

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
TENNESSEE BUSINESS ENTERPRISES**

**CHAPTER 1240-06-05
ASSIGNMENT OF MANAGERS**

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1240-06-05-.01 PROMOTIONS.

- (1) All managers are eligible to compete for promotional opportunities if, on the date the bid announcements are closed, the manager:
 - (a) Is not on probation,
 - (b) Is not delinquent in the filing of any report required by the State of Tennessee and is not delinquent in the payment of any financial obligation owed to the State of Tennessee,
 - (c) Possesses the certification(s) required by the facility announced for bid,
 - (d) Has not refused an award of a facility during the preceding twelve (12) months, and
 - (e) Has not failed to appear for a scheduled interview during the preceding twelve (12) months. This provision shall not apply if the manager has withdrawn from the interview forty-eight (48) hours prior to the scheduled appearance by providing notice to the Agency.
- (2) Six managers from those submitting bids shall be selected to compete for the promotion. The basis for this selection shall be seniority, provided the manager possesses the necessary certification(s). If two or more managers are tied for the sixth and final slot in terms of seniority, those managers who are tied will be permitted to interview. Additionally, any U.S. military veteran who was honorably discharged, who is licensed and otherwise qualified but does not possess the necessary seniority to qualify as one of the top six candidates, will automatically qualify for the interview.
- (3) After the candidates have been determined eligible to interview, each candidate will be interviewed by a panel consisting of one Agency representative, the area representative of the Committee, and one person jointly determined by the other two panel members. The third panel member may be an independent business person, a property management official or another person familiar with TBE. In cases where required by the permit, Property Management will be allowed to serve as the third panel member, and concurrence of the other two panel members is not required. If practical, interviews shall be conducted within fifteen (15) working days after the candidates have been determined.
- (4) The panel shall rate each candidate based upon his/her record of performance for the preceding twelve (12) months, responses received to questions, the manager's plans for the new operation, personal appearance, demeanor, and attitude. Each panel member shall rate each candidate according to the following:
 - (a) First Choice.....6 points

(Rule 1240-06-05-.01, continued)

- (b) Second Choice.....5 points
 - (c) Third Choice.....4 points
 - (d) Fourth Choice.....3 points
 - (e) Fifth Choice.....2 points
 - (f) Sixth Choice.....1 point
- (5) The rating shall be done by ballot. The Chairperson of the panel, who shall be the Agency representative, shall collect the ballots and tabulate the ratings, which shall be verified by the other panel members. The successful manager shall be immediately offered the award. The manager must, at that time, either accept or reject the award. If the award is refused, the manager shall be precluded from having any further bids considered until one year has elapsed from the date of the refusal. If the manager is scheduled for more than one interview as a result of his/her bids on a number of facilities contained in a single bid package, then the manager may wait until the conclusion of the last interview in which the manager participates to accept or reject the award of a facility.
- (6) It is understood that property management may impose additional selection criteria for managers on their properties. This may include, but is not limited to, such things as security clearance, special training, and random drug testing if such additional conditions are also required of property management’s employees. If a manager who is awarded a facility fails to meet the additional selection criteria, the manager with the next highest score who meets the additional selection criteria will be awarded the facility.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-4-204, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Repeal and new rule filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-05-.02 BID ANNOUNCEMENTS.

- (1) Bid announcements for a vending facility available for award shall be sent to all licensed managers within the state. The bid announcement shall be on a form developed by the Agency with the active participation of the Committee, and shall contain information needed for a manager to make an initial judgment as to his/her interest in the facility.
- (2) The manager’s signature on the bid announcement shall authorize the Agency to release to members of the interview panel information relative to the record of performance of the manager for the preceding twelve (12) month period. In addition, the signature of the manager on the bid announcement authorizes the Tennessee Department of Revenue to release to the Agency all information relative to the tax status of the manager at his/her present or last facility operated.
- (3) The bid announcement shall remain open for a period of fifteen (15) working days. Upon the closing of the bid announcement, the Agency shall verbally provide to the Secretary of the Committee a complete list of all managers who have submitted bids. The Secretary shall then verbally certify to the Agency the seniority ranking and the certification possessed by each manager who has submitted a bid.

(Rule 1240-06-05-.02, continued)

- (4) All bid announcements shall be posted in the U.S. Mail, postage pre-paid in a sufficient amount to insure delivery to the licensed managers. Documentation of this process shall be an affidavit attached to the computer-generated mailing list, executed by the State office personnel charged with the responsibility of the mailing, signifying the date of the posting and that all names and addresses on the list correspond with those on the envelopes addressed to the licensed managers.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed November 8, 1979; effective January 29, 1980. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed March 10, 1989; effective April 24, 1989. Repeal and new rule filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-05-.03 TRANSFERS.

- (1) The intent of a transfer is to assure, insofar as possible, employment for a manager who faces displacement not attributable to his/her conduct, attitude or lack of performance. A transfer shall not result in a substantial financial advantage or disadvantage to the manager. In order to assure the effectiveness of this provision, the manager's sales for the preceding twelve (12) months shall be calculated and compared to the projected sales on the bid announcement. The greater of these two numbers shall be used to determine the range of transfer eligibility. If a vacant facility for which the manager is certified and which produces sales equal to those calculated for the displaced manager (meaning that sales may be fifteen percent (15%) above or fifteen percent (15%) below those calculated), then the manager may be considered, depending upon the manager's seniority and the number of other managers competing for the same facility.
- (2) Transfer eligibility may be established if:
 - (a) A determination is made to close the facility;
 - (b) The classification of the manager's facility changes and the manager fails to obtain the necessary certification;
 - (c) A permanent loss of customers occurs equal to thirty percent (30%) of the population figures reflected on the bid announcement; or
 - (d) The manager is on medically documented sick leave and requests to be placed on transfer status.
- (3) Transfer eligibility is valid for a period of two (2) years, during which seniority continues to accrue and eligibility is maintained for all benefits. If a manager remains in his/her facility while on transfer status and the circumstances at the facility have not improved, the manager may reapply for transfer status at the end of the two-year period provided the manager has not declined a facility which falls within his/her range.
- (4) Transfer eligibility is lost if the manager bids on and receives the award of a facility which produces sales within or which exceeds the manager's transfer range, or the manager declines an award based on his/her transfer eligibility.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7 (c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed November 8, 1979; effective January 29, 1980. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed March 10, 1989; effective April

(Rule 1240-06-05-.03, continued)

24, 1989. Repeal and new rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-05-.04 DEMOTIONS.

- (1) If a manager is dedicated to the appropriate management of his/her facility and is exerting all of his/her ability to effectively operate the business but is not able to do so because of the demands of the facility, the Agency has the right to remove the manager from the facility as opposed to initiating disciplinary action. Prior to any such removal, documented observations of inadequate performance must be presented to the manager at least thirty (30) days before any removal can take place. This will allow the manager the necessary time to make any adjustments, if any can be made, to improve the efficiency and effectiveness of the facility's operation.
 - (a) If, after the expiration of the allotted time, the circumstances have not changed, the Agency shall immediately remove the manager from the facility and place him/her on demotion status and the Ready-for-Employment List. The manager will maintain all benefits for a period of two (2) years and continue to accrue seniority during that period of time.
 - (b) The manager shall not be eligible to compete for a facility by virtue of the demotion status if the facility's annual sales exceed eighty-five percent (85%) of those of the facility from which the manager was demoted.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7 (b). **Administrative History:** Original rule filed May 25, 1983; effective June 24, 1983. Repeal filed December 6, 1983; effective January 5, 1984. Repeal and new rule filed April 8, 2005; effective June 22, 2005.

1240-06-05-.05 PERMANENT ASSIGNMENT NOT REQUIRING BIDS.

- (1) If eligibility has been established under chapters 1240-06-05-.03 and 1240-06-05-.04, the Agency may make the award of the facility to the manager, without soliciting bids, provided the manager possesses the appropriate certification(s).
- (2) If two or more managers have established such eligibility and are competing for the same facility, then the provisions of chapter 1240-06-05-.01 shall apply and an interview shall be conducted for purposes of selecting the manager for the assignment.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7. **Administrative History:** Original rule filed April 8, 2005; effective June 22, 2005.

1240-06-05-.06 READY-FOR-EMPLOYMENT LIST.

- (1) The Ready-for-Employment List shall contain the names of all licensed managers who remain certified and who are not permanently assigned to a facility. If certification expires, the manager's name shall be removed and (s)he will no longer be eligible to compete in the bidding process.
- (2) The Agency shall rank all managers on the Ready-for-Employment List in accordance with the amount of seniority which has been accrued and the list shall contain the certification(s) for each manager. Managers having no seniority shall follow on the Ready-for-Employment List according to the date the Agency certified the manager as a licensed manager.

(Rule 1240-06-05-.06, continued)

- (3) A manager accrues seniority when permanently or temporarily assigned to a facility or when placed on transfer or demotion status.
- (4) Managers who have not accrued seniority for a period of five (5) years will not be allowed to compete for vacant vending facilities through the promotion process and will have their names removed from the Ready-for-Employment List. In order to have their names placed back on the Ready-for-Employment List, they must complete entry-level training. Any manager who must attend entry level training under this provision must meet the same requirements as any new trainee.
- (5) The Agency shall have the responsibility of maintaining the Ready-for-Employment List and shall provide to all members of the Committee a copy together with updates as they occur.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** Original rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-05-.07 TEMPORARY MANAGERS.

- (1) The Agency may, if circumstances require, place a facility under temporary management. The person assigned to the facility on a temporary basis may or may not be a licensed manager. The Agency, with the active participation of the Committee of Blind Vendors, will develop guidelines to be incorporated into the operations manual on selecting temporary managers.
- (2) The Agency, with the active participation of the Committee, shall develop guidelines to review the status of facilities under temporary assignment.
- (3) After a manager is selected to operate a facility on a temporary basis, the Instrument of Facility Assignment must be executed on the first day of business and the attachments appended thereto as required by chapter 1240-6-2-.04. The Agency has the authority to customize the IOFA for the temporary manager to be more restrictive than that required of licensed managers.
- (4) A manager who accepts a temporary assignment pursuant to this section has no permanent rights to the facility in whole or in part.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(b) and(c). **Administrative History:** Original rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-05-.08 MARGINAL FACILITIES.

- (1) It is the Agency's intent to offer for operation vending facilities that will provide to a licensed blind vendor an income, sufficient to support them and their family. If, for whatever reason, a vending facility will no longer support a licensed blind vendor, consideration must be given to closing the facility. The Agency, with the active participation of the Committee of Blind Vendors, shall develop guidelines to be incorporated into the operations manual on when such facilities shall be closed and how any remaining vending is to be distributed to licensed blind vendors or third party vendors.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(b) and (c). **Administrative History:** New rule filed May 25, 2017; effective August 23, 2017.