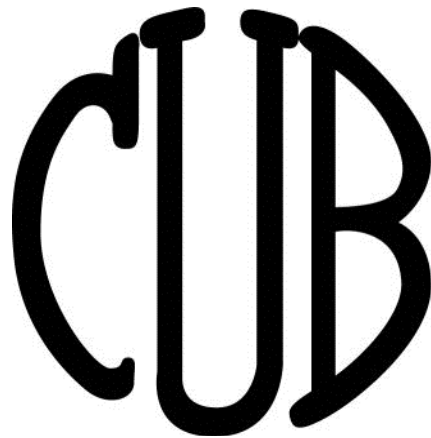


CLINTON UTILITIES BOARD
PURCHASING PROCEDURES POLICY



Adopted by Resolution by CUB's Board of Directors on December 12, 2013.

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**ARTICLE I
GENERAL PROVISIONS**

Section 100. Purpose and Rules of Construction

This Purchasing Procedures Policy (“Policy”) has been adopted for the purpose of simplifying, clarifying, and modernizing the procedures governing the purchasing and procurement activities of CUB. This Policy shall be interpreted and applied to promote this underlying purpose. This Policy is intended to be consistent with the provisions of the Charter that apply to CUB’s operations and has been developed in accordance with § 18-105(11) of the Clinton Municipal Code. In the event of a conflict between this Policy and the Charter, the Charter shall control.

Section 101. Definitions

The words defined in this Section shall have the meanings set forth below whenever they appear in this Policy, unless the context in which they are used clearly requires a different meaning or a different definition is given in a particular Article, Section, or Subsection.

- (1) “Authority Resolution.” The Resolution Delegating Management Responsibilities and Authority to the General Manager, adopted by the Board on September 21, 2004.
- (2) “Board.” The Board of Directors of CUB.
- (3) “Charter.” The Charter of the City of Clinton, Tennessee.
- (4) “CUB.” The Clinton Utilities Board, an independent municipal agency of the City of Clinton created by § 18-101 of the Clinton Municipal Code pursuant to the authority of Article X of the Charter.
- (5) “Division.” Any part of the System that includes all of one (1) branch of the operation of the System, such as the branch having charge of the electric power operations or the branch having charge of the water operations.
- (6) “General Manager.” The general manager of CUB, who serves as its chief executive officer pursuant to § 18-108 of the Clinton Municipal Code.
- (7) “Person.” Any individual, corporation, partnership, limited liability company, sole proprietorship, joint stock company, joint venture, or legal entity through which business is conducted.
- (8) “Procured Item(s).” Any real, personal or mixed property and all supplies, services, construction agreements, insurance and insurance policies, and any and all other items that are necessary or convenient for the operation of the System, all of which shall be procured in accordance with this Policy.

- (9) “Professional Services.” Professional or technical services offered by professional persons or groups of high ethical standards in accordance with Tenn. Code Ann. § 12-3-1209.
- (10) “Public Notice.” Any manner of notification reasonably assured of creating competition for the award of any procurement contract. Examples of notification that constitute Public Notice are set forth in Section 302(2).
- (11) “Surplus Property.” Real, personal, or mixed property that has been determined by CUB to be no longer necessary for current or future System operations.
- (12) “Specifications.” Detailed instructions developed by CUB governing supplies to be purchased, services to be provided, designs to be followed, work to be performed, or any other pertinent details surrounding the scope and nature of a contemplated contract.
- (13) “System.” The electric system, the water system, the wastewater system, and any other system or services that the Board is authorized by law to operate or provide and which is approved by the City Council of Clinton, Tennessee.

Section 102. Incorporation

Any invitation to bid or request for proposals prepared in accordance with this Policy may state that such invitation to bid or request for proposals is subject to the provisions of this Policy and may require each respondent to include a provision in their bid or proposal assenting to the terms and provisions of this Policy. A respondent’s failure to include such a provision in a bid or proposal may, at CUB’s option, result in rejection of the bid or proposal.

**ARTICLE II
PURCHASING ORGANIZATION**

Section 200. Authority of General Manager

In addition to the authority granted to the General Manager by the Authority Resolution and the other authority and duties set forth in this Policy, the General Manager shall, subject to the Board's overall control and supervision, have the following authority and responsibility:

- (1) To serve as CUB's central purchasing and contracting authority and, in connection therewith, to interpret and apply the provisions of this Policy.
- (2) To contract for, purchase, lease-purchase, lease, or otherwise procure all Procured Items for CUB.
- (3) Subject to the limitations set forth in any bond financing documents, to sell, trade, or otherwise dispose of Surplus Property.
- (4) To establish and maintain a program for the development and usage of Specifications for Procured Items.
- (5) To establish and maintain a program for the inspection and testing of supplies, construction, services, or any other Procured Item.
- (6) To appoint one or more duly authorized designees to perform any of the General Manager's responsibilities provided for in this Policy.

Section 201. Compliance Documentation

All purchases by CUB shall be properly documented as necessary to assure compliance with the requirements of this Policy pursuant to such guidelines and procedures as may be established from time to time by CUB. All petty cash disbursements shall be evidenced by proper receipts.

Section 202. Contractual Authority

Subject to the limitations set forth in this Policy, all rights, powers, duties, and authority under this Policy relating to the procurement of Procured Items, and the sale and disposal of any Surplus Property, are delegated to and vested in the General Manager. Any contract or other written agreement that must be executed in connection with the acquisition or delivery of Procured Items may be executed either by the General Manager or his or her duly authorized designee. Notwithstanding the foregoing, in accordance with Section 2(c) of the Authority Resolution, any contract for the procurement of Procured Items exceeding Fifty Thousand Dollars (\$50,000.00) must be approved by the Board.

Section 203. Reliance on Legal Counsel

In interpreting the provisions of this Policy and in determining the respective duties and obligations of CUB and other parties hereunder, the General Manager may seek the advice of or rely on the opinions of legal counsel that may be employed from time to time for such purposes.

ARTICLE III
PURCHASING, SOURCE SELECTION, AND CONTRACT FORMATION

Section 300. Purchasing

- (1) Appropriation. In no event shall the General Manager procure or contract to procure any Procured Items for which funds have not been appropriated in a budget approved by the Board. This provision shall not prohibit multi-year contracts with contractors, suppliers, and vendors that are consistent with the requirements of this Policy.

- (2) Purchase of Procured Items. Upon satisfying himself or herself that adequate appropriated funds are available, the General Manager shall cause Procured Items to be purchased, and such items shall be paid for from the funds of the Division awarding the procurement or contract.

- (3) Competition. Unless otherwise exempt by the provisions of this Policy or the laws of the State of Tennessee, CUB shall comply with the advertising and competitive bidding requirements of § 5-601 of the Clinton Municipal Code and this Policy.

- (4) Exceptions to Advertisement and Competition. CUB shall not be required to use the methods of advertisement and competition described in this Policy in any of the following circumstances:
 - (a) The purchase of Procured Items when the purchase price is less than the minimum level established under § 5-601 of the Clinton Municipal Code, which, as of the date of the adoption of this Policy, is Ten Thousand Dollars (\$10,000.00). Notwithstanding the foregoing, in cases involving the purchase of Procured Items the purchase price of which is between Two Thousand Five Hundred Dollars (\$2,500.00) and the minimum level established under § 5-601 of the Clinton Municipal Code, CUB shall strive, where practical, to obtain at least three (3) bids or price quotes and shall make a record of such bids. Such bids or price quotes may be obtained by any reasonable method of transmission, including but not limited to, electronic, facsimile, hand-delivery, mail, overnight courier, or oral transmission.

 - (b) The sale of Surplus Property when the sales price is less than the minimum level established by this Policy, which in the case of personal property is One Thousand Dollars (\$1,000.00) and in the case of real property is Ten Thousand Dollars (\$10,000.00).

 - (c) In accordance with Tenn. Code Ann. § 6-56-304(2), purchases of goods or services for which there is a single source of supply, such as where the Procured Item is a certain type, brand, or make that is proprietary to a certain manufacturer and only that particular type, brand, or make can reasonably be used. In such cases, CUB shall make a record of the Procured Items purchased pursuant to this

exception, the amount paid for such Procured Items, and the identities of the Persons from whom the Procured Items were purchased.

- (d) In accordance with Tenn. Code Ann. § 6-56-304(3), in emergencies, for the purchase or lease of Procured Items that are reasonably needed for the operation of the System. In many instances, such emergency purchases will be for immediate delivery in actual emergencies arising from unforeseen causes, including, but not limited to, delays by contractors, delays in transportation, and unanticipated volumes of work. In such cases, CUB shall make a record of the Procured Items purchased pursuant to this exception, the amount paid for such Procured Items, the identities of the Persons from whom the Procured Items were purchased, and the nature of the emergency. It is the Board's intent that, in an emergency, the General Manager have the maximum procurement authority allowed under Tennessee law.
- (e) In accordance with Tenn. Code Ann. § 6-56-304(5), the purchase, lease, or lease-purchase of real property. In such cases, CUB shall require a sufficient number of appraisals of the real property being procured to determine its fair market value.
- (f) In accordance with Tenn. Code Ann. §§ 6-56-304(6) & 12-3-1202(a), purchases, leases, or lease-purchases of used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any federal, state, or local governmental unit.
- (g) In accordance with Tenn. Code Ann. § 6-56-304(7), purchases of perishable commodities, when such items are purchased in the open market. In such cases, CUB shall make a record of the Procured Items purchased pursuant to this exception, the amount paid for such Procured Items, and the identities of the Persons from whom the Procured Items were purchased.
- (h) In accordance with Tenn. Code Ann. § 6-56-304(7), purchases of fuel and fuel products may be purchased in the open market without public advertisement, but shall, whenever possible, be based on at least three (3) competitive bids.
- (i) In accordance with Tenn. Code Ann. § 6-56-304(8), purchases, for resale, of natural gas and propane gas.
- (j) In accordance with Tenn. Code Ann. § 12-3-1202(b), purchases of used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any private Person as long as CUB documents the general range of value of the Procured Items through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser. In such cases, the price paid by CUB shall not be more than five percent (5%) higher than the highest value of the documented range.

- (k) In accordance with Tenn. Code Ann. § 12-3-1201(a), purchases of goods or services made through the State of Tennessee's Central Procurement Office on the same terms and under the same rules and regulations as are provided for the purchase of goods and services by the Central Procurement Office.
- (l) In accordance with Tenn. Code Ann. § 12-3-1201(b), purchases made under the provisions of contracts or price agreements entered into by the State of Tennessee's Central Procurement Office.
- (m) In accordance with Tenn. Code Ann. § 12-3-1201(c), to the extent permitted by federal law or regulations, purchases of goods (except motor vehicles) or services included in federal General Services Administration contracts or other applicable federal open purchase contracts made either directly or through the appropriate state agency. In such transactions, the price paid by CUB may not be higher than that which is contained in the contract between the General Services Administration and the vendor.
- (n) In accordance with Tenn. Code Ann. § 12-3-1203(a), purchases made upon CUB's request by any municipality, county, utility district, or other local governmental unit of the State of Tennessee for CUB so long as the purchase is made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity. In such cases, CUB shall ensure that the cost of the purchase is borne entirely by CUB and not by the purchasing entity. Also in such cases, any otherwise applicable advertisement and competition requirements of this Policy shall be deemed satisfied so long as the purchasing entity complies with its own purchasing requirements.
- (o) In accordance with Tenn. Code Ann. § 12-3-1203(c), purchases made under contracts or price agreements entered into by any other local governmental unit of the State of Tennessee so long as the purchase is made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity. In such cases, CUB shall directly handle payment, refunds, returns, and any other communications or requirements involved in the purchase without involving the local governmental unit that originated the contract. Also in such cases, any otherwise applicable advertisement and competition requirements of this Policy shall be deemed satisfied. Notwithstanding the foregoing, this exception shall not apply to (i) purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in Tenn. Code Ann. § 12-3-1208; and (ii) purchases related to any transportation infrastructure project, including, but not limited to, projects for the construction or improvement of streets, highways, bridges, tunnels, or any roadway related facility.
- (p) In accordance with Tenn. Code Ann. § 6-56-302(6), purchases from nonprofit corporations whose purpose or one (1) of whose purposes is to provide goods or services specifically to municipalities.

- (q) Procurement of professional services in accordance with Article V.
- (r) Insofar as the operation of CUB's Electric Division is concerned, and to the extent permitted by Tenn. Code Ann. § 7-52-117(d) and any other applicable provisions of the Tennessee Municipal Electric Plant Law of 1935, the General Manager may purchase Procured Items at a price of up to Fifty Thousand Dollars (\$50,000.00) for CUB's Electric Division without utilizing the public advertisement and bidding processes which are otherwise provided for in this Policy.
- (s) Any other purchases where the requirement of advertisement and/or competition is dispensed with by this Policy or any applicable law.
- (t) Any other purchases where advertisement and competitive bidding are not appropriate because competition is not reasonably practical. CUB shall document the factors giving rise to such situations that authorize the use of this exception.

Section 301. Methods of Source Selection

Except as provided for in Section 300(4) hereof or as authorized by law, all contracts shall be awarded by one of the following methods:

- (1) Competitive sealed bidding
- (2) Competitive sealed proposals
- (3) Competitive negotiation
- (4) Negotiation after competitive sealed bidding where all bids exceed available funding
- (5) Competitive reverse auction

Section 302. Competitive Sealed Bidding

- (1) Conditions for Use. Contracts that are not exempt under Section 300(4) hereof shall be awarded by competitive sealed bidding whenever practicable.
- (2) Public Notice. CUB shall prepare an invitation to bid, notice of which shall be given adequate Public Notice, allowing sufficient time, in the discretion of CUB, for response before the date set forth for the opening of bids. Nothing contained herein shall prohibit CUB from prequalifying bidders for a particular contract. In such case, if proper Public Notice of the prequalification of bidders is made, further Public Notice of an invitation to bid for such contract is not required. As used herein, "Public Notice" means any manner of notification reasonably assured of creating competition for the award of any contract

under this Policy. Although none of such methods is required in any particular situation, Public Notice may include publication in a newspaper of general circulation, mailing of the invitation to bid to prospective bidders, notices in trade and industry publications and reports, and such other methods of providing notice of opportunities to bid as are customarily used for the type of contract being offered or the type of goods or services being procured. Whenever Public Notice is achieved by mailing or electronically transmitting the invitation to bid to prospective bidders, the invitation to bid shall, whenever practicable, be sent to at least three (3) prospective bidders.

- (3) Bid Opening. Bids shall be opened publicly at the time and place and in the manner designated in the invitation to bid. Each bid and the name of the bidder shall be recorded and open to public inspection. After bids are publicly opened, no bidder may make any change or modification to a bid which, in CUB's opinion, materially alters the bid. In the event a bidder makes a material change or modification after bids are publicly opened, CUB may, in its sole discretion, either: (a) reject the bidder's material changes or modifications and evaluate the bid in its original form; or (b) reject the bid in its entirety.
- (4) Award. Should a contract be awarded, the award shall occur within a reasonable amount of time after the bid opening to the responsive bidder whose bid is determined by CUB to contain the best evaluated bid. In determining which bid is the best evaluated bid, the following factors may be considered in addition to the price quoted: (a) apparent ability to perform, (b) quality, (c) purpose or use, (d) discount for prompt payment, (e) freight, (f) delivery date, (g) past performance, and (h) any other pertinent factors that may enable CUB to make the proper procurement decision. When using evaluation factors other than just price, the invitation to bid shall indicate the relative importance of price and any other significant evaluation factors.

Section 303. Competitive Sealed Proposals

- (1) Conditions for Use. In accordance with Tenn. Code Ann. § 12-3-1207, competitive sealed proposals may be used when it is impractical to use competitive sealed bidding or when the use of competitive sealed bidding is not advantageous to CUB. Competitive sealed proposals may be used only when qualifications, experience, or competence are more important to CUB than price in making the purchase and: (a) when there is more than one (1) solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or (b) when there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one (1) or more solutions.
- (2) Request for Sealed Proposals. CUB shall prepare a request for sealed proposals, notice of which shall be given adequate Public Notice in the same manner as provided in Section 302(2). The request for sealed proposals shall request the submission of sealed proposals, and shall state the relative importance of price and any other evaluation factors. Nothing contained herein shall prohibit CUB from prequalifying respondents for a particular contract. In such case, if proper Public Notice of the prequalification of

respondents is made, further Public Notice of a request for sealed proposals for such contract is not required.

- (3) Receipt and Opening of Sealed Proposals. Proposals shall be opened publicly at the time and place and in the manner designated in the request for sealed proposals, but shall be opened in a manner that avoids the disclosure of contents to competing respondents during the period for discussions. Only the names of the respondents shall be recorded and open to public inspection until such time as the entire competitive sealed proposal process is complete. If the intent to award a contract to a particular respondent is announced, all proposals shall thereafter be recorded and shall be open for public inspection. Except as provided for in Subsection (4) of this Section, after proposals are publicly opened, no respondent may make any change or modification to a proposal which, in CUB's opinion, materially alters the proposal. In the event a respondent makes a material change or modification after proposals are publicly opened, CUB may, in CUB's sole discretion, either: (a) reject the respondent's material changes or modifications and evaluate the proposal in its original form; or (b) reject the proposal in its entirety.
- (4) Discussion Period. For purposes of assuring the full understanding of, and responsiveness to, the solicitation requirements, CUB may conduct discussions with respondents who submit proposals determined by CUB to be reasonably susceptible of being selected. These discussions shall be for clarification only. Respondents with whom discussions are held shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions to proposals shall be permitted after submission but before the intent to award to a particular respondent is announced in order to obtain the best final offers. In conducting discussions, there shall be no disclosure to any respondent of any information derived from the proposals submitted by competing respondents.
- (5) Award. Should a contract be awarded, the award shall occur within a reasonable amount of time after the discussion period to the respondent whose proposal is determined by CUB to be the most advantageous to CUB, taking into consideration price and the other evaluation factors set forth in the request for sealed proposals. No other factors may be used in the evaluation. The contract file shall contain a written explanation of the basis on which the award is made.

Section 304. Competitive Negotiation

- (1) Conditions for Use. Competitive negotiation may be used when CUB determines that because of the nature of the goods or services to be purchased, neither competitive sealed bidding nor competitive sealed proposals is appropriate, or CUB determines that it is in CUB's best interests to engage in competitive negotiation in lieu of bidding. Competitive negotiation may be used when a market exists for several products or solutions having varying specifications, each of which may be acceptable to perform the task for which a product or solution is being purchased. By way of illustration, but not limitation, an

example of products for which competitive negotiation may be appropriate are telephones and related telephone services and computers and related technology services.

- (2) Request for Proposals. CUB shall prepare a request for sealed proposals, notice of which shall receive adequate Public Notice in the same manner as provided for in Section 302(2). The request for sealed proposals shall, at a minimum, describe the goods or services to be procured, set forth minimum proposer qualifications, and indicate the relative importance of price and any other significant evaluation factors. Nothing contained herein shall prohibit CUB from prequalifying proposers for a particular contract. In such case, if proper Public Notice of the prequalification of proposers is made, further Public Notice of a request for sealed proposals for such contract is not required.
- (3) Proposal Opening. Proposals shall be opened publicly at the time and place and in the manner designated in the request for proposals. Each proposal submitted and the name of the submitting proposer shall be recorded and open to public inspection. Except as provided for in Subsection (4) of this Section, after proposals are publicly opened, no proposer may make any change or modification to a proposal which, in CUB's opinion, materially alters the proposal. In the event a proposer makes a material change or modification after proposals are publicly opened, CUB may, in CUB's sole discretion, either: (a) reject the proposer's material changes or modifications and evaluate the proposal in its original form; or (b) reject the proposal in its entirety.
- (4) Evaluation of Proposals; Negotiation. CUB shall evaluate each submitted proposal using the evaluation factors set forth in the request for proposals. No other factors may be used in the evaluation. CUB shall select at least two (2) proposals determined to be the best evaluated proposals for negotiation. Negotiation shall then be conducted with the selected proposers, with such negotiation allowing for the modification of the proposals, including price. Offers and counter-offers may be made as many times with each proposer as is necessary to secure the best possible contract for CUB. After negotiations are concluded, CUB shall re-evaluate the proposals in light of any changes resulting from the negotiation process.
- (5) Award. Should a contract be awarded, the award shall occur within a reasonable amount of time after the negotiation period to the proposer whose proposal is determined by CUB to be the most advantageous to CUB, taking into consideration price and any other evaluation factors set forth in the request for proposals. The contract file shall contain a written explanation of the basis on which the award is made.

Section 305. Negotiations After Competitive Sealed Bidding Where All Bids Exceed Available Funding

If all bids submitted pursuant to an invitation to bid result in prices that exceed the funds available for the purchase, and CUB determines that:

- (1) There are no additional funds available from the Division involved in the procurement that could permit an award to the lowest evaluated responsive bidder; and
- (2) The best interests of CUB will not allow the delay of a re-solicitation under revised Specifications and/or quantities;

then a negotiated award may be made. In such a circumstance, CUB shall document in writing the reasons necessitating negotiation, after which point competitive negotiations shall commence.

Section 306. Competitive Reverse Auction

- (1) Conditions for Use. In accordance with Tenn. Code Ann. § 12-3-1208, in lieu of the other competitive procurement methods set forth in this Article, CUB may purchase Procured Items through a competitive reverse auction process that complies with the requirements of this Section and that allows bidders to bid on specified goods or services electronically and adjust bid pricing during a specified time period. Notwithstanding the foregoing, CUB may not use a competitive reverse auction process to procure the following Procured Items:
 - (a) Construction services, other than those relating to maintenance, repairs, and renovations, the cost of which is less than Twenty-Five Thousand Dollars (\$25,000);
 - (b) Architectural or engineering services;
 - (c) New or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose; or
 - (d) New or unused construction equipment.
- (2) Public Notice. CUB shall prepare an invitation to bid, notice of which shall receive adequate Public Notice by being inserted at least once in a newspaper of countywide circulation five (5) calendar days prior to the first day bids can be submitted. In addition, CUB may mail the invitation to bid to prospective bidders, distribute the invitation to bid to prospective bidders electronically via email, or post the invitation to bid on CUB's website. All invitations to bid shall include a general description of the Procured Items to be purchased and information related to the time, place, and manner for the opening of bids. Nothing contained herein shall prohibit CUB from prequalifying bidders for a particular contract. In such case, if proper Public Notice of the prequalification of bidders is made, further Public Notice of an invitation to bid for such contract is not required.
- (3) Small and Minority-Owned Businesses. In order to assure the fullest possible participation of small businesses and minority-owned businesses, a mechanism must be

provided either through CUB or, if a third party source is utilized to conduct the reverse auction, through such third party, to facilitate participation of small and minority-owned businesses in the reverse auction.

- (4) **Bid Opening.** All bids shall be opened publically at the time and place and in the manner designated in the invitation to bid. Each bid, with the name and address of the bidder, shall be recorded and the names of the bidders, the amounts of their bids, and the name of the successful bidder shall, after the award, be open to public inspection. All bids shall be preserved for a period of sixty (60) months. After bids are publicly opened, no bidder may make any change or modification to a bid which, in CUB's opinion, materially alters the bid. In the event a bidder makes a material change or modification after bids are publicly opened, CUB may, in CUB's sole discretion, either: (a) reject the bidder's material changes or modifications and evaluate the bid in its original form; or (b) reject the bid in its entirety.
- (5) **Award.** Should a contract be awarded, the award shall occur within a reasonable amount of time after the bid opening to the bidder whose bid is determined by CUB to be the lowest responsive bid at the close of the specified bid period.
- (6) **Prerequisites.** Prior to the initial utilization of the competitive reverse auction process, CUB shall file a plan with the Comptroller of the Treasury of the State of Tennessee. The plan shall contain: (a) a description of the technology to be utilized; (b) a statement as to whether a third party source will be utilized to conduct the competitive reverse auctions; (c) a description of any CUB policies and procedures related to the implementation of the competitive reverse auction process; (d) documentation of CUB's internal controls that will ensure the integrity of the competitive reverse auction process; and (e) a statement as to whether the competitive reverse auction process will be implemented within CUB's existing operating resources unit or, if additional operating resources are needed, an indication of prior Board approval. CUB shall not utilize the competitive reverse auction process until such a plan has been filed with the Comptroller of the Treasury.

Section 307. Cancellation of Invitations to Bid or Requests for Proposals

When determined to be in CUB's best interests, any invitation to bid, request for proposals, or other solicitation may be cancelled or withdrawn. In such case, all responses received shall be automatically rejected.

Section 308. Electronic Procurement

CUB may adopt procedures allowing for CUB's procurement processes to be accomplished through electronic means. Such procedures may allow for the electronic provision of Public Notice of invitations to bid or requests for proposals, as well as allow for the electronic receipt and opening of responses thereto. Notwithstanding the foregoing, any procedures

adopted by CUB pursuant to this Section shall comply in all respects with the other requirements of this Policy and all applicable laws.

Section 309. Registration

Persons seeking to provide Procured Items may register with CUB in accordance with procedures issued by CUB. Persons who successfully register with CUB will automatically receive invitations to bid and requests for proposals when, in CUB's opinion, the Procured Items can be supplied by those registered Persons. A Person's successful registration shall not prevent CUB from later determining that a once registered Person is no longer qualified to supply one or more Procured Items. CUB may reject any response to an invitation to bid or request for proposals on the grounds that the Person submitting the response previously attempted to register with CUB but failed to successfully do so.

Section 310. Multi-Year Contracts

Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of CUB, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available within the applicable Division for the first fiscal period at the time of contracting. In accordance with Section 2(g) of the Authority Resolution, the General Manager shall have the authority to approve a contract for a maximum of two (2) fiscal years. Contracts exceeding two (2) fiscal years must be approved by the Board; provided, however, that in no event shall a contract term exceed the amount of time allowed by law.

ARTICLE IV
SPECIFICATIONS FOR SUPPLIES AND SERVICES

Section 400. Specifications

CUB may from time to time issue Specifications to be used in the purchase of Procured Items. The General Manager may from time to time establish guidelines for drafting such Specifications.

Section 401. Maximum Practicable Competition

All Specifications shall: (1) seek to promote the acquisition of Procured Items of the specified quality at a price that is most economical overall for the purpose intended; (2) encourage competition in satisfying CUB's needs; and (3) not be unduly restrictive.

**ARTICLE V
PROCUREMENT OF PROFESSIONAL SERVICES**

Section 500. Authority and Duties of General Manager

The General Manager shall have the authority and duty to control CUB's procurement of professional services.

Section 501. Professional Services Generally

In accordance with Tenn. Code Ann. § 12-3-1209, CUB shall award contracts for professional services based on recognized competence and integrity and not based on competitive bidding. Accordingly, the provisions of Article III shall not apply to the procurement of professional services, including but not limited to, legal services; fiscal agent, financial advisor, or advisory services; educational consultant services; engineering services; architectural services; and similar services by professional persons or groups of high ethical standards. In awarding contracts for professional services, CUB may interview eligible persons or groups to determine the capabilities of such persons or groups.

Section 502. Architectural and Engineering Services

- (1) Selection and Evaluation. In the procurement of architectural and engineering services, CUB may seek qualifications and experience data from any firm or firms licensed in Tennessee and interview such firm(s). CUB shall evaluate statements of qualifications and experience data regarding the procurement of architectural and engineering services, and shall conduct discussions with such firm(s) regarding the furnishing of required services and then shall select the firm deemed to be qualified to provide the services required.
- (2) Negotiation. CUB shall negotiate a contract with the qualified firm for architectural and engineering services at compensation CUB determines to be fair and reasonable to CUB. In making such a determination, CUB shall take into account the estimated value of the services to be rendered, the scope of work, complexity and professional nature thereof. Should CUB be unable to negotiate a satisfactory contract with the firm considered to be most qualified at a price determined to be fair and reasonable to CUB, negotiations shall continue with other qualified firms until an agreement is reached.
- (3) Existing Relationships. Should CUB have a satisfactory existing working relationship for architectural or engineering services, CUB may, without exercising the provisions of Sections 501 and 502, expand the scope of the existing services; provided, however, that the expanded scope is within the technical competency of the existing firm.

Section 503. Energy Related Services

In accordance with Tenn. Code Ann. § 12-4-110, contracts for energy-related services that include both engineering services and equipment, and have as their purpose the reduction of energy costs in public facilities, shall be awarded on the same basis as contracts for professional services.

ARTICLE VI
PROCUREMENT OF CONSTRUCTION SERVICES

Section 600. Bid Security

- (1) Ability to Require Bid Security. CUB may require bid security for all competitive sealed bidding for construction services. Bid security shall be a bid bond, provided by a surety company authorized to do business in the State of Tennessee or otherwise in a form satisfactory to CUB.
- (2) Amount of Bid Security. The amount of any required bid security shall be established by CUB and shall be in an amount equal to at least five percent (5%) but not greater than ten percent (10%) of the total amount of the bid.
- (3) Rejection of Bids for Noncompliance with Bid Security Requirements. When an invitation to bid requires bid security, noncompliance shall be grounds for rejecting the bid, unless it is determined that the bid's failure to comply is insubstantial to the security requirements.
- (4) Bid Security for Construction Management Services. Notwithstanding the provisions of Subsections (1), (2), and (3) of this Section, in accordance with Tenn. Code Ann. § 62-6-129, whenever CUB is procuring the services of a construction manager, CUB shall require each bidding construction manager to post, at the time of the submittal of the bid or proposal by the construction manager, a bid bond equal to at least ten percent (10%) of the value of the services proposed and the value of the work to be managed. No contract may be awarded to a construction manager who fails to post the required bid bond.
- (5) Notice of Bid Security Requirement. Whenever bid security is required, the fact of such requirement and the required bid security amount shall be stated in the invitation to bid.

Section 601. Contract Performance and Payment Bonds

- (1) When Required; Amounts. When a construction contract is awarded in excess of Fifty Thousand Dollars (\$50,000.00), the following bonds or security shall be delivered to CUB and shall become binding on the parties upon the execution of the contract:
 - (a) A performance bond, satisfactory to CUB, executed by a surety or insurance company authorized to do business in the State of Tennessee and listed on the United States Department of Treasury, Financial Management Service's list of approved bonding companies, in an amount equal to one hundred percent (100%) of the price specified in the contract, accompanied by a certified power of attorney; and
 - (b) A payment bond satisfactory to CUB, executed by a surety or insurance company authorized to do business in the State of Tennessee and listed on the United States

Department of Treasury, Financial Management Service's list of approved bonding companies, for the protection of all persons supplying labor and material to the contractor or its subcontractors, in an amount equal to one hundred percent (100%) of the price specified in the contract, and accompanied by a certified power of attorney. In those cases where the work to be performed under a construction contract is comprised of distinct segments of work upon which other work under the contract is not dependent, CUB may elect to reduce the penal amount of any payment or performance bond required for such work to an amount that will adequately protect the interests of CUB if the contractor defaults in the performance of its contract.

- (2) Authority to Require Additional Bonds or Security. Nothing in this Article shall be construed to limit the authority of CUB to require a bond or other security in addition to the bonds required hereunder or in circumstances other than those specified in this Article.
- (3) Notice of Bond or Security Requirement. Whenever any payment or performance bond or other security is required, the fact of such requirement and the required bond or security conditions shall be stated in the invitation to bid.
- (4) Authority to Accept Substitute Security. To the extent permitted by Tenn. Code Ann. § 12-1-201(c), in lieu of the bonds required by Subsection (1) of this Section, the following securities or cash may, in CUB's discretion, be substituted at the percentage rates required for the bonds:
 - (a) United States treasury bonds, United States treasury notes, and United States treasury bills;
 - (b) General obligation bonds of the State of Tennessee;
 - (c) Certificates of deposit or evidence of other deposits irrevocably pledged from:
 - (i) A state or national bank having its principal office in Tennessee;
 - (ii) A state or federal savings and loan association having its principal office in Tennessee;
 - (iii) Any state or national bank, that has its principal office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits; or
 - (iv) Any state or federal savings and loan association that has its principal office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits;

- (d) A letter of credit from a state or national bank or state or federal savings and loan association having its principal office in Tennessee; or any state or national bank or state or federal savings and loan association that has its principal office outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits. The terms and conditions of any letter of credit shall be subject to CUB's approval. The form of such letter of credit shall be provided by the bank or savings and loan association and may be based on either the Uniform Commercial Code or the ICC Uniform Customs and Practice for Documentary Credits (UCP 500). All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter; or
 - (e) Cash; provided, that, where cash is posted, CUB shall pay to the contractor interest at the same rate that interest is paid on funds invested in a local government investment pool established pursuant to Tenn. Code Ann. § 9-4-704, for the contract period.
- (5) Suits on Bonds; Right to Institute. Every person who has a cause of action against a contractor or subcontractor on a bond required or provided under this Article may pursue an action in accordance with applicable law.

Section 602. Bond Forms; Copies

- (1) Bond Forms. Unless otherwise expressly provided for, CUB shall determine the form of the bonds required by this Article.
- (2) Certified Copies of Bonds. Any person may request and obtain from CUB a certified copy of a bond upon payment of the reproduction and postage cost. A certified copy of the bond shall be sufficient evidence of the contents, execution, and delivery of the original.

**ARTICLE VII
CONTRACT MODIFICATIONS AND TERMINATIONS**

Section 700. Modification of Contracts

Unless otherwise prohibited by this Policy or by any applicable law, the General Manager is authorized to enter into modifications of existing contracts in order to effect changes deemed necessary or desirable to CUB.

Section 701. Termination of Contracts

- (1) For Default of the Contractor. The General Manager is authorized to terminate contracts as a result of a default of the contractor.

- (2) For Convenience of CUB. The General Manager is authorized to terminate contracts for the convenience of CUB when such termination is in the best interests of CUB and its ratepayers.

**ARTICLE VIII
LEGAL AND CONTRACTUAL REMEDIES**

Section 800. Authority to Resolve Protested Solicitations and Awards

- (1) Right to Protest. Any Person who is aggrieved in connection with the solicitation or award of a contract must submit a written protest to the General Manager within fourteen (14) days after the occurrence of the act giving rise to the protest.
- (2) Authority to Resolve Protests. The General Manager shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved Person concerning the solicitation or award of a contract.
- (3) Decision. If the protest is not resolved by mutual agreement, the General Manager shall promptly issue a decision in writing that shall:
 - (a) State the reasons for the action taken; and
 - (b) Inform the protestor of its right to judicial or administrative review as provided in this Article.
- (4) Notice of Decision. A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the protestor and any other party intervening.
- (5) Finality of Decision. A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent or any Person adversely affected by the decision commences an action in court.
- (6) Resort to Court. If unsatisfied with the determination of the General Manager, within thirty (30) days after such determination has been issued, the Person may institute appropriate proceedings before any court, judicial or quasi-judicial board or agency of the State of Tennessee having jurisdiction to hear controversies concerning contracts to which CUB is a party. Any and all legal proceedings instituted in connection with this Policy shall be brought in the Chancery Court for Anderson County, Tennessee.

**ARTICLE IX
INTERGOVERNMENTAL RELATIONS**

Section 900. Cooperative Procurement Authorized

- (1) Local Governmental Units of this State. In accordance with Tenn. Code Ann. § 12-3-1205(a), CUB may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one (1) or more other local governmental units of this State in accordance with an agreement entered into between the participating local governmental units. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between local governmental units. Where CUB is otherwise required by law or this Policy to advertise and receive competitive bids for the items being purchased under the cooperative purchasing agreement, it shall be sufficient for those purposes that the purchasing entity under the cooperative purchasing agreement complied with its own purchasing requirements.
- (2) Governmental Units of Other States. In accordance with Tenn. Code Ann. § 12-3-1205(b)(1), CUB may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods, supplies, services, or equipment with one (1) or more other governmental entities outside this State, to the extent the laws of the other state permit the joint exercise of purchasing authority, in accordance with an agreement entered into between or among the participating governmental entities; provided, such goods, supplies, services, or equipment were procured in a manner that constitutes competitive bidding and were advertised, evaluated, and awarded by a governmental entity and made available for use by other governmental entities. This Subsection shall not apply to (a) purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in Tenn. Code Ann. § 12-3-1208; or (b) purchases of construction, engineering or architectural services, or construction materials.
- (3) Master Agreements. In accordance with Tenn. Code Ann. § 12-3-1205(b)(2), CUB may participate in a master purchasing agreement upon the Board's adoption of a resolution accepting the terms of the master purchasing agreement. If CUB is otherwise required by law or this Policy to advertise and receive competitive bids for the items being purchased under a master purchasing agreement, it shall be sufficient for those purposes that the purchasing entity or the entity that procured the bid complied with its own purchasing requirements. In such cases, CUB shall acquire and maintain documentation that the purchasing entity or entities that procured the bid complied with its own purchasing requirements. This Subsection shall not apply to (a) purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in Tenn. Code Ann. § 12-3-1208; or (b) purchases of construction, engineering or architectural services, or construction materials.
- (4) General Manager's Authority. Except where such authority is otherwise reserved to the Board, the General Manager is authorized to take any actions necessary to effect the

provisions of this Section. The General Manager is further authorized to collect information from any municipalities, counties, utility districts, and other local government units concerning the type, cost, quality, and quantity of commonly used goods, supplies, services, or equipment being procured by such local governmental units under cooperative purchasing agreements, and is authorized to make available, upon request, all such similar information regarding CUB to any other municipality, county, utility district, or other local government unit.

Section 901. Cooperative Use of Supplies or Services

CUB, through the General Manager, may enter into an agreement, independent of the requirements of Article III, with any other public purchasing unit for the cooperative use of supplies or services.

**ARTICLE X
DISPOSAL OF SURPLUS PROPERTY**

Section 1000. Disposal of Surplus Real Property

The procedure for the disposal or sale of surplus real property, after the declaration of it being surplus by CUB and CUB having determined that the property is no longer needed by CUB, shall be as follows:

- (1) CUB shall have the property in question appraised by one (1) or more qualified real estate appraisers.
- (2) If the appraised value of the property is Ten Thousand Dollars (\$10,000.00) or more, CUB shall advertise the property and receive competitive sealed bids thereon, or shall offer the property for sale at public auction, including Internet auction. If sealed bids are taken, the bids received, together with the report of the appraiser, shall be reported to the Board. If the property is offered for sale at public auction, the highest bid, the number of bidders, the appraiser's report, and such other information as may be pertinent shall be reported to the Board. If the Board finds the highest bid received to be fair and adequate and in the best interests of CUB, the Board shall approve the sale and authorize the General Manager to execute a deed of conveyance upon the successful bidder complying with the bid made.
- (3) If the appraised value of the property is less than Ten Thousand Dollars (\$10,000.00), the General Manager shall report to the Board such offers to purchase as he may have, together with the report of the appraiser. If the Board finds the offer to purchase fair and adequate and in CUB's best interests, then the Board shall approve the sale and authorize the General Manager to execute a deed of conveyance to the purchaser.
- (4) The General Manager may waive the requirement for an appraisal if he or she finds the property to have only nominal value and the cost of obtaining an appraisal would not be justified. This finding shall be in writing and kept on file for inspection by the Board. Upon the filing of such a finding, the Board may authorize the disposal of the real property without the necessity of payment to CUB, except as otherwise provided in this Section.
- (5) All real property offered for sale or lease by CUB, except property sold or leased to the federal, state, or county governments or an agency of city government, shall be advertised by posting a sign not less than eighteen (18) inches by twenty-four (24) inches in size on the property that is conspicuously located and visible from adjacent streets or roads. The sign shall give notice that the property is being offered for sale or lease and designate the office to be contacted for information relative to the bidding procedure, date of sale, and other pertinent information.

Section 1001. Disposal of Surplus Personal Property

The procedure for the sale or disposal of surplus personal property, after the declaration of it being surplus by CUB and CUB having determined that the property is no longer needed by CUB, shall be as follows:

- (1) CUB shall determine the fair value of the personal property in question through appraisals or by any other evaluation method reasonably calculated to accurately reflect the fair market value of such property.
- (2) All personal property owned by CUB having a value of One Thousand Dollars (\$1,000.00) or more shall be sold by CUB on a competitive basis by competitive sealed bids, or at public auction, including Internet auction.
- (3) All personal property owned by CUB having a value of less than One Thousand Dollars (\$1,000.00) shall be sold or disposed of by CUB in a commercially reasonable manner under the circumstances. However, if the value of surplus personal property has an aggregate value of One Thousand Dollars (\$1,000.00) or more, it shall be sold by CUB on a competitive basis by competitive sealed bids, or at public auction, including Internet auction.

Section 1002. Purchase of Surplus Property by CUB Officials and Employees

In accordance with Tenn. Code Ann. § 6-54-125, no CUB official or employee may purchase surplus property from CUB except by bid at public auction. This limitation shall apply during the tenure of such official or employee's office or employment and for six (6) months thereafter.

ARTICLE XI
ETHICS IN PUBLIC CONTRACTING

Section 1100. Statement of Policy

Public employment is a public trust. It is CUB's policy to adhere to all applicable state laws and the highest standards of ethical conduct in all of its public procurements. CUB employees are required to discharge their duties impartially so as to assure fair competitive access to CUB procurement by responsible Persons. Moreover, they shall conduct themselves in such a manner as to foster public confidence in the integrity of CUB's procurement process. To achieve the purpose of this Article, it is essential that those Persons doing business with CUB also observe the ethical standards prescribed herein.

Section 1101. Conflict of Interest

There is hereby incorporated herein by reference the provisions of Tenn. Code Ann. § 6-54-107, which govern conflicts of interest, and Title 4, Chapter 1 of the Clinton Municipal Code, which govern ethics. Any modification, amendment, or replacement of Tenn. Code Ann. § 6-54-107 or Title 4, Chapter 1 of the Clinton Municipal Code shall automatically become a part of this Policy immediately upon becoming law.

Section 1102. Kickbacks and Collusion

- (1) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or contract.
- (2) Collusion. It shall be a breach of ethical standards for any Person to collude with any other Person in an attempt to influence CUB's procurement of Procured Items.

Section 1103. Reporting of Suspected Collusive Bidding or Negotiation

- (1) Notification to the General Manager. When any employee of CUB suspects collusion among any Persons participating in the CUB procurement process, a written notice of such suspicion shall be transmitted to the General Manager.
- (2) Retention of All Documents. All documents involved in any procurement in which collusion is suspected shall be retained by CUB until the General Manager gives notice that such documents may be destroyed. All retained documents shall be made available to the Board upon request.

Section 1104. Civil and Administrative Remedies against Non-Employees Who Breach Ethical Standards

- (1) Existing Remedies Not Impaired. Civil and administrative remedies against non-employees that are in existence on the effective date of this Policy shall not be impaired.
- (2) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, CUB may impose any one or more of the following:
 - (a) Written warnings or reprimands;
 - (b) Termination of transactions; and
 - (c) Debarment from being a contractor or subcontractor under CUB contracts.

**ARTICLE XII
MISCELLANEOUS PROVISIONS**

Section 1200. Notices

Except as may otherwise be provided for in an invitation to bid, request for proposals, contract, or other written notice, any notice required or permitted to be given under this Policy shall be given in writing to the General Manager. Such notice may be given by hand or courier service delivery to the General Manager, and, in such case, shall be deemed to be given only upon actual hand or courier service delivery to the General Manager. Otherwise, notice shall be given by mailing the notice to the General Manager by Certified Mail, Return Receipt, with postage prepaid, at the following address:

Clinton Utilities Board
c/o General Manager
P.O. Box 296
Clinton, Tennessee 37717

In such cases, notice shall be deemed to be given on the delivery date shown on the Return Receipt.

Section 1201. Severability

In case any one or more of the provisions contained in this Policy shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Policy shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 1202. Waiver

To the extent such action is not contrary to the Charter or to state law, and when deemed by CUB to be in the best interest of CUB's ratepayers, CUB may waive or modify any requirement of this Policy. Any such waiver must be in writing and must be signed by the General Manager.

Section 1203. Interpretation

The headings of the Articles, Sections, and Subsections of this Policy are for convenience only and shall not be used to limit or expand the meaning of any of the provisions of this Policy. Where the context so requires, words referring to the masculine gender shall include the feminine and neuter and words referring to the singular shall include the plural and words referring to the plural shall include the singular.

Section 1204. Amendment by CUB

Any one or more provisions of this Policy may be amended, modified, or rescinded by CUB at any time without notice. No person or entity shall have any claim against CUB as a result of any such amendment, modification, or rescission.

Section 1205. Statutory References

References to particular statutes, charter provisions, and ordinances are made with respect to the contents and designations thereof as of the date of the adoption of this Policy. Where reference to a particular statute, charter provision, or ordinance is made in this Policy and a provision of this Policy has been adopted in accordance with such statute, charter provision, or ordinance, any amendment or redesignation of such statute, charter provision, or ordinance shall be automatically adopted into this Policy.

Section 1206. Effective Date and Repeal of Conflicting Provisions

This Policy shall take effect upon adoption by the Board and shall replace and supersede all previous resolutions, rules, regulations, policies, and procedures used in connection with CUB's procurement activities deemed to be in conflict with the provisions of this Policy. Notwithstanding the foregoing, nothing in this Policy is intended to restrict or otherwise constrain the authority granted to the General Manager under the Authority Resolution. In the event of a conflict between the provisions of this Policy and the provisions of the Authority Resolution, the provision that grants the General Manager the most expansive authority shall control.