



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

AGENDA
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #007
THURSDAY, JANUARY 3, 2013 – 10:00 AM
TN TOWER –3RD FLOOR - DAVIDSON ROOM

- I. Call to Order and Approve Minutes from October 22, 2012 Meeting
- II. New Business
 - Draft “Policies and Procedures of the Central Procurement Office”.

See attached supporting documentation (a Clean version and a redline Comparison version of each policy):

 - 1. Procurement Methods
 - 2. Non-competitive Procurement
 - 3. Contract Management
 - 4. Certification of Goods and Services Recommended by the Central Non-profit Agency or TRICOR
 - 5. Authority Delegation
 - 6. Subrecipient Uniform Reporting, Cost Allocation Plans, and Monitoring
 - 7. Energy Efficiency Standards and Life Cycle Costing
 - 8. Business Conduct and Ethics
- III. Other Business
- IV. Adjournment

CENTRAL PROCUREMENT OFFICE

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**MINUTES OF OCTOBER 22, 2012
MEETING**



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
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MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #006
MONDAY, OCTOBER 22, 2012
TN TOWER – 3RD FLOOR – NASHVILLE ROOM

Members in Attendance:

Jessica Robertson, Sondra Howe, Kelly Smith, Buddy Lea, Mark Choate, Melissa Kmiecik, Matt Thompson, Jim Thompson

Members in Attendance via Conference Call:

Jay Garrison, Steve Hillis

Others in Attendance:

Melinda Parton, Mary Anne Queen, Bryan Chriske, Mike Perry, Paul Krivacka, Toni Stuart, Marcy Damon, Charles Key, Charlotte McKinney (State of Tennessee).

Call to Order: Jessica Robertson, Chief Procurement Officer and Advisory Council on State Procurement Chairman, officially called the meeting to order. She asked for a roll call of members and recognized that a quorum of members was present.

I. Minutes from June 14, 2012 Meeting: A motion was made by Kelly Smith, Assistant Commissioner, Department of General Services, to accept the minutes as submitted. The motion was seconded by Mark Choate, Oce North America. All members voted in favor – none opposed.

II. New Business:

Draft Comprehensive Rules and Regulations of the Central Procurement Office:

Chief Procurement Officer Robertson explained that two versions of the draft *Comprehensive Rules and Regulations of the Central Procurement Office* were included with the agenda. The redline version indicates all the changes made by the Policy Review Subcommittee as a result of their extensive review and hours of hard work. The clean version has their changes accepted for ease of reading. Chief Procurement Officer Robertson and Paul Krivacka, Director of Category Management and Legal Team, indicated that revising the rules and regulations for the Central Procurement Office is the first step in the process and that updating the policies and procedures will be the next step.

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Chief Procurement Officer Robertson then opened the floor for any questions or discussion regarding the draft rules and regulations. Jim Thompson, Thompson Services, Inc., posed a question regarding the Proposal Bond included in Rule 7 being at the sole discretion of the Chief Procurement Officer. He asked if there was a dollar limit on the Proposal Bond. Paul Krivacka responded on behalf of Chief Procurement Officer Robertson, stating that the rule was written to allow the flexibility to not require a Proposal Bond in some low-risk cases. He explained that the intent was to encourage competition and that Proposal Bonds would still be required for all high-risk contracts.

Seeing no other questions or discussion, Chief Procurement Officer Robertson asked for a motion to accept the draft *Comprehensive Rules and Regulations of the Central Procurement Office* as submitted. A motion was made by Kelly Smith, Assistant Commissioner, Department of General Services, and was seconded by Buddy Lea, Assistant Commissioner, Department of Finance and Administration. All members voted in favor – none opposed.

Buddy Lea noted that the Division of Accounts, Department of Finance and Administration, will be drafting additional language for the placeholders in Rule 21 (Contractor Registration) and Rule 23 (General Requirements of Payments).

- III. Other Business:** Jessica asked for any other business that the Council needed to discuss. Seeing none, she asked for a motion to adjourn the meeting.
- IV. Adjournment:** A motion to adjourn was made by Buddy Lea and seconded by Kelly Smith. All members voted in favor – none opposed.

DRAFT POLICIES AND PROCEDURES OF THE CENTRAL PROCUREMENT OFFICE

1. Procurement Methods

CLEAN VERSION

DRAFT
Policy Number ____ - 2013
Central Procurement Office
Procurement Methods Policy and Procedures

Effective: ____ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a policy and procedure concerning procurement methods used by the Central Procurement Office and Delegated State Agencies when procuring goods and services that ensures fairness, transparency and the maximum amount of competition for State contracts.

2. Scope.

This policy applies to all procurements and resulting contracts as required by statute or rule.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Agency” - means each State board, commission, committee, department, officer, or any other unit of State government.

“Agency Term Contract”- means a State Agency Contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

“Best and Final Offer” or “BAFO” - means a negotiation tool whereby the State requests that respondents provide their best and final offer or response.

“Central Procurement Office” means the State office established and empowered by Tenn. Code Ann. § 4-56-104.

“Central Procurement Office Policy” means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with Tenn. Code Ann. §§ 4-56-101, *et seq.*

“Competitive Negotiation” – means a competitive procurement method that involves direct contract negotiation with one or more respondents who have been pre-qualified or pre-selected by the Central Procurement Office through a competitive process.

“Competitive Negotiation Techniques” – means those direct negotiation techniques used in connection with a competitive negotiation method of procurement.

“Contract” means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

“Contracting Party” means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.

“Delegated Authority” means a written document, approved in accordance with Central Procurement Office Policy, that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.

“Delegated State Agency” means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services program(s) within specified limits and guidelines.

“Emergency Purchases” means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

“Immaterial Defect” – means a defect in a response to a solicitation, which is of no substantial consequence, that is capable of correction through supplemental information or a clarifying response. A defect is immaterial when the effect on price, quantity, or delivery is negligible when contrasted with the total cost or scope of the goods or services being procured. Any defect, the correction of which gives a respondent a competitive advantage vis-à-vis other respondents or prejudicial to one or more respondents, shall not be deemed to be an immaterial defect.

“Person” – means a natural person or legal entity with the legal capacity to enter into contracts or sue and be sued.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, negotiation, preparation and award of a Contract, and all phases of Contract administration.

“Purchase Order” - means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a “purchase order” becomes a binding Contract on both parties.

“Respondent” – means a natural person or legal entity with the capacity to contract or sue and be sued who has submitted a written response to a solicitation.

“Responsible” – with respect to a respondent or a proposer means a person who has the capacity in all material respects to perform fully the Contract requirements, and the integrity and reliability that will assure good faith performance.

“Responsive” – with respect to a respondent or a proposer means a person who has submitted a proposal, which conforms in all material respects, to the terms of the Solicitation.

“Reverse Auction” – shall have the meaning set forth in Tenn. Code Ann. § 12-3-219.

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

“Solicitation” means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

“Sole Source Procurement” means a procurement for which only one vendor possesses the unique and singularly available capability to meet requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

“Specification” -means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. “Specification” includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

“State” – means the State of Tennessee and its Agencies, boards and commissions as the context requires.

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

“Statewide Contract” means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

“Target Pricing” – means a negotiation tool whereby the State provides respondents with the price the State expects to pay for a good or service.

4. Procurements - Generally.

All procurements shall utilize an approved procurement method in accordance with applicable statutes, the Rules or Central Procurement Office Policy. Allowable procurement methods and information gathering methods and techniques include, but are not limited to, the following:

- Informal Solicitations
- Invitation to Bid (ITB)
- Request for Proposals (RFP)
- Emergency Purchases

- Competitive Negotiation
- Sole Source
- Reverse Auction
- Request for Information
- Request for Qualifications (RFQ)

5. Waiver of Immaterial Defects in a Response.

The maximum amount of competition for State contracts is in the best interests of the State. Immaterial defects in a response should be waived, corrections or clarifications by respondents should be allowed after responses are reviewed, provided these defects are not of the type to give one respondent an unfair competitive advantage over other respondents. Procurement professionals should use restraint in deeming responses to be non-responsive on the basis of immaterial defects in a response that do not impugn competition, but that are capable of being responsive through correction or clarification.

6. Addenda, Amendments, and Clarifications to a Solicitation.

Prior to public release, all solicitations and subsequent addenda, amendments, and clarifications to a solicitation require the approval of the Central Procurement Office and all other State entities that endorsed or approved the original solicitation. All solicitations, including any addenda, amendments, and clarifications to a solicitation, shall be approved based on the following:

- Application of the requirements of Central Procurement Office Policy and the Rules;
- Adequacy of the scope of service description; and
- Adequacy of the solicitation's assurance of:
 - Fairness to potential providers of commodities or services;
 - Clear and open competition;
 - Achievement of procurement objectives; and
 - Protection of the State's best interests.

7. Pre-Proposal Conference.

Central Procurement Office or procuring State Agency staff may conduct a Pre-Proposal conference after release of the solicitation, but before responses are submitted, if such is determined to be in the best interests of the State.

8. Oral Presentation.

A solicitation may require oral presentations in a manner set forth in the solicitation. Oral presentations shall be conducted after the solicitation is released, but before responses are submitted to the Central Procurement Office or procuring State Agency.

9. General Requirements of Solicitations and Response Evaluation.

Each solicitation shall establish a time schedule for opening and evaluation of responses and inspection of the procurement file.

9.1. *Technical Response.*

The technical response evaluation should include, but is not limited to, consideration of the following factors:

- Quality of the goods or reliability of the services;
- Experience and qualifications (e.g., pending litigation, years in business, utilization of diverse business enterprises as sub-consultants, subcontractors, or suppliers to assist in providing goods or services, partnering with or mentoring of diverse business programs associated with the delivery of goods or services, and customer references, etc.);
- Technical approach;
- Financial ability to perform;
- Delivery terms (e.g., number of days for product to be shipped or for job to be started, etc.);
- Past vendor performance, financial resources, and ability to perform to specification requirements;
- The effect of the purchase on Agency productivity;
- Environmental options and resources (e.g., green, energy efficiency, earth-conscious considerations, recycle options, remanufactured/refurbished products or equipment, packaging, certificates, permits, awards, successful and ongoing programs, etc.); and
- Used products or equipment.

9.2. *Cost Proposal.*

The cost proposal should include, but not be limited to, the following considerations:

- Acquisition costs;
- Costs of implementation;
- Delivery costs;
- Discounts or Rebates;
- Cost of any State employee training associated with the purchase;
- Implementation and start-up costs, including installation costs, life cycle costs, trade-in value and warranty options;
- Discounts;

Once the evaluation team has completed the evaluation of the technical portion of the response, the cost proposal (e.g., single award, line item, or group award) will be calculated using a formula set forth in the solicitation. The relative scoring and weight between the technical response and the cost proposal shall be set forth in the solicitation.

The evaluation team shall combine the technical response scores with the cost proposal scores for each respondent to determine the response that has the highest evaluated score. Technical responses and cost proposals may be contemporaneously evaluated or tabulated so long as the evaluation panel for the technical responses is independent of the persons tabulating or otherwise analyzing the cost proposals. In no event should the persons serving on the evaluation panel for the technical responses be influenced by the cost proposals and all safe guards must be in place to maintain a proper segregation of duties and responsibilities.

10. Rejection of Responses.

The Chief Procurement Officer or Delegated State Agency, with the approval of the Chief Procurement Officer, shall have the absolute discretion to reject any and all responses. The Chief Procurement Officer or Delegated State Agency shall provide written notification to all respondents whose responses were rejected. If the evaluation team determines that a response is non-responsive, non-responsible, or rejects a response for any reason, the State should not complete the technical response evaluation or open the associated cost proposal. Minor clerical errors or immaterial defects will not automatically result in rejection of a response.

Any response that does not meet the requirements of the solicitation may be considered to be nonresponsive and the response may be rejected. Examples of non-responsiveness include, but are not limited to:

- The response is untimely;
- The response is incomplete;
- The response is inconsistent with the specifications as set forth in the solicitation; or
- The response restricts the rights of the State or otherwise qualifies the respondent's proposal as set forth in his or her response.

All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:

- Unreasonably high prices or failure of all responses to meet technical specifications as set forth in the solicitation;
- Error or defect in the solicitation;
- Cessation of need;
- Unavailability of funds;
- Lack of adequate competition;
- A determination by the State Agency, with the concurrence of the Chief Procurement Officer, that proceeding with the Procurement would be detrimental to the best interests of the State.

A rejection of all responses shall be documented and set forth the reasons for rejection of all responses. The Chief Procurement Officer shall report rejection of all responses to the Comptroller of the Treasury.

Selection or rejection of a response does not affect its status as a public record. Upon completion of the review and evaluation of responses submitted in response to a solicitation, evaluated responses and associated materials shall be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

The Chief Procurement Officer may reject any response, even a response that is ostensibly responsive, that contains prices for individual items or services that are inconsistent with the solicitation or unrealistic when compared to other prices in other responses to the same solicitation, provided that doing so is in the best interests of the State.

11. Verification of Ability to Perform.

Responses may be deemed non-responsive for lack of apparent ability to perform the proposed contract after adequate assurance of performance is requested by the Central Procurement Office and the respondent is unable to provide the requested assurance. A respondent must, upon request of the State, furnish satisfactory evidence of the ability to furnish products or services in accordance with the terms, conditions, and specifications of the solicitation. Proposal bonds, performance bonds or other security may be required for any contract. All such requirements shall be set forth in the solicitation.

The procuring Agency may inspect the facilities of any respondent or require additional information regarding a respondent's ability to perform the proposed contract. A site visit may be conducted by an Agency where the commodity or service at issue may be impacted by site conditions

12. Amendment or Withdrawal of Responses.

A respondent may withdraw or amend a response prior to its opening. After response opening, and prior to award, a respondent may withdraw a response or a portion thereof only upon a written determination by the Chief Procurement Officer that there is an obvious response error supported by appropriate industry, market or vendor cost information and where enforcement of the response would impose an unconscionable hardship on the respondent.

13. Notice of Intent to Award.

A Notice of Intent to Award shall be communicated in writing or by electronic transmission to all respondents. Each contract shall be awarded and let by the State with reasonable promptness to the apparent winning respondent, e.g., on the basis of highest evaluation score or lowest cost, whose response meets the requirements and criteria set forth in the solicitation. Where more than one item is specified in a solicitation, the State reserves the right to determine the winning respondent, or respondents in the case of a multiple award, either on the basis of each individual item, a group of items, or the total of all items, unless otherwise provided in the solicitation.

14. Contract Award.

The Central Procurement Office or Delegated State Agency shall document the evaluation team members' names, scores, and evaluation results and recommend an award to the respondent who has received the highest evaluation score or in the case of an ITB, an award to the responsive and responsible respondent with the lowest cost response.

Notwithstanding the foregoing, there are situations where it is in the best interests of the State to award a contract to a respondent other than the respondent with the lowest cost proposal. In such event, the Chief Procurement Officer, or his or her designee, shall document the reasons for awarding a contract to a respondent other than one with the lowest cost proposal. Justifications for such an award include, but are not limited to:

- The highest evaluated response, taken as a whole, falls outside the competitive range;
- The respondent is not capable of meeting the solicitation requirements;
- The respondent is not able to perform under the terms of the contract as awarded, e.g., in terms of quality, quantity or timeliness of performance; or
- Based on the totality of the above and other considerations, award to another respondent is in the best interests of the State, provided this determination is supported by sufficient documentation that will become part of the procurement file.

After the evaluation team completes the award recommendation process and notifies the respondents of the official award recommendation, the procurement file shall be open and available for public inspection for at least seven (7) calendar days prior to the actual award of the contract. Protests shall be governed by Tenn. Code Ann. § 4-56-101, *et seq.*, and the Rules of the Central Procurement Office.

15. Single Response to Solicitation.

In the event that only one response is received by the Central Procurement Office or the procuring State Agency by the response deadline in response to a solicitation, the State may elect one of the following actions:

- The procuring Agency head may request the Chief Procurement Officer to cancel the solicitation based upon insufficient competition;
- Open the technical response to determine whether it meets minimum requirements. If it does not meet minimum requirements, the procuring Agency head may request the Chief Procurement Officer to approve to cancel the solicitation;
- If the response meets minimum requirements, the procuring Agency may open the cost proposal and negotiate with the respondent; or
- The procuring Agency head may also request the Chief Procurement Officer to approve or cancel the solicitation if the cost is deemed excessive after attempts at negotiation.

16. Cancellation or Reissuance of Solicitation.

Cancellation or reissuance of a solicitation requires a written notice of cancellation or reissuance from the Central Procurement Office for contracts procured by the Central Procurement Office or written notice of cancellation or reissuance from the procuring Agency if it is an Agency

procured contract. Any notice of cancellation or reissuance of a solicitation by an Agency shall also be provided to the Central Procurement Office. All decisions to cancel or reissue a solicitation shall be documented and become part of the procurement file.

17. Tie Responses.

A tie will exist where two or more respondents offer goods or services that meet all specifications and terms and conditions at identical prices, including cash discount offered for prompt payment. A tie will be broken by considering the following factors, in descending order:

- First preference shall be given to a “Tennessee Respondent.” Pursuant to Tenn. Code Ann. § 12-4-121(c)(2), a “Tennessee Respondent” means a business that is:
 - Incorporated in this State;
 - Has its principal place of business in this State; or
 - Has an established physical presence in this State.
- Second preference shall be given to certified disadvantaged business enterprise (“DBE”) respondents.
- Third preference shall be given to the respondent who was the low cost respondent on other items being procured for the same solicitation.
- Fourth preference shall be given to the respondent who offers the best delivery.
- If a tie remains, it shall be broken by lot or coin toss.

18. Protests.

Protests shall be governed by Tenn. Code Ann. § 4-56-101, *et seq.*, Central Procurement Policy, and the Rules.

19. Procurement and Information Gathering Methods and Techniques.

19.1. Informal Solicitations.

Informal solicitations may be used for one time purchases or for contracts with a total value not to exceed twenty-five thousand dollars (\$25,000.00) or such amount approved by the Procurement Commission. Three quotes should be obtained, when practicable. The person soliciting quotes shall document the quotes received in accordance with Central Procurement Office Policy, which shall become part of the procurement file. Purchase orders or contracts may not be artificially divided by a Delegated State Agency in order to make the purchase amount fall below limitations established in Central Procurement Office Policy or the Rules.

19.2. Invitation to Bid (“ITB”).

An ITB is a request, verbal or written, which is made to prospective suppliers of commodities or providers of services requesting the submission of a response for the

purpose of awarding a contract or transmitting a purchase order. An ITB is generally an objective determination where the award is made to the responsive and responsible respondent who meets the minimum specifications and requirements at the lowest cost.

All ITBs shall require, at a minimum, that respondents:

- Provide a valid mailing or email address;
- Sign the response prior to opening;
- Provide a net price for the unit specified for each item;
- Initial in ink any corrections of a line item unit price made by the respondent;
- Provide the number of calendar days required for delivery after receipt of order; and
- State the length of time in which a proposed pricing is valid (failure to do so will result in pricing being valid for sixty (60) days).

Alternate items may be proposed in a response if allowed by the terms of the solicitation and if the alternate item or items meet the specifications in terms of quality, form and function. The procuring Agency may specify whether alternate items are allowed.

19.3. *Request for Proposals (“RFP”).*

A RFP is a formal invitation to potential respondents to submit a proposal to provide a good or service to a State or one or more of its Agencies. Additionally, a RFP is a Procurement process whereby the State has the ability to judge if a respondent’s qualifications, experience, and approach will result in an award of a contract to a respondent on terms and conditions in the best interests of the State.

Terms and conditions for a RFP are derived from the *pro forma* Contract (located on the Central Procurement Office website) developed during the RFP creation and attached to the solicitation. A RFP shall set forth specific provisions in accordance with Central Procurement Office Policy and include and meet the following:

- The description of the technical requirements for the goods or services to be procured by RFP shall provide sufficient detail to minimize the likelihood of respondent confusion;
- The technical requirements and scope in the RFP shall not contain features that unduly restrict competition;
- The RFP shall contain directions regarding the submittal of responses;
- State requirements and restrictions regarding the RFP should be detailed in the RFP;
- A description of the evaluation factors to be considered in evaluating the responses should be detailed in the RFP. Evaluation factors should include, by way of example only, respondent qualifications, experience, technical approach, and cost; A declaration of whether the contract award is subject to successful contract negotiation should be detailed in the RFP; and
- The RFP shall contain a schedule of events that specifies RFP deadlines. Respondents shall be given a reasonable time, as determined by the Chief Procurement

Officer, to consider the required scope and the response evaluation factors before responses are submitted. The schedule of events may contain the deadlines for events, which includes by way of example only:

- RFP Issuance Date;
- Disability Accommodation Request;
- Pre-Proposal Conference;
- Notice of Intent to Propose;
- Respondent Written “Questions and Comments” Submission;
- State Response to Written “Questions and Comments”;
- Oral Presentation;
- Site Visit;
- Performance Bond Submission;
- Response Submission;
- State Completion of Technical Response Evaluations;
- State Opening and Scoring of Cost Proposals;
- State Evaluation Notice Released and RFP Files Opened for Public Inspection;
and
- Contract Signing.

The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.

The Central Procurement Office or Delegated State Agency shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. All RFPs that would result in contracts requiring the Comptroller’s approval shall also require the approval of the Office of the Comptroller of the Treasury before their public release. Further, any addenda, amendments, and clarifications to RFPs that would result in contracts requiring the Comptroller’s approval shall be filed by the procuring Agency with the Comptroller of the Treasury contemporaneously with their public release.

A RFP or its revisions shall be approved based on the following:

- Application of the requirements of the Rules and Central Procurement Office Policy;
- Adequacy of the scope description; and
- Adequacy of the RFP’s assurance of:
 - Fairness to respondents;
 - Clear and open competition;
 - Achievement of procurement objectives; and
 - Protection of the State’s interests.

Upon approval, the Central Procurement Office or Delegated State Agency shall send the RFP or a written or electronic notice that the specific RFP has been released to a documented list of potential providers.

19.3.1. *Evaluation of Responses.*

To foster the integrity of the RFP evaluation process, each respondent shall be required to submit the Cost Proposal component of the response in a sealed and labeled envelope separate from the technical response component. The cost proposal shall be evaluated separately from the technical response:

- The technical response and the cost proposal may be opened and evaluated simultaneously provided safeguards are in place to avoid the panel evaluating the technical proposal being influenced by the cost proposal;
- The scores of both technical response and the cost proposal may be combined to arrive at a total evaluation score.
- Any response that fails to adequately separate the cost proposal components from the technical response components may be considered non-responsive and rejected by the Chief Procurement Officer in his or her sole discretion.
- Response evaluations shall be impartial and ensure that all material requirements of the RFP have been met.
- Responses shall be evaluated in a manner consistent with the Rules and Central Procurement Office Policy.
- Prior to reviewing responses, each Response Evaluation Team member shall review a list of persons making responses and determine if the member has a conflict of interest with serving on the Response Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Policy. The conflict of interest statement shall be retained in the Procurement file.
- Responses shall be evaluated based on criteria set forth in the solicitation and on the basis of factors pertinent to the goods or services being procured.
- The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score based on the respondent's technical response and cost proposal.
- Contract awards to a respondent other than the respondent receiving the highest evaluated score shall require the written approval of the Chief Procurement Officer. Justification for the contract award shall be documented in the procurement file.

19.4. *Emergency Purchases.*

“Emergency Purchases” are State Agency purchases made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause.

Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and the Rules and utilize competitive procurement methods or negotiations whenever practicable. The procuring Agency shall maintain a procurement file that addresses the following:

- The circumstances leading to an emergency purchase;
- Procurement-related actions taken in response to the emergency, including procurement methods used; and
- A complete list of goods or services procured, including prices paid and total purchase amount.

19.4.1. *Conditions of Use for Emergency Purchase.*

Typical circumstances that warrant the use of an Emergency Purchase method include, by way of example only, natural disasters, e.g., tornadoes and floods, fire and oil or other hazardous material spill, mechanical failures, system outages, or unforeseen police action. An “emergency” does not require the declaration of a State of Emergency. Poor planning or the expiration of funds does not constitute an emergency. While these circumstances may require immediate action or may justify use of Non-Competitive Procurement methods, these circumstances do not warrant use of an Emergency Purchase method.

19.4.2. *Emergency Purchase Approval Process and Written Documentation.*

The Chief Procurement Officer may delegate Emergency Purchase authority to a State Agency to address emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated work volume, system or mechanical failures acts of God, or unforeseen police action. Delegated State Agencies may procure goods or services through the Emergency Purchase method in accordance with applicable rules, policies, and procedures. State Agencies should make Emergency Purchases through the Edison system and submit in writing to the Central Procurement Office the following information upon request by the Central Procurement Office:

- The circumstances leading to the Emergency Purchase;
- The procurement-related actions taken in response to the emergency, including procurement methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

19.5. *Competitive Negotiation.*

A competitive negotiation is a procurement method that involves direct discussions between the State and respondents who have been pre-qualified through a pre-

qualification method and found to be responsive and responsible. The purpose of a competitive negotiation is to facilitate discussion between the State and the best evaluated respondent or respondents to ensure award of a contract or contracts on terms on conditions in the best interests of the State.

Competitive negotiation techniques may be used in conjunction with any procurement method. All negotiations shall be conducted by the Chief Procurement Officer, his or her appointed lead negotiator, or an appointed negotiation team. The State may elect to negotiate by requesting revised cost proposals from one or more responsive and responsible respondents. The State, however, reserves the right to award a contract on the basis of initial responses received. Accordingly, each response should contain the respondent's best terms from a price and technical standpoint.

The State reserves the right to conduct multiple negotiation rounds or limit negotiations to only respondents in the competitive range or to only the highest evaluated respondent. If the State exercises its right to enter into negotiations, it may identify areas of one or more proposals that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations.

All responsive and responsible respondents the State has identified for further cost negotiation will receive equivalent information. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct Target Pricing and other price or service level negotiations. Target Pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual respondent pricing. During Target Price negotiations, respondents are not obligated to meet or beat target prices, but respondents will not be allowed to increase prices they propose. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in proposal improvement. Note that each clarification sought by the State may be unique to an individual respondent.

The Central Procurement Office staff shall maintain, at a minimum, the following documentation for a competitive negotiation:

- A log of the date and time of each meeting with a respondent, including the identity of the respondent and its representative;
- A description of the nature or reason for all material communications with each respondent; and
- A copy of all written and electronic communications between the Central Procurement Office or State Agency and each respondent.

19.6. *Sole Source Procurements.*

Sole source procurements may be made when an item or service possesses specific characteristics that can only be filled by a single source or where exclusive rights exist. Sole source procurements shall require the State Agency to provide advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All sole source procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of sole source procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy. The Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

- Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;
- Whether the product or service is unique and available from only one source;
- Whether the program requirements can be modified so that competitively procured goods or services may be used;
- Whether items must be interchangeable or compatible with in-place items;
- Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or
- Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

Sole source procurements shall also be conducted in accordance with the Central Procurement Office's *Non-competitive Procurement Policy and Procedures*.

19.7. *Reverse Auction.*

A Reverse Auction is a competitive process that allows respondents to bid on specified goods or services electronically and adjust cost proposals during a specified time period. An award shall be made to the respondent determined to be the lowest responsible and responsive respondent at the close of the specified response period.

19.8. *Request for Information ("RFI").*

A "Request for Information" or "RFI" is a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications. A RFI enables an equitable and simultaneous comparison of vendors. Agencies may use this tool to gather information about the availability of goods or services. A RFI is created through the Edison system and should be utilized when:

- An Agency has a procurement need, but requires more information to fully understand the industry;
- The Agency desires to identify vendors who are available to supply the needed good or service; or

- When the Central Procurement Office or procuring State Agency determines that a RFP process will benefit from a RFI.

19.9. *Request for Qualifications (“RFQ”).*

A “Request for Qualifications” or “RFQ” is a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications. A RFQ is a document that may be distributed before initiation of the Solicitation process. It is used to gather information from potential vendors regarding qualifications of providers of goods and services within the market place.

Related Statutes, Rules and Policies.

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

Approval Signature

Jessica Robertson, Chief Procurement Officer

DRAFT POLICIES AND PROCEDURES OF THE CENTRAL PROCUREMENT OFFICE

1. Procurement Methods

COMPARISON: SUBCOMMITTEE UPDATES TO 11/29/12 VERSION

DRAFT
Policy Number _____ - 2013
Central Procurement Office
Procurement Methods Policy and Procedures

Effective: ~~Upon approval by the Procurement Commission of the State of Tennessee~~ ___ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a policy and procedure concerning procurement methods used by the Central Procurement Office and Delegated State Agencies when procuring goods and services that ensures fairness, transparency and the maximum amount of competition for State contracts.

2. Scope.

This policy applies to all procurements and resulting contracts as required by statute or rule.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Agency” - means each State board, commission, committee, department, officer, or any other unit of State government.

“Agency Term Contract”- means a State Agency Contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

“Best and Final Offer” or “BAFO” - means a negotiation tool whereby the State requests that respondents provide their best and final offer or response.

“Central Procurement Office” —means the ~~Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.~~State office established and empowered by Tenn. Code Ann. § 4-56-104.

“Central Procurement Office Policy” means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with Tenn. Code Ann. §§ 4-56-101, *et seq.*

“Competitive Negotiation” – means a competitive procurement method that involves direct contract negotiation with one or more respondents who have been pre-qualified or pre-selected by the Central Procurement Office through a competitive process.

“Competitive Negotiation Techniques” – means those direct negotiation techniques used in connection with a competitive negotiation method of procurement.

“Contract” means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

“Contracting Party” means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.

“Delegated Authority” means a written document, approved in accordance with Central Procurement Office Policy, that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.

“Delegated State Agency” means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services ~~for an individual~~ program(s) within specified limits and guidelines.

“Emergency ~~Procurement~~—Purchases” means a State Agency purchase made during an actual emergency arising from unforeseen causes: without the issuance of a competitive solicitation.

“Immaterial Defect” – means a defect in a response to a solicitation, which is of no substantial consequence, that is capable of correction through supplemental information or a clarifying response. A defect is immaterial when the effect on price, quantity, or delivery is negligible when contrasted with the total cost or scope of the goods or services being procured. Any defect, the correction of which gives a respondent a competitive advantage vis-à-vis other respondents or prejudicial to one or more respondents, shall not be deemed to be an immaterial defect.

“Person” – means a natural person or legal entity with the legal capacity to enter into contracts or sue and be sued.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, negotiation, preparation and award of a Contract, and all phases of Contract administration.

“Purchase Order” - means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a “purchase order” becomes a binding Contract on both parties.

“Respondent” – means a natural person or legal entity with the capacity to contract or sue and be sued who has submitted a written response to a solicitation.

“Responsible” – with respect to a respondent or a proposer means a person who has the capacity in all material respects to perform fully the Contract requirements, and the integrity and reliability that will assure good faith performance.

“Responsive” – with respect to a respondent or a proposer means a person who has submitted a proposal, which conforms in all material respects, to the terms of the Solicitation.

“Reverse Auction” – shall have the meaning set forth in Tenn. Code Ann. § 12-3-219.

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

“Solicitation” – means a written document that facilitates ~~an~~the award of a contract to ~~contracting parties~~Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

“Sole Source Procurement” means a procurement for which only one vendor possesses the unique and singularly available capability to meet requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

“Specification” -means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. “Specification” includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

“State” – means the State of Tennessee and its Agencies, boards and commissions as the context requires.

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

“Statewide Contract” – means a contract for goods or services established by the ~~Central~~Chief Procurement ~~Office~~Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

“Target Pricing” – means a negotiation tool whereby the State provides respondents with the price the State expects to pay for a good or service.

4. Policy and Procedure. Procurements - Generally.

All ~~State Agency~~ procurements shall utilize an approved procurement method in accordance with applicable statutes, the Rules or Central Procurement Office Policy. Allowable procurement methods and information gathering methods and techniques include, but are not limited to, the following:

- ~~Competitive Negotiation~~
- Informal ~~Written, Verbal or Telephone Quotations~~ Solicitations
- Invitation to Bid (ITB)
- Request for Proposals (RFP)
- Emergency ~~Procurements~~ Purchases
- Competitive Negotiation
- Sole Source
- Reverse Auction
- Request for Information
- Request for Qualifications (RFQ)

5. ~~Relaxation of Strict Requirements of Solicitations and~~ Waiver of Immaterial Defects in a Response.

The maximum amount of competition for State contracts is in the best interests of the State. ~~Procurement professionals are urged to relax strict requirements of solicitations where necessary to ensure the maximum amount of competition for State contracts. Immaterial~~ immaterial defects in a response should be waived, ~~corrected or clarified~~ corrections or clarifications by respondents should be allowed after responses are reviewed, provided these defects are not of the type to give one respondent an unfair competitive advantage over other respondents. Procurement professionals should use restraint in deeming responses to be non-responsive on the basis of immaterial defects in a response that do not impugn competition, but that are capable of being responsive through correction or clarification.

~~Amendment or Withdrawal of Responses.~~

~~A respondent may withdraw or amend a response prior to its opening. After response opening, a respondent may withdraw a response or a portion thereof only upon a written determination by the Chief Procurement Officer that there is an obvious response error supported by appropriate industry, market or vendor cost information and where enforcement of the response would impose an unconscionable hardship on the respondent.~~

~~Rejection of ITB Responses.~~

~~The Chief Procurement Officer may reject any response, even a response that is ostensibly responsive, that contains prices for individual items or services that are inconsistent with the solicitation or unrealistic when compared to other prices in other responses to the same solicitation, provided that doing so is in the best interests of the State.~~

Facility Inspection.

~~The procuring Agency may inspect the facilities of any respondent or require additional information regarding a respondent's ability to perform the proposed contract. Responses may be bypassed for lack of apparent ability to perform the proposed contract after adequate assurance of performance is requested by the Central Procurement Office. A respondent must, upon request of the State, furnish satisfactory evidence of the ability to furnish products or services in accordance with the terms, conditions, and specifications of the solicitation. Proposal bonds, performance bonds or other security may be required for any contract. All such requirements shall be set forth in the solicitation.~~

6. Addenda, Amendments, and Clarifications to a Solicitation.

~~The Central Procurement Office shall approve~~Prior to public release, all solicitations and ~~any subsequent~~ addenda, amendments, and clarifications to a solicitation ~~before public release.~~ All solicitations that would result in contracts requiring the Comptroller's approval shall also require the approval of the ~~Office of the Comptroller of the Treasury before their public release.~~ Further, any addenda, amendments, and clarifications to solicitations that would result in contracts requiring the Comptroller's approval shall be filed by the Central Procurement Office ~~or Delegated State Agency with the Comptroller of the Treasury contemporaneously with their public release.~~ and all other State entities that endorsed or approved the original solicitation. All solicitations, including any addenda, amendments, and clarifications to a solicitation, shall be approved based on the following:

- Application of the requirements of Central Procurement Office Policy and the Rules;
- Adequacy of the scope of service description; and
- Adequacy of the solicitation's assurance of:
 - Fairness to potential providers of commodities or services;
 - Clear and open competition;
 - Achievement of procurement objectives; and
 - Protection of the State's best interests.

7. Pre-Proposal Conference.

~~Central Procurement Office or procuring State Agency staff may conduct a Pre-Proposal conference after release of the solicitation, but before responses are submitted, if such is determined to be in the best interests of the State.~~

8. Oral Presentation.

~~A solicitation may require oral presentations in a manner set forth in the solicitation. Oral presentations shall be conducted after the solicitation is released, but before responses are submitted to the Central Procurement Office or procuring State Agency.~~

9. General Requirements of Solicitations and Response Evaluation.

Each solicitation shall establish a time schedule for opening and evaluation of responses and inspection of the procurement file.

9.1. *Technical Response.*

The technical response evaluation should include, but is not limited to, consideration of the following factors:

- Quality of the goods or reliability of the services;
- Experience and qualifications (e.g., pending litigation, years in business, utilization of diverse business enterprises as sub-consultants, subcontractors, or suppliers to assist in providing goods or services, partnering with or mentoring of diverse business programs associated with the delivery of goods or services, and customer references, etc.);
- Technical approach;
- Financial ability to perform;
- Delivery terms (e.g., number of days for product to be shipped or for job to be started, etc.);
- Past vendor performance, financial resources, and ability to perform to specification requirements;
- Cost of any State employee training associated with the purchase;
 - The effect of the purchase on Agency productivity;
- Implementation and start-up costs, including installation costs, life cycle costs, trade-in value and warranty options;
- Discounts;
 - Environmental options and resources (e.g., green, energy efficiency, earth-conscious considerations, recycle options, remanufactured/refurbished products or equipment, packaging, certificates, permits, awards, successful and ongoing programs, etc.); and
 - Used products or equipment.

9.2. *Cost Proposal.*

The cost proposal should include, but not be limited to, the following considerations:

- Acquisition costs;
- Costs of implementation;
- Delivery costs;
- Discounts or Rebates;
- Cost of any State employee training associated with the purchase;
- Implementation and start-up costs, including installation costs, life cycle costs, trade-in value and warranty options;
- Discounts;

Once the evaluation team has completed the evaluation of the technical portion of the response, the cost proposal (e.g., single award, line item, or group award) will be calculated using a formula set forth in the solicitation. The relative scoring and weight between the technical response and the cost proposal shall be set forth in the solicitation. The evaluation team shall combine the technical response scores with the cost proposal scores for each respondent to determine the response that has the highest evaluated score. Technical responses and cost proposals may be contemporaneously evaluated or tabulated so long as the evaluation panel for the technical responses ~~are~~ is independent of the persons tabulating or otherwise analyzing the cost proposals. In no event should the persons serving on the evaluation panel for the technical responses be influenced by the cost proposals and all safe guards must be in place to maintain a proper segregation of duties and responsibilities.

10. Rejection of Responses.

The Chief Procurement Officer or Delegated State Agency, with the approval of the Chief Procurement Officer, shall have the absolute discretion to reject any and all responses. The Chief Procurement Officer or Delegated State Agency shall provide written notification to all respondents whose responses were rejected. If the evaluation team determines that a response is non-responsive, non-responsible, or rejects a response for any reason, the State should not complete the technical response evaluation or open the associated cost proposal. Minor clerical errors or immaterial defects will not automatically result in rejection of a response.

Any response that does not meet the requirements of the solicitation may be considered to be nonresponsive and the response may be rejected. Examples of non-responsiveness include, but are not limited to:

- The response is untimely;
- The response is incomplete;
- The response is inconsistent with the specifications as set forth in the solicitation; or
- The response restricts the rights of the State or otherwise qualifies the respondent's proposal as set forth in his or her response.

All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:

- Unreasonably high prices or failure of all responses to meet technical specifications as set forth in the solicitation;
- Error or defect in the solicitation;
- Cessation of need;
- Unavailability of funds;
- Lack of adequate competition;
- A determination by the State Agency, with the concurrence of the Chief Procurement Officer, that proceeding with the Procurement would be detrimental to the best interests of the State.

A rejection of all responses shall be documented and set forth the reasons for rejection of all responses. The Chief Procurement Officer shall report rejection of all responses to the Comptroller of the Treasury.

Selection or rejection of a response does not affect its status as a public record. Upon completion of the review and evaluation of responses submitted in response to a solicitation, evaluated responses and associated materials shall be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

The Chief Procurement Officer may reject any response, even a response that is ostensibly responsive, that contains prices for individual items or services that are inconsistent with the solicitation or unrealistic when compared to other prices in other responses to the same solicitation, provided that doing so is in the best interests of the State.

11. Verification of Ability to Perform.

Responses may be deemed non-responsive for lack of apparent ability to perform the proposed contract after adequate assurance of performance is requested by the Central Procurement Office and the respondent is unable to provide the requested assurance. A respondent must, upon request of the State, furnish satisfactory evidence of the ability to furnish products or services in accordance with the terms, conditions, and specifications of the solicitation. Proposal bonds, performance bonds or other security may be required for any contract. All such requirements shall be set forth in the solicitation.

The procuring Agency may inspect the facilities of any respondent or require additional information regarding a respondent's ability to perform the proposed contract. A site visit may be conducted by an Agency where the commodity or service at issue may be impacted by site conditions

12. Amendment or Withdrawal of Responses.

A respondent may withdraw or amend a response prior to its opening. After response opening, and prior to award, a respondent may withdraw a response or a portion thereof only upon a written determination by the Chief Procurement Officer that there is an obvious response error supported by appropriate industry, market or vendor cost information and where enforcement of the response would impose an unconscionable hardship on the respondent.

13. Notice of Intent to Award.

A Notice of Intent to Award shall be communicated in writing or by electronic transmission to all respondents. Each contract shall be awarded and let by the State with reasonable promptness to the apparent winning respondent, e.g., on the basis of highest evaluation score or lowest cost, whose response meets the requirements and criteria set forth in the solicitation. Where more than one item is specified in a solicitation, the State reserves the right to determine the winning respondent, or respondents in the case of a multiple award, either on the basis of each individual item, a group of items, or the total of all items, unless otherwise provided in the solicitation.

14. Contract Award.

The Central Procurement Office or Delegated State Agency shall document the evaluation team members' names, scores, and evaluation results and recommend an award to the respondent who has received the highest evaluation score or in the case of an ITB, an award to the responsive and responsible respondent with the lowest cost response.

Notwithstanding the foregoing, there are situations where it is in the best interests of the State to award a contract to a respondent other than the respondent with the lowest cost proposal. In such event, the Chief Procurement Officer, or his or her designee, shall document the reasons for awarding a contract to a respondent other than one with the lowest cost proposal. Justifications for such an award include, but are not limited to:

- The highest evaluated response, taken as a whole, falls outside the competitive range;
- The respondent is not capable of meeting the solicitation requirements;
- The respondent is not able to perform under the terms of the contract as awarded, e.g., in terms of quality, quantity or timeliness of performance; or
- Based on the totality of the above and other considerations, award to another respondent is in the best interests of the State, provided this determination is supported by sufficient documentation that will become part of the procurement file.

After the evaluation team completes the award recommendation process and notifies the respondents of the official award recommendation, the procurement file shall be open and available for public inspection for at least seven (7) calendar days prior to the actual award of the contract. Protests shall be governed by Tenn. Code Ann. § 4-56-101, *et seq.*, and the Rules of the Central Procurement Office.

Notice of Intent to Award.

~~A Notice of Intent to Award shall be communicated in writing or by electronic transmission to all respondents. Each contract shall be awarded and let by the State with reasonable promptness to the apparent winning respondent, e.g., on the basis of highest evaluation score or lowest cost, whose response meets the requirements and criteria set forth in the solicitation. Where more than one item is specified in a solicitation, the State reserves the right to determine the winning respondent, or respondents in the case of a multiple award, either on the basis of each individual item, a group of items, or the total of all items, unless otherwise provided in the solicitation.~~

15. Single Response to Solicitation.

In the event that only one response is received by the Central Procurement Office or the procuring State Agency by the response deadline in response to a solicitation, the State may elect one of the following actions:

- The procuring Agency head may request the Chief Procurement Officer to cancel the solicitation based upon insufficient competition;
- Open the technical response to determine whether it meets minimum requirements. If it does not meet minimum requirements, the procuring Agency head may request the Chief Procurement Officer to approve to cancel the [RFP solicitation](#);
- If the response meets minimum requirements, the procuring Agency may open the cost proposal and negotiate with the respondent; or
- The procuring Agency head may also request the Chief Procurement Officer to approve or cancel the [RFP solicitation](#) if the cost ~~resulting from these negotiations~~ is deemed excessive [after attempts at negotiation](#).

16. Cancellation or Reissuance of Solicitation.

~~Cancellation of a contract or purchase order or reissuance of a~~ [solicitation](#) requires a written notice of cancellation [or reissuance](#) from the Central Procurement Office for contracts procured by the Central Procurement Office or written notice of cancellation [or reissuance](#) from the procuring Agency if it is an Agency procured contract. Any notice of cancellation [or reissuance of a solicitation](#) by an Agency shall also be provided to the Central Procurement Office. ~~A solicitation that is cancelled may be reissued by the Central Procurement Office or a Delegated State Agency. All decisions to cancel or reissue a solicitation shall be documented and become part of the procurement file.~~

17. Tie Responses.

A tie will exist where two or more respondents offer ~~products~~ [goods or services](#) that meet all specifications and terms and conditions at identical prices, including cash discount offered for prompt payment. A tie will be broken by considering the following factors, in descending order:

- First preference shall be given to a “Tennessee Respondent.” Pursuant to Tenn. Code Ann. § 12-4-121(c)(2), a “Tennessee Respondent” means a business that is:
 - Incorporated in this State;
 - Has its principal place of business in this State; or
 - Has an established physical presence in this State.
- Second preference shall be given to certified disadvantaged business enterprise (“DBE”) respondents.
- Third preference shall be given to the respondent who was the low [cost](#) respondent on other items being procured for the same solicitation.

- Fourth preference shall be given to the respondent who offers the best delivery.
- If a tie remains, it shall be broken by lot or coin toss.

18. Protests.

Protests shall be governed by Tenn. Code Ann. § 4-56-101, *et seq.*, Central Procurement Policy, and the Rules.

19. Procurement and Information Gathering Methods and Techniques.

Competitive Negotiation.

~~A competitive negotiation is a procurement method that involves individual discussions between the State and respondents who have been pre-qualified and found to be responsive and responsible. The purpose of a competitive negotiation is to facilitate discussion between the State and the best evaluated respondent or respondents to ensure award of a contract or contracts on terms on conditions in the best interests of the State.~~

~~Competitive negotiation techniques may be used in conjunction with any procurement method. All negotiations shall be conducted by the Chief Procurement Officer, his or her appointed lead negotiator, or an appointed negotiation team. The State may elect to negotiate by requesting revised cost proposals from one or more responsive and responsible respondents. The State, however, reserves the right to award a contract on the basis of initial responses received. Accordingly, each response should contain the respondent's best terms from a price and technical standpoint.~~

~~The State reserves the right to conduct multiple negotiation rounds or limit negotiations to only respondents in the competitive range or to only the highest evaluated respondent. If the State exercises its right to enter into negotiations, it may identify areas of one or more proposals that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations.~~

~~All responsive and responsible respondents the State has identified for further cost negotiation will receive equivalent information. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct Target Pricing and other price or service level negotiations. Target Pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual respondent pricing. During Target Price negotiations, respondents are not obligated to meet or beat target prices, but respondents will not be allowed to increase prices they propose. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in proposal improvement. Note that each clarification sought by the State may be unique to an individual respondent.~~

~~The Central Procurement Office staff shall maintain, at a minimum, the following documentation for a competitive negotiation:~~

- ~~• A log of the date and time of each meeting with a respondent, including the identity of the respondent and its representative;~~
- ~~• A description of the nature or reason for all material communications with each respondent; and~~
- ~~• A copy of all written and electronic communications between the Central Procurement Office or State Agency and each respondent.~~

19.1. *Informal Solicitations.*

Informal Written, Verbal or Telephone Quotations:

Informal ~~written, verbal or telephone quotations~~ solicitations may be used for one time purchases or for contracts with a total value not to exceed ~~twenty-five~~ thousand dollars (~~\$10,000~~25,000.00) or such amount approved by the Procurement Commission. Three quotes should be obtained, when practicable. The person soliciting quotes shall document the quotes received in accordance with Central Procurement Office Policy, which shall become part of the procurement file. Purchase orders or contracts may not be artificially divided by a Delegated State Agency in order to make the purchase amount fall below limitations established in Central Procurement Office Policy or the Rules.

19.2. *Invitation to Bid (“ITB”)*

An ITB is a request, verbal or written, which is made to prospective suppliers of commodities or providers of services requesting the submission of a response for the purpose of awarding a contract or transmitting a purchase order. An ITB is generally an objective determination where the award is made to the responsive and responsible respondent who meets the minimum specifications and requirements at the lowest cost.

All ITBs shall require, at a minimum, that respondents:

- Provide a valid mailing or email address;
- Sign the response prior to opening;
- Provide a net price for the unit specified for each item;
- Initial in ink any corrections of a line item unit price made by the respondent;
- Provide the number of calendar days required for delivery after receipt of order; and
- State the length of time in which a proposed pricing is valid (failure to do so will result in pricing being valid for sixty (60) days).

Alternate items may be proposed in a response if allowed by the terms of the solicitation and if the alternate item ~~meets~~or items meet the specifications in terms of quality, form and function. The procuring Agency may specify whether alternate items are allowed.

19.3. *Request for Proposals (“RFP”)*

A RFP is a formal invitation to potential respondents to submit a proposal to provide a good or service to a State or one or more of its Agencies. Additionally, a RFP is a Procurement process whereby the State has the ability to judge if a respondent’s qualifications, experience, and approach will result in an award of a contract to a respondent on terms and conditions in the best interests of the State.

Terms and conditions for a RFP are derived from the *pro forma* Contract (located on the Central Procurement Office website) developed during the RFP creation and attached to the solicitation. A RFP shall set forth specific provisions in accordance with Central Procurement Office Policy and include and meet the following:

- The description of the technical requirements for the goods or services to be procured by RFP shall provide sufficient detail to minimize the likelihood of respondent confusion;
- The technical requirements and scope in the RFP shall not contain features that unduly restrict competition;
- The RFP shall contain directions regarding the submittal of responses;
- State requirements and restrictions regarding the RFP should be detailed in the RFP;
- A description of the evaluation factors to be considered in evaluating the responses should be detailed in the RFP. Evaluation factors should include, by way of example only, respondent qualifications, experience, technical approach, and cost; A declaration of whether the contract award is subject to successful contract negotiation should be detailed in the RFP; and
- The RFP shall contain a schedule of events that specifies RFP deadlines. Respondents shall be given a reasonable time, as determined by the Chief Procurement Officer, to consider the required scope and the response evaluation factors before responses are submitted. The schedule of events may contain the deadlines for events ~~such as~~, which includes by way of example only:
 - RFP Issuance Date;
 - Disability Accommodation Request;
 - Pre-Proposal Conference;
 - Notice of Intent to Propose;
 - Respondent Written “Questions and Comments” Submission;
 - State Response to Written “Questions and Comments”;
 - Oral Presentation;
 - Site Visit;
 - Performance Bond Submission;
 - Response Submission;
 - State Completion of ~~technical~~Technical Response Evaluations;
 - State Opening and Scoring of Cost Proposals;
 - State Evaluation Notice Released and RFP Files Opened for Public Inspection;
 - and
 - Contract Signing.

The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.

The Central Procurement Office or Delegated State Agency shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. All RFPs that would result in contracts requiring the Comptroller’s approval shall also require the approval of the Office of the Comptroller of the Treasury before their public release. Further, any addenda, amendments, and clarifications to RFPs that would result in contracts requiring the Comptroller’s approval shall be filed by the procuring Agency with the Comptroller of the Treasury contemporaneously with their public release.

A RFP or its revisions shall be approved based on the following:

- Application of the requirements of the Rules and Central Procurement Office Policy;
- Adequacy of the scope description; and
- Adequacy of the RFP's assurance of:
 - Fairness to respondents;
 - Clear and open competition;
 - Achievement of procurement objectives; and
 - Protection of the State's interests.

Upon approval, the Central Procurement Office or Delegated State Agency shall send the RFP or a written or electronic notice that the specific RFP has been released to a documented list of potential providers.

~~Pre-Proposal Conference.~~

~~Central Procurement Office or procuring Agency staff may conduct a Pre-Proposal conference after its release, but before responses are submitted, if such is determined to be in the best interests of the State.~~

~~Oral Presentation.~~

~~An oral presentation may be conducted for a RFP at the procuring Agency's request. Such presentation may be conducted after the RFP is released, but before responses are submitted.~~

~~Site Visit.~~

~~A site visit may be conducted by an Agency where the commodity or service at issue may be impacted by site conditions. If a site visit is conducted, the following shall apply:~~

- ~~- If site visits are required for evaluation purposes, the State, and not the respondent being evaluated, should pay for the site visit.~~
- ~~- Exceptions to this policy may be made by the Chief Procurement Officer or his or her designee. Any exception must be made on a case-by-case basis. If an exception is made, a written determination signed by the Chief Procurement Officer or his or her designee shall be included in the contract file.~~
- ~~- State employees making such site visits will incur and recover travel costs from the State entity for which the procurement is being conducted in accordance with State travel regulations.~~
- ~~- No direct reimbursement of individuals by a respondent is permitted. The procuring Agency will determine all costs incurred by State employees in connection with the site visit and bill the appropriate respondent for reimbursement of costs by means of a check payable to the State entity.~~

19.3.1. *Evaluation of Responses.*

To foster the integrity of the RFP evaluation process, each respondent shall be required to submit the Cost Proposal component of the response in a sealed and

labeled envelope separate from the technical response component. The cost proposal ~~may~~shall be evaluated separately from the technical response:

- The technical response and the cost proposal may be opened and evaluated simultaneously provided safeguards are in place to avoid the panel evaluating the technical proposal being influenced by the cost proposal;
- ~~After the technical response evaluation is completed, the cost proposal may be opened and evaluated, and the~~The scores of both technical response and the cost proposal may be combined to arrive at a total evaluation score.
- Any response that fails to adequately separate the cost proposal components from the technical response components may be considered non-responsive and rejected by the Chief Procurement Officer in his or her sole discretion.
- Response evaluations shall be impartial and ensure that all material requirements of the RFP have been met.
- Responses shall be evaluated in a manner consistent with the Rules and Central Procurement Office Policy.
- Prior to reviewing responses, each Response Evaluation Team member shall review a list of persons making responses and determine if the member has a conflict of interest with serving on the Response Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Policy. The conflict of interest statement shall be retained in the Procurement file.
- Responses shall be evaluated based on criteria set forth in the solicitation and on the basis of factors pertinent to the goods or services being procured.
- The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score based on the respondent's technical response and cost proposal.
- Contract awards to a respondent other than the respondent receiving the highest evaluated score shall require the written approval of the Chief Procurement Officer. Justification for the contract award shall be documented in the procurement file.

19.4. Emergency ~~Procurement~~Purchases.

“Emergency Purchases” are State Agency purchases made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and the Rules and utilize competitive procurement methods or negotiations whenever practicable. The procuring Agency shall maintain a procurement file that addresses the following:

- The circumstances leading to ~~the~~an emergency ~~procurement~~purchase;
- Procurement-related actions taken in response to the emergency, including procurement methods used; and

- A complete list of goods or services procured, including prices paid and total purchase amount.

19.4.1. Conditions of Use for Emergency ~~Procurement~~Purchase.

Typical circumstances that warrant the use of an Emergency ~~Procurement~~Purchase method include, by way of example only, natural disasters, e.g., tornadoes and floods, fire and oil or other hazardous material spill, mechanical failures, system outages, or unforeseen police action. An “emergency” does not require the declaration of a State of Emergency. Poor planning or the expiration of funds does not constitute an emergency. While these circumstances may require immediate action or may justify use of Non-Competitive Procurement methods, these circumstances do not warrant use of an Emergency ~~Procurement~~Purchase method.

19.4.2. Emergency ~~Procurement~~Purchase Approval Process and Written Documentation.

The Chief Procurement Officer may delegate Emergency ~~Procurement~~Purchase authority to a State Agency to address emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated work volume, and system or mechanical failures acts of God, or unforeseen police action. Delegated State Agencies may procure goods or services through the Emergency ~~Procurement~~Purchase method in accordance with applicable rules, policies, and procedures. State Agencies should make Emergency ~~Procurements~~Purchases through the Edison system and submit in writing to the Central Procurement Office the following information upon request by the Central Procurement Office:

- The circumstances leading to the Emergency ~~Procurement~~Purchase;
- The procurement-related actions taken in response to the emergency, including procurement methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

19.5. Competitive Negotiation.

A competitive negotiation is a procurement method that involves direct discussions between the State and respondents who have been pre-qualified through a pre-qualification method and found to be responsive and responsible. The purpose of a competitive negotiation is to facilitate discussion between the State and the best evaluated respondent or respondents to ensure award of a contract or contracts on terms on conditions in the best interests of the State.

Competitive negotiation techniques may be used in conjunction with any procurement method. All negotiations shall be conducted by the Chief Procurement Officer, his or her appointed lead negotiator, or an appointed negotiation team. The State may elect to negotiate by requesting revised cost proposals from one or more responsive and responsible respondents. The State, however, reserves the right to award a contract on the basis of initial responses received. Accordingly, each response should contain the respondent's best terms from a price and technical standpoint.

The State reserves the right to conduct multiple negotiation rounds or limit negotiations to only respondents in the competitive range or to only the highest evaluated respondent. If the State exercises its right to enter into negotiations, it may identify areas of one or more proposals that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations.

All responsive and responsible respondents the State has identified for further cost negotiation will receive equivalent information. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct Target Pricing and other price or service level negotiations. Target Pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual respondent pricing. During Target Price negotiations, respondents are not obligated to meet or beat target prices, but respondents will not be allowed to increase prices they propose. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in proposal improvement. Note that each clarification sought by the State may be unique to an individual respondent.

The Central Procurement Office staff shall maintain, at a minimum, the following documentation for a competitive negotiation:

- A log of the date and time of each meeting with a respondent, including the identity of the respondent and its representative;
- A description of the nature or reason for all material communications with each respondent; and
- A copy of all written and electronic communications between the Central Procurement Office or State Agency and each respondent.

19.6. *Sole Source Procurements.*

Sole source procurements may be made when an item or service possesses specific characteristics that can only be filled by a single source or where exclusive rights exist. Sole source procurements shall require the State Agency to provide advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All sole source procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of sole source procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy. The

Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

- Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;
- Whether the product or service is unique and available from only one source;
- Whether the program requirements can be modified so that competitively procured goods or services may be used;
- Whether items must be interchangeable or compatible with in-place items;
- Whether or not it is in the State’s best interests to conduct a pilot program for a defined period of time; or
- Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

Sole source procurements shall also be conducted in accordance with the Central Procurement Office’s *Non-competitive Procurement Policy and Procedures*.

19.7. *Reverse Auction.*

A Reverse Auction is a competitive process that allows respondents to bid on specified goods or services electronically and adjust cost proposals during a specified time period. An award shall be made to the respondent determined to be the lowest responsible and responsive respondent at the close of the specified response period.

19.8. *Request for Information (“RFI”).*

A “Request for Information” or “RFI” is a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications. A RFI enables an equitable and simultaneous comparison of vendors. Agencies may use this tool to gather information about the availability of goods or services. A RFI is created through the Edison system and should be utilized when:

- An Agency has a procurement need, but requires more information to fully understand the industry;
- The Agency desires to identify ~~the~~ vendors who are available to supply the needed good or service; or
- When the Central Procurement Office or procuring State Agency determines that a RFP process will benefit from a RFI.

19.9. *Request for Qualifications (“RFQ”).*

A “Request for Qualifications” or “RFQ” is a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for

Qualifications. A RFQ is a document that may be distributed before initiation of the Solicitation process. It is used to gather information from potential vendors regarding qualifications of providers of goods and services within the market place.

Related [Statutes](#), Rules and Policies.

[TBD]

[Tenn. Code Ann. §§ 4-56-101, et seq.](#)

[Tenn. Code Ann. §§ 12-3-101, et seq.](#)

[Tenn. Code Ann. §§ 12-4-101, et seq.](#)

Approval Signature

Jessica Robertson, Chief Procurement Officer

Document comparison by Workshare Compare on Thursday, December 20, 2012 10:53:39 AM

Input:	
Document 1 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Procurement Methods Policy.docx
Description	Procurement Methods Policy
Document 2 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Procurement Methods Policy final.docx
Description	Procurement Methods Policy final
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	145
Deletions	81
Moved from	29
Moved to	29
Style change	0
Format changed	0
Total changes	284

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

2. Non-competitive Procurement

CLEAN VERSION

DRAFT
Policy Number ____ - 2013
Central Procurement Office
Non-Competitive Procurement Policy and Procedures

Effective: ____ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a policy and procedures for utilizing non-competitive procurement methods for goods or services by the Central Procurement Office or Delegated State Agencies.

2. Scope.

This policy applies to all non-competitive procurements and resulting contracts and amendments procured under Title 12 of the Tennessee Code, the Rules or Central Procurement Office Policy.

3. Definitions.

For purposes of this policy, existing definitions are listed below:

“Agency” - means each State board, commission, committee, department, officer, or any other unit of State government.

“Central Procurement Office” – means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

“Emergency Purchases” means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration [Tenn. Code Ann. §4-56-101(6)].

“Proprietary” means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.

“Proprietary Procurement” means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.

“Sole Source Procurement” means a procurement for which only one vendor possesses the unique and singularly available capability to meet requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

“State” – means the State of Tennessee and its agencies, boards and commissions as the context requires.

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

4. Authorization for Non-Competitive Solicitations.

The Chief Procurement Officer must approve all non-competitive procurements under Title 12 of the Tennessee Code. The allowed non-competitive procurement methods include:

- Emergency Purchases;
- Proprietary Procurements;
- Sole Source Procurements; and
- Small Purchases.

4.1 Emergency Purchases.

4.1.1. Description of Emergency Purchases.

An Emergency Purchase may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action; such action entails the need to secure goods or services to carry out an emergency response. In such situations, competition should be engaged when practicable, but this policy recognizes that some emergencies are such that the exigencies of the situation may not allow for a competitive procurement.

4.1.2. Conditions of Use for Emergency Purchases.

Conditions of use for an Emergency Purchase may include, by way of example only, natural disasters, hazardous material spill or systems failure. An Emergency Purchase does not require the declaration of a State of Emergency. Poor planning (e.g., failure to manage contract beginning dates or expiration dates) or the expiration of funds (e.g., expiration of federal funding for a project), however, do not constitute an emergency. These circumstances may require immediate action and may justify use of another Non-Competitive Procurement method, but not an Emergency Purchase.

4.1.3. Emergency Purchase Approval Process & Written Documentation.

The Chief Procurement Officer may delegate Emergency Purchase authority to a State Agency to meet emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated work volume, acts of God or systems failures. Such delegations must not conflict with an activated Tennessee Emergency Management Agency (TEMA) declared emergency.

Delegated State Agencies may procure goods or services via the Emergency Purchase method in accordance with the Rules or Central Procurement Office Policy. State agencies should make Emergency Purchases through the Edison System and submit in writing to the Central Procurement Office the following information when requested by the Central Procurement Office:

- The circumstances leading to the Emergency Purchase;
- The Procurement-related actions taken in response to the emergency, including procurement methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

4.2. *Proprietary Procurements.*

4.2.1. *Description of Proprietary Procurements.*

A Proprietary Procurement occurs when a required good or service is restricted to a particular manufacturer but may be sold through multiple distributors. If competition between distributors is obtained, then products or services should be secured by means of a competitive procurement method:

- Total value exceeds \$50,000, use Request for Proposal, Invitation to Bid or other available competitive procurement method;
- Total value exceeds \$10,000 but is less than \$50,000, use Informal Procurement Method.

4.2.2. *Conditions of Use for Proprietary Procurement.*

Circumstances whereby a Proprietary Procurement may be justified include, but are not limited to:

- Compatibility of existing equipment or products is at issue;
- The good or service is covered by one or more patents or copyrights;
- Continuity of results is absolutely dependent upon the proprietary good or service at issue; or
- State users have extensive training or experience and use of similar goods or services would require significant reorientation and training.

4.2.3. *Proprietary Procurement Approval Process.*

Requests for Proprietary Procurements, with accompanied justification and circumstances for limiting competition to a select group of distributors or suppliers, must be submitted to the Chief Procurement Officer for approval prior to the draft or issuance of any associated procurement document. All other approvals for the selected procurement method still apply.

4.3. *Sole Source Procurements.*

4.3.1. *Description of Sole Source Procurements.*

A Sole Source Procurement may occur when only one vendor possesses the unique and singularly available capability to meet the solicitation requirements such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

4.3.2. *Conditions of Use for Sole Source Procurements.*

Sample justifications for Sole Source Procurements include, but are not limited to:

- Only one company has the good or service that will meet the State's needs;
- Compatibility of existing equipment or products is at issue;
- The good or service is covered by one or more patents or copyrights;
- Continuity of results is absolutely dependent upon the specific good or service;
- The supplier possesses exclusive capabilities for the good or service at issue that are not obtainable from similar suppliers;
- An unusual or compelling urgency exists; or
- State users have extensive training or experience and use of similar goods or services would require significant reorientation and training.

4.3.3. *Sole Source Procurement Approval Process.*

Requests for Sole Source Procurements, with accompanied justification and circumstances, must be submitted by the State agency for approval by the Central Procurement Office prior to the drafting of any associated contract. Upon approval by the Central Procurement Office, the sole source procurement may be made without following competitive procurement procedures. A written quote should be obtained from the single-source supplier, and a purchase order will be issued without utilizing the competitive bidding process. The Central Procurement Office shall report approved Sole Source Procurements to the Comptroller of the Treasury in the form of a quarterly report.

4.4. *Small Purchases.*

4.4.1. *Description of Small Purchase.*

State procurement professionals are encouraged to use competitive methods whenever practicable. State Agencies may utilize a Small Purchase authority without soliciting quotes or proposals from multiple suppliers when the total value of a contract or a purchase will cost less than \$10,000.

4.4.2. *Conditions of Use for Small Purchase.*

Small Purchase authority may be used for goods or services will cost less than \$10,000. It is important to note that no procurement shall be artificially divided or split in order to fall within the \$10,000 Small Purchase authority. Similarly, if purchases that fall within the Small Purchase authority are of a recurring nature and the aggregate total exceeds \$10,000, the contract is presumed to exceed the Small Purchase authority and a competitive procurement method must be used (e.g., Request for Proposals, Invitation to Bid or informal quotes).

4.4.3. *Small Purchase Approval Process.*

Small Purchases must be approved by the contract manager of a State Agency prior to communication or issuance of a contract or purchase order to a supplier of goods or services.

Related Statutes, Rules and Policies.

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

Approval Signature

Jessica Robertson, Chief Procurement Officer

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

2. Non-competitive Procurement

**COMPARISON: SUBCOMMITTEE
UPDATES TO 12/14/12 VERSION**

DRAFT
Policy Number _____ - 2013
Central Procurement Office
Non-Competitive ~~Solicitation~~ Procurement Policy and Procedures ~~for Procurements~~

Effective: ____ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a policy and procedures for utilizing non-competitive procurement methods for goods or services by the Central Procurement Office or Delegated State Agencies.

2. Scope.

This policy applies to all non-competitive procurements and resulting contracts and amendments procured under Title 12 of the Tennessee Code, the Rules or Central Procurement Office Policy.

3. Definitions.

For purposes of this policy, existing definitions are listed below:

“Agency” - means each State board, commission, committee, department, officer, or any other unit of State government.

“Central Procurement Office” – means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

“Emergency ~~Procurement~~ Purchases” means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation. “

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration [Tenn. Code Ann. §4-56-101(6)].

“Proprietary” means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.

“Proprietary Procurement” means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.

“Sole Source Procurement” means a procurement for which only one vendor possesses the unique and singularly available capability to meet requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

“State” – means the State of Tennessee and its agencies, boards and commissions as the context requires.

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

4. Authorization for Non-Competitive Solicitations.

The Chief Procurement Officer must approve all non-competitive procurements under Title 12 of the Tennessee Code. The allowed non-competitive procurement methods include:

- Emergency ~~Procurements~~Purchases;
- Proprietary Procurements;
- Sole Source Procurements; and
- Small Purchases.

4.1 *Emergency ~~Procurements~~Purchases.*

4.0.1. *Description of Emergency ~~Procurements~~Purchases.*

An Emergency ~~Procurement~~Purchase may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action; such action entails the need to secure goods or services to carry out an emergency response. In such situations, competition should be engaged when practicable, but this policy recognizes that some emergencies are such that the exigencies of the situation may not allow for a competitive procurement.

4.0.2. *Conditions of Use for Emergency ~~Procurements~~Purchases.*

Conditions of use for an Emergency ~~Procurement~~Purchase may include, by way of example only, natural disasters, ~~including but not limited to tornadoes and floods, fire and oil~~, hazardous material spill or systems failure. An Emergency ~~procurement~~Purchase does not require the declaration of a State of Emergency. Poor planning (e.g., failure to manage contract beginning dates or expiration dates) or the expiration of funds (e.g., expiration of federal funding for a project), however, ~~seldom constitutes do not constitute~~ an emergency. These circumstances may require immediate action and may justify use of another Non-Competitive Procurement method, but not an Emergency ~~Procurement~~Purchase.

4.0.3. *Emergency ~~Procurement~~Purchase Approval Process & Written Documentation.*

The Chief Procurement Officer may delegate Emergency ~~Procurement~~Purchase authority to a State Agency to meet emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated work volume, acts of God or systems failures. Such delegations must not conflict with an activated Tennessee Emergency Management Agency (TEMA) declared emergency.

Delegated State Agencies may procure goods or services via the Emergency ~~Procurement~~Purchase method in accordance with the Rules or Central Procurement Office Policy. State agencies should make Emergency ~~procurements~~Purchases through the Edison System and submit in writing to the Central Procurement Office the following information when requested by the Central Procurement Office:

- The circumstances leading to the Emergency ~~Procurement~~Purchase;
- The Procurement-related actions taken in response to the emergency, including procurement methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

4.1. *Proprietary Procurements.*

4.1.1. *Description of Proprietary Procurements.*

A Proprietary Procurement occurs when a required good or service is restricted to a particular manufacturer but may be sold through multiple distributors. If competition between distributors is obtained, then products or services should be secured by means of a competitive procurement method:

- Total value exceeds \$50,000, use Request for Proposal, Invitation to Bid or other available competitive procurement method;
- Total value exceeds \$10,000 but is less than \$50,000, use Informal Procurement Method.

4.1.2. *Conditions of Use for Proprietary Procurement.*

Circumstances whereby a Proprietary Procurement may be justified include, but are not limited to:

- Compatibility of existing equipment or products is at issue;
- The good or service is covered by one or more patents or copyrights;
- Continuity of results is absolutely dependent upon the proprietary good or service at issue; or
- State users have extensive training or experience and use of similar goods or services would require significant reorientation and training.

4.1.3. *Proprietary Procurement Approval Process.*

Requests for Proprietary Procurements, with accompanied justification and circumstances for limiting competition to a select group of distributors or suppliers, must be submitted to the Chief Procurement Officer for approval prior to the draft or issuance of any associated procurement document. All other approvals for the selected procurement method still apply.

4.2. *Sole Source Procurements.*

4.2.1. *Description of Sole Source Procurements.*

A Sole Source Procurement may occur when only one vendor possesses the unique and singularly available capability to meet the solicitation requirements such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

4.2.2. *Conditions of Use for Sole Source Procurements.*

Sample justifications for Sole Source Procurements include, but are not limited to:

- Only one company has the good or service that will meet the State's needs;
- Compatibility of existing equipment or products is at issue;
- The good or service is covered by one or more patents or copyrights;
- Continuity of results is absolutely dependent upon the specific good or service;
- The supplier possesses exclusive ~~or predominant~~ capabilities ~~or for~~ the good or service ~~contains superior utility~~ at issue that are not obtainable from similar ~~vendors~~ suppliers;
- An unusual or compelling urgency exists; or
- State users have extensive training or experience and use of similar goods or services would require significant reorientation and training.

4.2.3. *Sole Source Procurement Approval Process.*

Requests for Sole Source Procurements, with accompanied justification and circumstances, must be submitted by the State agency for approval by the Central Procurement Office prior to the drafting of any associated contract. Upon approval by the Central Procurement Office, the sole source procurement may be made without following competitive ~~bid~~ procurement procedures. A written quote should be obtained from the single-source supplier, and a purchase order will be issued without utilizing the competitive bidding process. The Central Procurement Office shall report approved Sole Source Procurements to the Comptroller of the Treasury in the form of a quarterly report.

4.3. *Small Purchases.*

4.3.1. *Description of Small Purchase.*

State procurement professionals are encouraged to use competitive methods whenever practicable. State Agencies may utilize a Small Purchase authority without soliciting quotes or proposals from multiple suppliers when the total value of a contract or a purchase ~~is expected to~~ will cost less than \$10,000.

4.3.2. *Conditions of Use for Small Purchase.*

Small Purchase authority may be used for goods or services ~~that are expected to~~ will cost less than ~~\$10,000 over the life of the contract.~~ 10,000. It is important to note that no procurement shall be artificially divided or split in order to fall within the \$10,000 Small Purchase authority. Similarly, if purchases that fall within the Small Purchase authority are of a recurring nature and the aggregate total exceeds ~~\$10,000 over 24 months,~~ 10,000, the contract is presumed to exceed the Small

| [Purchase authority and](#) a competitive procurement method must be used (e.g., Request for Proposals, Invitation to Bid or informal quotes).

4.3.3. *Small Purchase Approval Process.*

Small Purchases must be approved by the contract manager of a State Agency prior to communication or issuance of a contract or purchase order to a supplier of goods or services.

Related [Statutes, Rules and Policies.](#)

~~TBD~~

[Tenn. Code Ann. §§ 4-56-101, et seq.](#)

[Tenn. Code Ann. §§ 12-3-101, et seq.](#)

[Tenn. Code Ann. §§ 12-4-101, et seq.](#)

Approval Signature

Jessica Robertson, Chief Procurement Officer

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Moved from	0
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Style change	0
Format changed	0
Total changes	69

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

3. Contract Management

CLEAN VERSION

DRAFT
Policy Number ____ - 2013
Central Procurement Office
Contract Management Policy and Procedures

Effective: ____ Day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a uniform policy governing the State's contracts for goods and services. This policy shall provide guidance to State procurement professionals in determining which contract to use and to highlight distinguishing factors or considerations for each contract type. This policy also provides guidance and describes the approval process for each contract type (including original contract, amendments, renewals and terminations) and contract management. Finally, this policy delineates the party responsible for contract management. This Contract Management Policy and Procedures will be further augmented by the Central Procurement Office's Contract Manual.

2. Scope.

The scope of this policy includes all contracts procured under the jurisdiction of the Central Procurement Office.

3. Definitions.

For purposes of this policy, existing definitions are listed below:

“Agency Term Contract” - means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices for a single State Agency.

"Award" – in the context of a Grant Contract means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term “Award” in the context of a procurement shall mean the award of a contract to a Contracting Party pursuant to a procurement.

“Contract Manager” – means, with respect to a Statewide Contract, the category specialist responsible for the procurement or such other person as appointed by the Chief Procurement Officer to act as the Contract Manager. “Contract Manager” with respect to an Agency Term Contract shall mean the State Agency official appointed by the State Agency to act as the person responsible for contract management.

“Contracting Party” – means a party to a contract with the State to provide goods or services.

“Delegated State Agency” - means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual State Agency within specified limits and guidelines.

“Fair Pricing” – means pricing that is mutually acceptable to the parties after considering:

- the level of competition within the marketplace,
- time sensitivities,
- technical qualifications,
- the scope of work at issue,
- economies of scale benefits,
- learning curve costs,
- the presence of proprietary, intangible, personal or real property rights at issue,
- the scarcity or abundance of manpower and resources, or
- other considerations.

The “Fair Pricing” shall be ascertained after benchmarking for time, labor, pricing, or deliverables when practicable. Benchmarking shall compare the individual or market basket of goods and services, as applicable, for the contract or amendment at issue in the relevant market place for the relevant period of time.

“Grant Contract” – means a written contract to facilitate an Award to a Grantee or Subrecipient. “Grant Contract” does not include an Award with the primary purpose of procuring an end product for a Grantor State Agency, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be procured on a competitive basis.

“Interagency Agreement” means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

“No Cost Contract” means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

“Purchase Order” means a written or electronic document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a “purchase order” becomes a binding contract on both parties.

“Revenue Contract” means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

“State Agency” means the departments, agencies, and instrumentalities of the State of Tennessee.

“Statewide Contract” - means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

“Utility Contact” – means a contract for telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority.

4. Contract Types.

All contracts awarded pursuant to a procurement event shall meet the requirements of the Rules and Central Procurement Office Policy. A contract shall be one of the following contract types:

- *Agency Term Contracts*
- *Statewide Contracts*
- *Purchase Orders*
- *No Cost Contracts*
- *Revenue Contracts*
- *Grant Contracts*
- *Utility Contracts*

4.1. Agency Term Contracts.

4.1.1. Description of Agency Term Contracts.

An Agency Term Contract is a written contract for goods or services for a specified term for the benefit of a single State Agency. The parties to an Agency Term Contract include, at a minimum, the State, acting by and through one of its agencies or instrumentalities and one or more Contracting Parties with the legal capacity to enter into contracts or to sue and be sued.

4.1.2. Condition of Use for Agency Term Contracts.

An Agency Term Contract should be used when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term period. Agency Term Contracts shall be used where

performance by the Contracting Party cannot be completed in less than ninety (90) days. The Chief Procurement Officer may establish a Statewide Contract for common goods or services needed by more than one State Agency. The Central Procurement Office or Delegated State Agencies may establish Agency Term Contracts for goods or services needed solely and uniquely by their agency in accordance with the Rules or Central Procurement Office Policy.

4.1.3. *Management of Agency Term Contracts.*

After the award of an Agency Term Contract, the State Agency procuring the Agency Term Contract shall have primary responsibility for managing the contract, which includes decisions concerning extensions and renewals. The Central Procurement Office shall have compliance responsibility over all Statewide Contracts, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination. State Agencies shall manage all contracts for which the State Agency is primarily responsible in accordance with the Rules and Central Procurement Office Policy. All contract management plans of State Agencies shall comply with the Rules and Central Procurement Office Policy in terms of form, content, amendments or modifications, and reporting.

4.2. *Statewide Contracts.*

4.2.1. *Description of Statewide Contract.*

A Statewide Contract is a contract for goods or services established by the Central Procurement Office that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities. The purpose of a Statewide Contract is to obtain a source of supply for commonly procured goods or services for the State, its Agencies, local governments, higher education and not-for-profit entities.

4.2.2. *Condition of Use for Statewide Contract.*

Only a contract that benefits two or more State Agencies will be considered a Statewide Contract. A contract that otherwise meets the requirements of a Statewide Contract, but is restricted to certain State Agencies is a Restricted Statewide Contract. Only the Central Procurement Office has authority to procure and award a Statewide or Restricted Statewide Contract.

4.2.3. *Management of Statewide Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Statewide Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. All State Agencies are required to procure goods and services from Statewide Contracts when

practicable. No State Agencies shall procure goods or services that are within the scope of a Statewide Contract without first obtaining the consent of the Chief Procurement Officer. Grounds for the Chief Procurement Officer's approval of a State Agency's request to procure goods or services outside a Statewide Contract may include, by way of example only, Contracting Party's past performance and concerns over future performance, timeliness of performance, the Contracting Party's ability to supply the goods or services, pricing, quality or compatibility concerns. The Central Procurement Office shall also have compliance responsibility over all Statewide Contracts, which includes, by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.3. *Purchase Orders.*

4.3.1. *Description of Purchase Order.*

A Purchase Order is a commercial document (issued electronically or on hard copy), generated by the Edison System (except procurements made pursuant to a natural or declared disaster), that indicates types, quantities and agreed upon prices for goods or services. A State Agency issuing a Purchase Order to a supplier constitutes an offer to buy goods or services, and acceptance of a Purchase Order by a supplier forms a contract between the parties.

4.3.2. *Condition of Use for Purchase Order.*

A Purchase Order is generally used for those procurements of goods or services where performance can be completed in less than ninety (90) days or that represent a single transaction. An Agency Term or Statewide Contract must be used for any procurement of goods or services where Contracting Party performance cannot be completed within ninety (90) days.

4.3.3. *Management of Purchase Orders.*

After issuance of a purchase order, the State Agency issuing a Purchase Order for goods or services shall have primary responsibility for managing the Purchase Order. State Agencies shall also have compliance responsibility over all Purchase Orders that it issues or that are issued on the State Agency's behalf, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.4. *No Cost Contracts.*

4.4.1. *Description of No Cost Contract.*

A No Cost Contract is a written contract entered between the State and a Contracting Party that does not involve a payment or create a pecuniary obligation of the State to the Contracting Party.

4.4.2. *Condition of Use for No Cost Contract.*

A No Cost Contract may be used when there is no payment or pecuniary obligation of the State to the Contracting Party, and when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term. A No Cost Contract can be either an Agency Term Contract or a Statewide Contract.

4.4.3. *Management of No Cost Contracts.*

A Statewide No Cost Contract will be managed by the Central Procurement Office in the same manner as all other Statewide Contracts. An Agency Term Contract that is a No Cost Contract will be managed by the State Agency procuring the No Cost Contract in the same manner that a State Agency manages all other Agency Term Contracts.

4.5. *Revenue Contracts.*

4.5.1. *Description of Revenue Contract.*

A Revenue Contract is a standard written contract entered into between the State and a Contracting Party where the State provides goods or services for payment by a Contracting Party.

4.5.2. *Condition of Use for Revenue Contract.*

A Revenue Contract may be used where the State provides goods or services to a Contracting Party for payment, and when goods or services, as defined in the scope of work, will be provided over an established period of time.

4.5.3. *Management of Revenue Contracts.*

After contract award, the State Agency entering into a Revenue Contract shall have primary responsibility for managing all aspects of the Revenue Contract, which includes, by way of example, decisions concerning extensions, renewals or revenue increases or decreases. State Agencies shall also have compliance responsibility over all Revenue Contracts, which includes by way of example only, Contracting Party compliance, notice of default, curing performance and contract termination.

4.6. *Grant Contracts.*

4.6.1. *Description of Grant Contracts.*

A Grant Contract is a written contract between the State, a grantor, a natural person or a legal entity to facilitate an Award to a person or legal entity to support a program authorized by law.

4.6.2. *Condition for Use of Grant Contracts.*

A Grant Contract should be used to facilitate an Award, but should not be used where the true object of the contract is to purchase goods or services for the Grantor State Agency. State Agencies that have entered into Grant Contracts with other State Agencies that create subrecipient grant relationships should continue to use a Grant Contract to memorialize the subrecipient grant relationship.

4.6.3. *Management of Grant Contracts.*

The Grantor State Agency shall be primarily responsible for managing a Grant Contract in accordance with the *Grant Management and Subrecipient Monitoring Policy*.

4.7. *Utility Contracts.*

4.7.1. *Description of Utility Contracts.*

A Utility Contract is a contract between the State and a private or public legal entity that is regulated by one or more states or the federal government as a public utility.

4.7.2. *Condition for Use of Utility Contracts.*

A Utility Contract should only be used for the procurement of utilities.

4.7.3. *Management of Utility Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Utility Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. No State Agency shall procure any goods or services that are within the scope of a Utility Contract without first obtaining the consent of the Chief Procurement Officer. The Central Procurement Office shall also have compliance responsibility over all Utility Contracts, which includes by way of example only, Contracting Party compliance, merchantability of goods, acceptability of services, notice of default, curing performance and contract termination.

5. **Contract Terms and Conditions.**

5.1. *General Requirements of Terms and Conditions.*

All contracts must be in writing and contain such terms and conditions as set forth in contract templates prescribed by the Chief Procurement Officer, the Rules, or Central Procurement Office Policy.

5.2. *Termination and Length of Term.*

All contracts shall contain a provision that allows the State to terminate for convenience upon a period of time prescribed by the State unless otherwise approved by the Chief Procurement Officer. All contracts shall also contain a provision that allows the State to terminate for lack of funding. The length of a contract, including all renewals, shall not exceed sixty (60) months unless a longer term is approved by the Chief Procurement Officer as being in the State's best interests.

5.3. *Prohibited Terms and Conditions.*

5.3.1. *Indemnification and Hold Harmless.*

Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

5.3.2. *Limitations of Liability.*

All limitations of liability must comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 and Central Procurement Office Policy. Limitations of Liability that do not comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 or Central Procurement Office Policy are prohibited. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

5.3.3. *Bonus Payments.*

Bonus payment provisions are prohibited for all contracts subject to these Rules.

6. Approval Process for Statewide and Agency Term Contracts and Amendments.

6.1. *Minimum Approvals.*

All Agency Term Contracts shall be approved by the head of the State Agency and the Chief Procurement Officer or any other state officials as required by statute or rule. All Statewide Contracts shall be approved by the Chief Procurement Officer. Except for Agency Term Contracts procured by a Delegated State Agency, the Central Procurement Office shall initiate a Statewide or Agency Term Contract or amendment approval through the Edison System. The Delegated State Agency shall initiate approval of an Agency Term Contract procured by the Delegated State Agency, or an amendment to such contract, by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office.

6.2. Additional Approvals.

Additional approvals are required for all contracts or amendments that fall within the following types of contract scope of services:

Contract Subject Matter	Required Approval or Endorsement
Information technology	OIR Endorsement
Medical/mental health-related professional, pharmaceutical, laboratory, or imaging	F&A eHealth Initiative Endorsement
Contract between State agencies that includes provisions for cooperative programs; Provision for State legal consultation services	Governor
Provision for State legal consultation services	Attorney General
Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year; Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services; Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; High risk procurements;	Comptroller of the Treasury
Contract with an individual; Contract that involves training State	Human Resources Commissioner

Contract Subject Matter	Required Approval or Endorsement
employees (except training pursuant to an information technology system procurement); Services relating to the employment of current or prospective State employees;	
Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has an interest.	State Architect

Additionally, all contracts or amendments to such contracts with a duration period of more than twelve (12) months must be approved by the Office of the Comptroller. Amendments and renewals must follow the same approval process as that of the original, or base, contract. The termination of a contract, for any reason, must be approved by the Chief Procurement Officer (or Delegated State Agency official by Chief Procurement Officer) and filed by the affected State Agency with the Office of the Comptroller.

7. Fiscal Review.

7.1. *Generally.*

Tenn. Code Ann. § 4-56-108 generally requires that certain contracts or amendments to certain contracts be contemporaneously filed with the Central Procurement Office, Office of the Comptroller for approval and with the Fiscal Review Committee of the General Assembly for review. Tenn. Code Ann. § 4-56-108 requires filing with Fiscal Review in pertinent part:

- (1) All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of \$250,000 or more;
- (2) Any amendment to a contract described in subdivision (1); and
- (3) Any amendment to a contract described in subdivision (1), whether originally procured competitively or noncompetitively which:
 - a. Increases or decreases funding and extends or shortens the contract term, unless the original contract contained term extension language and so long as the additional funding does not increase the amount per compensable increment;
 - b. Changes the entity or name of the entity with which the State is contracting; or
 - c. Otherwise changes an original or amended contract in a substantive manner.

8. Interagency Agreements.

8.1. *Description of Interagency Agreement.*

An Interagency Agreement is a written document that describes a bilateral or multilateral agreement between State agencies. This type of document should memorialize the description of duties for each State Agency, any applicable exchange of funds and the term for the agreement.

8.2. *Condition of Use for Interagency Agreement.*

An Interagency Agreement should be used to memorialize one or more State Agencies' agreement and should be used when the parties (State Agencies) do not have the legal capacity to contract or sue and be sued by one another. While Interagency Agreements should be tracked in the Edison system, these agreements are exempt from the requirements of the Rules and Central Procurement Office Policy and they do not require the approval of the Chief Procurement Officer. The Central Procurement Office shall prescribe or approve the form of Interagency Agreement that will be used by State Agencies.

8.3. *Management of Interagency Agreements.*

The State Agency parties to an Interagency Agreement shall have primary responsibility for managing the Interagency Agreement, which includes by way of example only, decisions concerning extensions, renewals or price increases. State Agency parties to an Interagency Agreement shall also have compliance responsibility over all Interagency Agreements, which includes by way of example only, State Agency party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

Approval Signature

Jessica Robertson, Chief Procurement Officer

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

3. Contract Management

**COMPARISON: SUBCOMMITTEE
UPDATES TO 12/3/12 VERSION**

DRAFT
Policy Number _____ - 2013
Central Procurement Office
Contract Management Policy and Procedures

Effective: ___ Day of _____, 2013

Prepared by: ~~Tennessee Department of General Services,~~[The Central Procurement Office of the State of Tennessee](#)

1. Purpose.

To establish a uniform policy governing the State's contracts for goods and services. This policy shall provide guidance to State procurement professionals in determining which contract to use and to highlight distinguishing factors or considerations for each contract type. This policy also provides guidance and describes the approval process for each contract type (including original contract, amendments, renewals, and terminations) and contract management. Finally, this policy delineates the party responsible for contract management. [This Contract Management Policy and Procedures will be further augmented by the Central Procurement Office's Contract Manual.](#)

2. Scope.

The scope of this policy includes all contracts ~~within~~[procured under](#) the jurisdiction of the Central Procurement Office.

3. Definitions.

For purposes of this policy, existing definitions are listed below:

"Agency Term Contract" - means a State [Agency](#) contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices for a single State Agency.

"Award" – in the context of a Grant Contract means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Award" in the context of a procurement shall mean the award of a contract to a Contracting Party pursuant to a procurement.

"Contract Manager" – means, with respect to a Statewide Contract, the category specialist responsible for the procurement or such other person as appointed by the Chief Procurement Officer to act as the Contract Manager. "Contract Manager" with respect to an Agency Term Contract shall mean the State Agency official appointed by the State Agency to act as the person responsible for contract management.

"Contracting Party" – means a party to a contract with the State to provide goods or services.

“Delegated State Agency” - means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual ~~program~~ [State Agency](#) within specified limits and guidelines.

“Fair Pricing” – means pricing that is mutually acceptable to the parties after considering:

- the level of competition within the marketplace,
- time sensitivities,
- technical qualifications,
- the scope of work at issue,
- economies of scale benefits,
- learning curve costs,
- the presence of proprietary, intangible, personal or real property rights at issue,
- the scarcity or abundance of manpower and resources, or
- other considerations.

The “Fair Pricing” shall be ascertained after benchmarking for time, labor, pricing, or deliverables when practicable. Benchmarking shall compare the individual or market basket of goods and services, as applicable, for the contract or amendment at issue in the relevant market place for the relevant period of time.

“Grant Contract” – means a written contract to facilitate an Award to a Grantee or Subrecipient. “Grant Contract” does not include an Award with the primary purpose of procuring an end product [for a Grantor State Agency](#), whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be procured on a competitive basis.

“Interagency Agreement” means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

“No Cost Contract” means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

“Purchase Order” means a [written or electronic](#) document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase.

Upon delivery to the Contracting Party, a “purchase order” becomes a binding contract on both parties.

“Revenue Contract” means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

“State Agency” means the departments, agencies, and ~~entities~~instrumentalities of the State of Tennessee.

“Statewide Contract” - means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

“Utility Contact” – means a contract for telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority.

4. Contract Types.

All contracts awarded pursuant to a procurement event shall meet the requirements of the Rules and Central Procurement Office Policy. A contract shall be one of the following contract types:

- *Agency Term Contracts*
- *Statewide Contracts*
- *Purchase Orders*
- *No Cost Contracts*
- *Revenue Contracts*
- *Grant Contracts*
- *Utility Contracts*

4.1. Agency Term Contracts.

4.1.1. Description of Agency Term Contracts.

An Agency Term Contract is a written contract for goods or services for a specified term for the benefit of a single State Agency. The parties to an Agency Term Contract include, at a minimum, the State, acting by and through one of its agencies or instrumentalities and one or more ~~counter parties~~Contracting Parties with the legal capacity to enter into contracts or to sue and be sued.

4.1.2. Condition of Use for Agency Term Contracts.

An Agency Term Contract should be used when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term period. Agency Term Contracts ~~are generally~~ shall be used where performance by the Contracting Party cannot be completed in less than ninety (90) days. The Chief Procurement Officer may establish a Statewide Contract for common goods or services needed by more than one State Agency. The Central Procurement Office or Delegated State Agencies may establish Agency Term Contracts for goods or services needed solely and uniquely by their agency in accordance with the Rules or Central Procurement Office Policy.

4.1.3. *Management of Agency Term Contracts.*

After the award of an Agency Term Contract, the State Agency procuring the Agency Term Contract shall have primary responsibility for managing the contract, which includes decisions concerning extensions and renewals. ~~State Agencies~~ The Central Procurement Office shall ~~also~~ have compliance responsibility over all Statewide Contracts, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination. State Agencies shall manage all contracts for which the State Agency is primarily responsible in accordance with the Rules and Central Procurement Office Policy. All contract management plans of State Agencies shall comply with the Rules and Central Procurement Office Policy in terms of form, content, amendments or modifications, and reporting.

4.2. *Statewide Contracts.*

4.2.1. *Description of Statewide Contract.*

A Statewide Contract is a contract for goods or services established by the Central Procurement Office that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities. The purpose of a Statewide Contract is to obtain a source of supply for commonly procured goods or services for the State, its Agencies, local governments, higher education and not-for-profit entities.

4.2.2. *Condition of Use for Statewide Contract.*

Only a contract that benefits two or more State Agencies will be considered a Statewide Contract. A contract that otherwise meets the requirements of a Statewide Contract, but is restricted to certain State Agencies is a Restricted Statewide Contract. Only the Central Procurement Office has authority to procure and award a Statewide or Restricted Statewide Contract.

4.2.3. *Management of Statewide Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Statewide Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. All State Agencies are required to procure goods and services from Statewide Contracts when practicable. No State Agencies shall procure goods or services that are within the scope of a Statewide Contract without first obtaining the consent of the Chief Procurement Officer. Grounds for the Chief Procurement Officer's approval of a State Agency's request to procure goods or services outside a Statewide Contract may include, by way of example only, Contracting Party's past performance and concerns over future performance, timeliness of performance, the Contracting Party's ability to supply the goods or services, pricing, quality or compatibility concerns. The Central Procurement Office shall also have compliance responsibility over all Statewide Contracts, which includes, by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.3. *Purchase Orders.*

4.3.1. *Description of Purchase Order.*

A Purchase Order is a commercial document (issued electronically or on hard copy), generated by ~~Edison~~ [the Edison System \(except procurements made pursuant to a natural or declared disaster\)](#), that indicates types, quantities and agreed upon prices for goods or services. A State Agency issuing a Purchase Order to a supplier constitutes an offer to buy goods or services, and acceptance of a Purchase Order by a supplier forms a contract between the parties.

4.3.2. *Condition of Use for Purchase Order.*

A Purchase Order is generally used for those procurements of goods or services where performance can be completed in less than ninety (90) days or that represent a single transaction. An Agency Term or Statewide Contract must be used for any procurement of goods or services where Contracting Party performance cannot be completed within ninety (90) days.

4.3.3. *Management of Purchase Orders.*

After issuance of a purchase order, the State Agency issuing a Purchase Order for goods or services shall have primary responsibility for managing the Purchase Order. State Agencies shall also have compliance responsibility over all Purchase Orders that it issues or that are issued on the State Agency's behalf, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.4. *No Cost Contracts.*

4.4.1. *Description of No Cost Contract.*

A No Cost Contract is a written contract entered between the State and a Contracting Party that does not involve a payment or create a pecuniary obligation of the State to the Contracting Party.

4.4.2. *Condition of Use for No Cost Contract.*

A No Cost Contract may be used when there is no payment or pecuniary obligation of the State to the Contracting Party, and when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term. A No Cost Contract can be either an Agency Term Contract or a Statewide Contract.

4.4.3. *Management of No Cost Contracts.*

A Statewide No Cost Contract will be managed by the Central Procurement Office in the same manner as all other Statewide Contracts. An Agency Term Contract that is a No Cost Contract will be managed by the State Agency procuring the No Cost Contract in the same manner that a State Agency manages all other Agency Term Contracts.

4.5. *Revenue Contracts.*

4.5.1. *Description of Revenue Contract.*

A Revenue Contract is a standard written contract entered into between the State and a Contracting Party where the State provides goods or services for payment by a Contracting Party.

4.5.2. *Condition of Use for Revenue Contract.*

A Revenue Contract may be used where the State provides goods or services to a Contracting Party for payment, and when goods or services, as defined in the scope of work, will be provided over an established period of time.

4.5.3. *Management of Revenue Contracts.*

After contract award, the State Agency entering into a Revenue Contract shall have primary responsibility for managing all aspects of the Revenue Contract, which includes, by way of example, decisions concerning extensions, renewals or revenue increases or decreases. State Agencies shall also have compliance responsibility over all Revenue Contracts, which includes by way of example only, Contracting Party compliance, notice of default, curing performance and contract termination.

4.6. *Grant Contracts.*

4.6.1. *Description of Grant Contracts.*

A Grant Contract is a written contract between the State, a grantor, a natural person or a legal entity to facilitate an Award to a person or legal entity to support a program authorized by law. ~~A~~

4.6.2. *Condition for Use of Grant Contracts.*

A Grant Contract should be used to facilitate an Award, but should not be used where the true object of the contract is to purchase goods or services for the Grantor State Agency. State Agencies that have entered into Grant Contracts with other State Agencies that create subrecipient grant relationships should continue to use a Grant Contract to memorialize the subrecipient grant relationship.

4.6.3. *Management of Grant Contracts.*

The Grantor State Agency shall be primarily responsible for managing a Grant Contract in accordance with the *Grant Management and Subrecipient Monitoring Policy*.

4.7. *Utility Contracts.*

4.7.1. *Description of Utility Contracts.*

A Utility Contract is a contract between the State and a private or public legal entity that is regulated by one or more states or the federal government as a public utility.

4.7.2. *Condition for Use of Utility Contracts.*

A Utility Contract should only be used for the procurement of utilities.

4.7.3. *Management of Utility Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Utility Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. No State Agency shall procure any goods or services that are within the scope of a Utility Contract without first obtaining the consent of the Chief Procurement Officer. The Central Procurement Office shall also have compliance responsibility over all Utility Contracts, which includes by way of example only, Contracting Party compliance, merchantability of goods, acceptability of services, notice of default, curing performance and contract termination.

5. Contract Terms and Conditions.

5.1. *General Requirements of Terms and Conditions.*

All contracts must be in writing and contain such terms and conditions as set forth in contract templates prescribed by the Chief Procurement Officer, the Rules, or Central Procurement Office Policy.

5.2. *Termination and Length of Term.*

All contracts ~~with a term greater than twelve (12) months~~ shall contain a provision that allows the State to terminate for convenience upon a period of time prescribed ~~in~~by the State unless otherwise approved by the Chief Procurement Officer. All contracts ~~with a term of twelve (12) months or greater~~ shall also contain a provision that allows the State to terminate for lack of funding. The length of a contract, including all renewals, shall not exceed sixty (60) months unless a longer term is approved by the Chief Procurement Officer as being in the State's best interests.

5.3. *Prohibited Terms and Conditions.*

5.3.1. *Indemnification and Hold Harmless.*

Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

5.3.2. *Limitations of Liability.*

All limitations of liability must comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 and Central Procurement Office Policy. Limitations of Liability that do not comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 or Central Procurement Office Policy are prohibited. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

5.3.3. *Bonus Payments.*

Bonus payment provisions are prohibited for all contracts subject to these Rules.

6. Approval Process for Statewide and Agency Term Contracts and Amendments.

6.1. *Minimum Approvals.*

All Agency Term Contracts shall be approved by the head of the State Agency, ~~signed as to form and legality by a State Agency attorney and approved by~~ and the Chief Procurement Officer ~~or any other state officials as required by statute or rule~~. All Statewide Contracts shall be approved by the Chief Procurement Officer ~~and approved as to form and legality by an attorney for the Central Procurement Office~~. Except for Agency Term Contracts procured by a Delegated State Agency, the Central Procurement Office shall initiate a Statewide or Agency Term Contract or amendment approval through the Edison ~~system~~ System. The Delegated State Agency shall initiate approval of an Agency Term Contract procured by the Delegated State Agency, or an amendment to such contract, by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office.

6.2. *Additional Approvals.*

Additional approvals are required for all contracts or amendments that fall within the following types of contract scope of services:

Contract Subject Matter	Required Approval or Endorsement
Information technology	OIR Endorsement
Medical/mental health-related professional, pharmaceutical, laboratory, or imaging	F&A eHealth Initiative Endorsement
Contract between State agencies that includes provisions for cooperative programs; Provision for State legal consultation services	Governor
Provision for State legal consultation services	Attorney General

Contract Subject Matter	Required Approval or Endorsement
<p>Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;</p> <p>Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;</p> <p>Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing;</p> <p>High risk procurements;</p>	<p>Comptroller of the Treasury</p>
<p>Contract with an individual;</p> <p>Contract that involves training State employees (except training pursuant to an information technology system procurement);</p> <p>Services relating to the employment of current or prospective State employees (interviewing, screening, evaluating, et cetera);</p>	<p>Human Resources Commissioner</p>
<p>Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has an interest.</p>	<p>State Architect</p>

Additionally, all contracts or amendments to such contracts with a duration period of more than twelve (12) months must be approved by the Office of the Comptroller. Amendments and renewals must follow the same approval process as that of the original, or base, contract. The termination of a contract, for any reason, must be approved by the Chief Procurement Officer (or ~~delegated agency~~ [Delegated State Agency](#) official by Chief Procurement Officer) and filed by the affected State Agency with the Office of the Comptroller.

7. Fiscal Review.

7.1. *Generally.*

Tenn. Code Ann. § 4-56-108 generally requires that certain contracts or amendments to certain contracts be contemporaneously filed with the Central Procurement Office, Office of the Comptroller for approval and with the Fiscal Review Committee of the General

Assembly for review. Tenn. Code Ann. § 4-56-108 requires filing with Fiscal Review in pertinent part:

- (1) All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of \$250,000 or more;
- (2) Any amendment to a contract described in subdivision (1); and
- (3) Any amendment to a contract described in subdivision (1), whether originally procured competitively or noncompetitively which:
 - a. Increases or decreases funding and extends or shortens the contract term, unless the original contract contained term extension language and so long as the additional funding does not increase the amount per compensable increment;
 - b. Changes the entity or name of the entity with which the State is contracting; or
 - c. Otherwise changes an original or amended contract in a substantive manner.

8. Interagency Agreements.

8.1. Description of Interagency Agreement.

An Interagency Agreement is a written document that describes a bilateral or multilateral agreement between State agencies. This type of document should memorialize the description of duties for each State Agency, any applicable exchange of funds and the term for the agreement.

8.2. Condition of Use for Interagency Agreement.

An Interagency Agreement should be used to memorialize one ~~o~~for more State Agencies' agreement and ~~is~~should be used when the parties (State Agencies) do not have the legal capacity to contract or sue and be sued by one another. While Interagency Agreements should be tracked in the Edison system, these agreements are exempt from the requirements of the Rules and Central Procurement Office Policy and they do not require the approval of the Chief Procurement Officer. [The Central Procurement Office shall prescribe or approve the form of Interagency Agreement that will be used by State Agencies.](#)

8.3. Management of Interagency Agreements.

The State Agency parties to an Interagency Agreement shall have primary responsibility for managing the Interagency Agreement, which includes by way of example only, decisions concerning extensions, renewals or price increases. State Agency parties to an Interagency Agreement shall also have compliance responsibility over all Interagency Agreements, which includes by way of example only, State Agency party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

Related [Statutes](#), Rules and Policies

~~TBD~~

[Tenn. Code Ann. §§ 4-56-101, et seq.](#)

[Tenn. Code Ann. §§ 12-3-101, et seq.](#)

[Tenn. Code Ann. §§ 12-4-101, et seq.](#)

Approval Signature

Jessica Robertson, Chief Procurement Officer

Document comparison by Workshare Compare on Thursday, December 20, 2012 10:45:58 AM

Input:	
Document 1 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Contract Management.docx
Description	Contract Management
Document 2 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Contract Management Final.docx
Description	Contract Management Final
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Style change	
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Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
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Padding cell	

Statistics:	
	Count
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Deletions	22
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	61

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

**4. Certification of Goods and Services
Recommended by the Central Non-
profit Agency or TRICOR**

CLEAN VERSION

DRAFT
Policy Number ____ - 2013
Central Procurement Office
Certification of Goods and Services Recommended by the Central Nonprofit Agency or
TRICOR
Policy and Procedures

Effective: ____ day of _____ 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish Certification procedures related to TRICOR, CMRA, Certification of Products, Reevaluation of a Certified Product or Service, Decertification, Certified Service Change, Product Design or Composition Change, Certified Product or service Price Increase/Decrease for commodities and services that have been recommended by a Tennessee Central Nonprofit Agency or TRICOR as suitable for procurement by state entities.

2. Scope.

These policies and procedures apply to all procurements, contract awards, and amendments to such awarded contracts related to a certified good or service provided by a Tennessee Central Nonprofit Agency or TRICOR.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Advisory Committee” – means the committee established pursuant to Tenn. Code Ann. Sec. 71-4-703.

“Certification” – means the process by which goods or services are certified by the Procurement Commission. A certification shall expire after three hundred sixty-five (365) days.

“Certification Committee”- means the committee established by Title 41, Chapter 22, Part 119 (c), Tennessee Code Annotated.

“Certification”- means the formal determination by the Procurement Commission that a given commodity or service is certified by the Procurement Commission Staff as being of satisfactory quality, reasonable in price, and commercially available.

“Certification Term” – means the one (1) year term following the effective date of a Certification.

“CMRA”- Community Rehabilitation Agencies of Tennessee- the central nonprofit agency designated by the advisory committee for purchase from the blind and other severely disabled, created by Title 71, Chapter 4, Part 703, Tennessee Code Annotated)

“Effective Date of Certification” – means the date on which Procurement Commission staff has determined to be the effective date of any approved certification of goods or services.

“Fair Market Value” means a price for goods or services at which buyers and sellers with a reasonable knowledge of all pertinent facts, and not acting under any compulsion to buy or sell, are willing to transact business.

"Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

“Procurement Commission”- means the State entity created and empowered by Tenn. Code Ann. § 4-56-102.

“Procurement Commission Staff” means the staff under the supervisory control of the Chief Procurement Officer.

“Tennessee Central Nonprofit Agency” – means the agency designated by the Committee to facilitate the distribution, by direct allocation, subcontract or any other means, of orders from state government for commodities and services on the procurement list among work centers for the blind and agencies serving individuals with severe disabilities.

“TRICOR”- Tennessee Rehabilitative Initiative in Correction- produces, assembles or manufactures products with the labor of convicts confined within institutions or elsewhere employed within the State.

“Work Center” – shall have the meaning set forth in Tenn. Code Ann. § 71-4-702(8).

4. Policy and Procedure - Committee.

4.1. Procedure.

TRICOR and CMRA may request of the Procurement Commission certify certain goods or services. The Committee advises the Procurement Commission regarding the "Certification" of articles and services.

Pursuant to TCA §§ 41-22-119, *et seq.*, and 71-4-701 *et seq.*, all departments, institutions, agencies, and political subdivisions of this state, which are supported in whole or in part by the state, shall purchase all needed commodities or services from

the Tennessee Rehabilitative Initiative in Correction (TRICOR) or from nonprofit work centers for the blind or agencies serving individuals with severe disabilities, provided, that such services or articles are certified by the Procurement Commission in accordance with this Procedure. While, the procurement of certified articles or services are not subject to competitive requirements, certified articles and services must nonetheless be competitive with available goods or services generally available in the market place in terms of price and quality.

4.2. *Establishment of Policies and Procedures.*

The Committee may establish certain policies and procedures, as approved by the Procurement Commission, or for the effective implementation of the certification program. Revisions to this policy shall be submitted to the Procurement Commission for approval.

4.3. *Membership.*

The Committee shall be comprised of a representative from the TRICOR board (voting member), CMRA of Tennessee (ex-officio only), the Departments of General Services and Finance and Administration, and the Office of the Comptroller of the Treasury as follows:

- Finance and Administration- Voting Member
- Comptroller- Voting Member
- General Services- Voting Member
- TRICOR- Voting Member
- CMRA- Ex-Officio Member

The representative from The Department of Finance and Administration shall serve as the Committee Chairperson, who will have the following duties:

- To preside at all meetings of the Committee;
- To insure that the functions of the Committee as described in legislation and regulations are carried out;
- To promote the Committee's continuous cooperative working relationship with state government and political subdivisions;
- To serve as official spokesperson for the Committee in all activities for which the Committee may deem necessary; and
- To provide direction, support, and guidance to the nonprofit work centers in interpreting or fulfilling Committee activities.

The representative from the Office of the Comptroller of the Treasury shall serve as the committee Vice-Chairperson.

The representative from the Department of General Services shall serve as the Committee Secretary, who will have the following duties:

- Schedule monthly Committee meetings;
- Follow-up and coordinate TRICOR and CMRA agenda items for Committee meetings; and
- Record, prepare, and submit Committee meeting minutes and product or service request recommendations and rejections, along with supporting data submitted by TRICOR and CMRA for review and approval by the Procurement Commission Staff.

5. TRICOR.

5.1. Generally.

Products that are produced, assembled or manufactured by TRICOR with the labor of convicts confined within institutions or elsewhere employed within the State shall be considered for Certification.

5.2. Establishment of Policies and Procedures.

TRICOR, at its expense, will defend any suit that may be brought against the State to the extent that the suit is based on a claim that the goods certified by the Procurement Commission and purchased by State agencies infringes on a United States patent. TRICOR shall pay those costs and damages that are attributable to infringement claims and finally awarded against the State.

By January 1 of each year, TRICOR shall submit to Procurement Commission Staff, as recommended by the Committee, a preliminary listing of products on which TRICOR seeks certification. The Committee will utilize the preliminary list for the Committee's background review of products on which TRICOR seeks certification.

The Committee will make recommendations based upon one or more of its findings to Procurement Commission Staff. No products shall be certified until approved by the Procurement Commission Staff for recommendation to the Procurement Commission.

The Committee may, when it deems appropriate, contact persons and agencies independent of TRICOR in order to gather information concerning the price, quality and availability of the products proposed for certification.

The Committee shall meet at least once a month, or as needed, to evaluate the products upon which a formal request for product certification has been made by TRICOR. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Committee by TRICOR.

Each certified product shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the end of the Certification Term to

determine if the product should either continue to be certified or be recommended for decertification.

The price of a product formally requested to be certified by TRICOR shall be based upon a "Fair Market Value." The cost may be established by submitting the cost of providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

6. CMRA.

6.1. Generally.

The purpose of this program as set forth in Title 71, Chapter 4, Part 7, Tennessee Code Annotated, is to achieve employment of the blind, deaf, mentally disabled and severely disabled persons by assuring and expanding the market for such persons' products or services. Products or services that are produced, assembled or manufactured and provided by CMRA by subcontracting with State certified non-profit agencies, who employ the blind, deaf, mentally disabled and severely disabled, shall be considered for Certification.

6.2. Establishment of Policies and Procedures.

In accordance with Title 71, Chapter 4, Part 7 of the Tennessee Code, as amended, the price of a product or service formally requested to be certified by CMRA shall be based upon the fair market value of the product or service.

The Committee will make recommendations based upon its finding(s) to the Procurement Commission Staff. No products or services shall be certified until approved by the Procurement Commission Staff.

The Committee may, when it deems appropriate, contact persons and agencies independent of CMRA in order to gather information concerning the price, quality and availability of the products or services proposed for Certification.

The Committee shall meet at least once a month, or as needed, to evaluate the products or services upon which a formal request for product or service certification has been made by CMRA. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Committee by CMRA.

Each certified product or service shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the end of the Certification Term to determine if the product or service should either continue to be certified or be recommended for decertification.

The price of a product formally requested to be certified by CMRA shall be based upon a "Fair Market Value." The cost may be established by submitting the cost of providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

7. Certification of Products.

7.1. Formal Request.

TRICOR and CMRA shall submit to the Committee formal requests for product and service Certifications along with supporting data regarding quality, price and availability. The following is required for each product and service submitted for Certification:

- Product or service name
- General description of product or service
- Current or proposed Edison item number
- An identification of the agencies that would benefit from TRICOR's or CMRA's product or service offering
- Packaging of the product
- Additional information, if requested by the Committee

The following documentation is required, if applicable, for each product or service submitted in order for the Committee to review the quality of the product or service offered:

- Product or service specifications
- Materials or chemical composition and the approximate amount of usage of each for unit of production
- Product warranties (e.g., warranty against defects; warranty as to fitness for purpose)
- Description of inspection program
- Description of quality control program
- Production time
- Description of assembly or mix process
- Independent laboratory evaluation, as may be requested by the Committee
- Additional information, as may be requested by the Committee
- Submit product sample, as may be requested by the Committee

The following documentation is required, if applicable, for each product or service submitted in order to review the price of the product or service:

- Unit of measurement
- Unit price
- Breakdown of unit price by cost of supplies, labor, factory overhead, and profit, if applicable

- Supply copies of invoices to support the cost of supplies, and calculations of any factory overhead or profit applied, if requested by the Committee
- Costs associated with delivery and any other associated delivery costs, and who will be responsible for payment
- Estimated annual sales volume based upon price
- Minimum order quantities
- Volume or any other discounts offered for the purchase of the product or service
- Supply pricing on at least three (3) comparable products or services from three different companies, if possible. If it is not possible to supply pricing for at least three (3) comparable products or services from three (3) different companies, a memorandum must be supplied justifying why it is impossible to obtain at least three (3) comparable prices. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified. The cost of comparable products should take into account volume discounts and other pricing structures used in private industry. The price of comparable products should be F.O.B. destination, unless otherwise stipulated.
- Any other special requirements or terms and conditions

The following documentation is required, if applicable, for each product or service submitted in order to review the availability of the product or service:

- Description of the delivery terms, including, but not limited to: destinations to which TRICOR or CMRA will not deliver and the means of delivery
- Delivery time (from point the order is received until reaching delivery destination)
- Description of Return Goods Policy
- Specific conditions under which a restocking charge will be levied and how much that charge will be
- A survey of three (3) companies from which comparable prices were obtained to determine the time in which the private sector could supply comparable products to the State. The survey should take into account the quantity ordered and the complexity of the product or service.

7.2. *Committee Review.*

7.2.1. *Quality, Price, Availability.*

Committee review will be based upon, but not be limited to, the documentation required to be submitted to the Committee. If requested by the Committee, TRICOR or CMRA will submit, as part of its quality report, an independent laboratory evaluation of a given certified product. The program for evaluation will include a product comparison chart that establishes brands or models manufactured by the private sector, which are comparable to the products

submitted by TRICOR or CMRA for Certification. The review will involve a determination as to whether the quality is satisfactory or meets the State's standards for quality.

The Committee will review the price of the three (3) comparable products. If TRICOR's or CMRA's price is higher than comparable products or services, the Committee will require documentation of costs. The Committee will determine whether the TRICOR or CMRA pricing is at fair market value based on the documentation provided by TRICOR or CMRA or such other information as may be available relating to price or quality of the good or service for which certification is sought.

The survey conducted by TRICOR or CMRA will be used to compare the delivery time of TRICOR or CMRA in order to determine if the product can be supplied within a reasonable time frame. The Committee review will also be based upon other documentation required to be submitted to the Committee per the Formal Request Section.

7.2.2. Committee Recommendation to the Procurement Commission Staff Form of Recommendation.

The Committee's recommendation to certify or not certify the product or service will be submitted at least monthly to Procurement Commission Staff and documented in the Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR or CMRA shall be used to support the Committee's review of price, quality and availability.

7.2.3. Recommendation Not to Certify.

If the Committee recommends against certifying a certain product or service, the Committee's recommendation shall be reported and based upon one or more of the following criteria:

- The price is not fair taking into consideration the cost of comparable products or services and the costs of the work center in supplying the product or service.
- The quality is not satisfactory or does not meet acceptable State quality standards.
- TRICOR or CMRA cannot supply the product within a reasonable time frame.

7.2.4. Approval for Certification.

Procurement Commission Staff approval is required to certify a product or service.

7.2.5. Effective Date of Certification.

The effective date of a product or service approved for Certification will be the date as determined by Procurement Commission Staff, which will be reported to the Procurement Commission and entered into the Edison System.

8. Reevaluation of a Certified Product or Service.

8.1. Review of a Certified Product or Service by the Committee.

Each certified product or service shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the ending date of the Certification Term in order to determine if the product or service should either continue to be certified or not certified by the Committee to Procurement Commission Staff. The following documentation is required for each product or service being reevaluated in order to perform the end of Certification term review:

8.2. Price.

TRICOR or CMRA shall conduct a survey of three (3) original vendors, if possible, who were contacted for comparison of prices for Certification to determine:

- Current price for comparison to the Certification products or service price.
- If there have been any changes in the product or service since the original comparison which would account for changes in price.
- If there has been any change in market conditions or technology.

If it is not possible to supply information noted above concerning pricing from the three (3) original vendors or from at least three (3) vendors who produce the same or similar product or service, a memorandum must be supplied to the Committee justifying why it is impossible. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified.

8.3. Quality and Availability.

The following shall be obtained for reevaluation of the certified product or service under review:

- The Complaint to Vendor file shall be obtained from the Department of General

Services for review by the Committee.

- A current production model shall be supplied to the Committee by TRICOR or CMRA to determine if the same or better quality or production standards are being maintained.
- A list of the number of orders placed or the dollar volume of sales during the current Certification term shall be supplied by TRICOR or CMRA to the Committee.

8.4. *Committee Recommendation.*

8.4.1. *Form of the Recommendation.*

The Committee's recommendation to certify or not certify the product or service will be submitted monthly to the Procurement Commission Staff and documented in the Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison of private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR and CMRA shall be used to support the Committee's review of price, quality and availability.

8.4.2. *Recommendation Not to Recertify.*

If the recommendation from the Committee is to not continue Certification of the product or service, the cause for not recommending shall be based upon any of the following criteria:

- The price is not fair taking into consideration the cost of comparable products or services and the costs of the work center in supplying the product or service.
- The quality is not satisfactory or does not meet acceptable State quality standards.
- TRICOR or CMRA cannot supply the product within a reasonable time frame.

8.4.3. *Approval for Recertification.*

Procurement Commission Staff approval is required for recertification upon reevaluation of the certified product or service with reporting of such approval to the Commission.

9. **Decertification.**

9.1. *Conditions for Decertification.*

Products or services which have been previously certified by Procurement Commission

Staff are subject to decertification when one of the following conditions exists:

- A sufficient number of complaints are issued by an agency relating to the unavailability or poor quality of the products or services at issue.
- Design modifications or changes in material were made by TRICOR or CMRA that diminish the quality of the product.
- Price increases are requested by TRICOR or CMRA that are not supported by the work center's costs, and are beyond the current fair market price for comparable products or services.
- By request of TRICOR or CMRA upon supplying reasonable justification for decertification.
- Submission of sufficient criteria for not recommending recertification during the reevaluation process.

9.2. *Committee Recommendation.*

The Committee will make recommendations regarding decertification to Procurement Commission Staff based upon at least one of the conditions listed in the Decertification Section.

9.3. *Approval of Decertification.*

Procurement Commission Staff approval is required to remove a product from the certified products catalog or to decertify a service. Any products or services that are decertified by Procurement Commission Staff will be reported to the Procurement Commission.

10. Changes to Certified Goods or Services.

10.1. *Requests to Change Certification for Goods or Services.*

All requests for any design, composition, or other significant changes or modification to any product or service that has been certified must be submitted in writing by TRICOR or CMRA to the Committee within sixty (60) days prior to the scheduled change or modification as an addendum.

10.2. *Documentation Required for Approval.*

TRICOR or CMRA must also submit the following together with its request for a change:

- Complete documentation of the nature of the change or modification.
- The reason for the change or modification.
- Any changes in price, quality or availability information submitted with the original request for Certification.
- A list or primary customers of the certified product to be changed.

10.3. *Committee Review of Change.*

The Committee will review the change in the product or service to determine if the change has affected the quality, price or availability as currently certified.

10.4. *Causes for Rejection of Change.*

If any one of the following occurs, it will be cause for not recommending a change in the product or service:

- The price change is not supported by the Work Center's costs and is beyond the current fair market value price for comparable goods or services.
- The quality of the product or service has been lessened and is no longer satisfactory or no longer meets the State's quality standards.
- The good or service can no longer be supplied within a reasonable time frame.

10.5. *Committee Recommendation.*

The Committee will make recommendations regarding acceptance or rejection of a change to a certified good or service to Procurement Commission Staff based upon information supplied as required in Policy and Procedure- Certified Service Change, Product Design, or Composition Change section.

10.6. *Approval of Change.*

Procurement Commission Staff approval is required for a design, composition, or other significant changes or modifications to any product from the certified products catalog or certified service and shall be reported to the Procurement Commission.

10.7. *Disapproval of Change to a Certified Product or Service.*

If the Procurement Commission Staff disapproves the modification, TRICOR or CMRA has the option of continuing with the currently certified product or service, or modifying the product or service and being subject to decertification.

11. Policy and Procedure - Certified Product or Service Price Increase or Decrease.

11.1. *Conditions for Price Increase or Decrease for Certified Product or Service Firm Price Period.*

Prices for goods or services certified by Procurement Commission Staff shall remain firm for the Certification Term or any remainder of the Certification Term after a price increase or decrease is approved by Procurement Commission Staff.

11.2. *Request for Price Increase.*

A request for a price increase of a certified product shall be submitted in writing by TRICOR or CMRA to the Committee. TRICOR or CMRA must also submit sufficient documentation to justify the increased price.

11.3. *Documentation Required for a Price Increase.*

The following must be submitted by TRICOR or CMRA to the Committee as documentation to justify the increase in price:

- The cost of raw material, labor, overhead and any profit before the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- The cost of raw material, labor, overhead and any profit after the price increase for one (I) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- Any other information, upon request of the Committee.

11.4. *Committee Review of the Request.*

The Committee shall conduct a survey of private industry, and such other documentation supplied by TRICOR or CMRA, to determine the cost of comparable products or services to which the Committee's review of the price increase will be compared for reasonableness and meeting the fair market price criteria for TRICOR or CMRA.

11.5. *Committee Recommendation of Price Increase.*

The Committee will make recommendations regarding acceptance or rejection of a price increase to Procurement Commission Staff based upon whether the price increase is supported by the work center's costs and whether those cost are reasonable and meet the fair market criteria for TRICOR or CMRA.

11.6. *Approval of Pricing Change.*

Procurement Commission Staff approval is required for a price increase to any product or service from the certified product's catalog or certified service, and such approval shall be reported to the Procurement Commission.

11.7. *Effective Date of Price Increase.*

Price increases, when approved, will be effective on the first day of the following month. Price increases for products or services will be entered into Edison. No

increase shall be effective until approved by the Procurement Commission Staff. Approval of any price increase will remain in effect for the remainder of the Certification Term.

11.8. *Price Increase Rejection.*

When the Procurement Commission Staff rejects a request for a price increase, TRICOR and CMRA will be notified of the Procurement Commission Staff's decision prior to the first of the following month. TRICOR or CMRA has the option of continuing with the current price or modifying the price and being subject to decertification. .

11.9. *Certified Product or Service Price Decrease, Notice of Price Decrease,*

TRICOR or CMRA shall report to Procurement Commission Staff price decreases of certified products or services immediately upon receipt or realization of the decrease, and the price shall be proportionately reduced based upon the decrease.

11.10. *Effective Date of Price Decreases.*

Price decreases will be effective on the first day of the following month upon receipt of notice, and will be updated in Edison.

Related Statutes, Rules and Policies

- TCA § 41-22-118
- TCA § 41-22-119
- TCA § 41-22-120
- TCA § 41-22-122
- TCA § 41-22-124
- TCA § 71-4-701
- TCA § 71-4-702
- TCA § 71-4-703
- TCA § 71-4-704
- TCA § 71-4-705

Approval Signature

Jessica Robertson, Chief Procurement Officer

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

**4. Certification of Goods and Services
Recommended by the Central Non-
profit Agency or TRICOR**

**COMPARISON: SUBCOMMITTEE
UPDATES TO 12/11/12 VERSION**

DRAFT
Policy Number _____ - 2013
Central Procurement Office
Certification of Goods and Services Recommended by the Central Nonprofit Agency or
TRICOR
Policy and Procedures ~~for Procurements~~

Effective: ___ day of _____ 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish Certification procedures, ~~inclusive of the following elements: Committee, related to~~ TRICOR, CMRA, Certification of Products, Reevaluation of a Certified Product or Service, Decertification, Certified Service Change, Product Design or Composition Change, Certified Product or service Price Increase/Decrease for commodities and services that have been recommended by ~~the central nonprofit agency~~ a Tennessee Central Nonprofit Agency or TRICOR as suitable for ~~Procurement~~ procurement by state entities.

2. Scope.

These policies and procedures apply to all procurements, contract awards, and amendments to such awarded contracts ~~when the solicitation and award are conducted by a State governmental entity~~ related to a certified good or service provided by a Tennessee Central Nonprofit Agency or TRICOR.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Advisory Committee” – means the committee established pursuant to Tenn. Code Ann. Sec. 71-4-703.

“Certification” – means the process by which goods or services are certified by the Procurement Commission. A certification shall expire after **three hundred sixty-five (365) days.**

“Certification Committee”- means the committee established by Title 41, Chapter 22, Part 119 (c), Tennessee Code Annotated.

“Certification”- means the formal determination by the Procurement Commission that a given commodity or service is certified by the Procurement Commission Staff as being of satisfactory quality, reasonable in price, and commercially available.

“Certification Term” – means the one (1) year term following the effective date of a Certification.

“CMRA”- Community Rehabilitation Agencies of Tennessee- the central nonprofit agency designated by the advisory committee for purchase from the blind and other severely disabled, created by Title 71, Chapter 4, Part 703, Tennessee Code Annotated)

“Effective Date of Certification” – means the date on which Procurement Commission staff has determined to be the effective date of any approved certification of goods or services.

“Fair Market Value” means a price for goods or services at which buyers and sellers with a reasonable knowledge of all pertinent facts, and not acting under any compulsion to buy or sell, are willing to transact business.

~~“State” means the State of Tennessee and its agencies, boards and commissions as the context requires.~~

~~“Procurement” means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, negotiation, preparation and award of a contract, and all phases of contract administration.~~

~~“TRICOR” Tennessee Rehabilitative Initiative in Correction produces, assembles or manufactures products with the labor of convicts confined within institutions or elsewhere employed within the State.~~

~~“CMRA” Community Rehabilitation Agencies of Tennessee the central nonprofit agency designated by the advisory committee for purchase from the blind and other severely disabled, created by Title 71, Chapter 4, Part 703, Tennessee Code Annotated)~~

~~“Certification Committee” hereinafter referred to as "the Committee," was established by Title 41, Chapter 22, Part 119 (c), Tennessee Code Annotated. “Certification” is the formal determination by the Procurement Commission that a given commodity or service is certified by the Commission as being of satisfactory quality, being reasonable in price, and available.~~

“Procurement Commission”- means the State entity created and empowered by Tenn. Code Ann. § 4-56-102.

“Procurement Commission Staff” means the staff under the supervisory control of the Chief Procurement Officer.

“Tennessee Central Nonprofit Agency” – means the agency designated by the Committee to facilitate the distribution, by direct allocation, subcontract or any other means, of orders from state government for commodities and services on the procurement list among work centers for the blind and agencies serving individuals with severe disabilities.

“TRICOR”- Tennessee Rehabilitative Initiative in Correction- produces, assembles or manufactures products with the labor of convicts confined within institutions or elsewhere employed within the State.

“Work Center” – shall have the meaning set forth in Tenn. Code Ann. § 71-4-702(8).

4. Policy and Procedure - Committee.

4.1. Procedure.

TRICOR and CMRA may request of the Procurement Commission, ~~hereinafter referred to as "the Commission," Certification of specified products certify certain goods~~ or services. The Committee advises the Procurement Commission regarding the "Certification" of articles and services.

Pursuant to TCA §§ 41-22-119, *et seq.*, and 71-4-701 *et seq.*, all departments, institutions, agencies, and political subdivisions of this state, which are supported in whole or in part by the state, ~~are to~~ shall purchase all needed commodities or services from the Tennessee Rehabilitative Initiative in Correction (TRICOR) or from nonprofit work centers for the blind or agencies serving individuals with severe disabilities, provided, that such services or articles are certified by the Procurement Commission in accordance with this Procedure. While, the procurement of certified articles or services are not subject to competitive requirements, certified articles and services must nonetheless be competitive with available goods or services generally available in the market place in terms of price and quality.

4.2. Establishment of Policies and Procedures.

The Committee may establish certain policies and procedures, as approved by the Procurement Commission, or for the effective implementation of the certification program. Revisions to this policy shall be submitted to the Procurement Commission for approval.

4.3. Membership.

The Committee shall be comprised of a representative from the TRICOR board (~~ex-officio only~~ voting member), CMRA ~~in~~ of Tennessee (ex-officio only), the Departments of General Services and Finance and Administration, and the Office of the Comptroller of the Treasury as follows:

- Finance and Administration- Voting Member
- Comptroller- Voting Member
- General Services- Voting Member
- TRICOR- ~~Ex-Officio~~ Voting Member
- CMRA- Ex-Officio Member

The representative from The Department of Finance and Administration shall serve as the Committee Chairperson, who will have the following duties:

- ; To preside at all meetings of the Committee;
- ; To insure that the functions of the Committee as described in legislation and regulations are carried out;
- ; To promote the Committee's continuous cooperative working relationship with state government and political subdivisions;
- ; To serve as official spokesperson for the Committee in all activities for which the Committee may deem necessary; and
- ; To provide direction, support, and guidance to the nonprofit work centers in interpreting or fulfilling Committee activities.

The representative from the Office of the Comptroller of the Treasury shall serve as the committee Vice-Chairperson.

The representative from the Department of General Services shall serve as the Committee Secretary, who will have the following duties:

- ; Schedule monthly Committee meetings;
- ; Follow-up and coordinate TRICOR and CMRA agenda items for Committee meetings; and
- ; Record, prepare, and submit Committee meeting minutes and product or service request recommendations and rejections, along with supporting data submitted by TRICOR and CMRA for review and approval by the Procurement Commission Staff.

5. ~~Policy and Procedure~~—TRICOR.

5.1. *Generally.*

Products that are produced, assembled or manufactured by TRICOR with the labor of convicts confined within institutions or elsewhere employed within the State shall be considered for Certification.

5.2. *Establishment of Policies and Procedures.*

TRICOR, at its expense, will defend any suit that may be brought against the State to the extent that the suit is based on a claim that the goods certified by the [Procurement Commission](#) and purchased by State agencies infringes on a United States patent. TRICOR shall pay those costs and damages that are attributable to infringement claims and finally awarded against the State.

By January 1 of each year, TRICOR shall submit to Procurement Commission Staff, as recommended by the Committee, a preliminary listing of products on which TRICOR seeks certification. The Committee will utilize the preliminary list for the

Committee's background review of products on which TRICOR seeks certification.

The Committee will make recommendations based upon one or more of its findings to Procurement Commission Staff. No products shall be certified until approved by the Procurement Commission Staff for recommendation to the [Procurement](#) Commission.

The Committee may, when it deems appropriate, contact persons and agencies independent of TRICOR in order to gather information concerning the price, quality and availability of the products proposed for certification.

The Committee shall meet at least once a month, or ~~more often if required~~ [as needed](#), to evaluate the products upon which a formal request for product certification has been made by TRICOR. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Committee by TRICOR.

Each certified product shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the ~~anniversary date~~ [end](#) of the Certification [Term](#) to determine if the product should either continue to be certified or be recommended for decertification.

The price of a product ~~or service~~ formally requested to be certified by TRICOR shall be based upon a "Fair Market Value." The cost may be established by submitting the cost of providing the products ~~or services~~ and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products ~~or services~~. ~~This price does not have to be the lowest price when compared to similar products or services on the market.~~

6. ~~Policy and Procedure~~—CMRA.

6.1. *Generally.*

The purpose of this program as set forth in Title 71, Chapter 4, Part 7, Tennessee Code Annotated, is to achieve employment of the blind, deaf, mentally disabled and severely disabled persons by assuring and expanding the market for such persons' products or services. Products or services that are produced, assembled or manufactured and provided by CMRA by subcontracting with State certified non-profit agencies, who employ the blind, deaf, mentally disabled and severely disabled, shall be considered for Certification.

6.2. *Establishment of Policies and Procedures.*

In accordance with Title 71, Chapter 4, Part 7 of the Tennessee Code, as amended, the price of a product or service formally requested to be certified by CMRA shall be based upon the fair market value of the product or service.

The Committee will make recommendations based upon its finding(s) to the Procurement Commission Staff. No products or services shall be certified until approved by the Procurement Commission Staff.

The Committee may, when it deems appropriate, contact persons and agencies independent of CMRA in order to gather information concerning the price, quality and availability of the products or services proposed for Certification.

The Committee shall meet at least once a month, or ~~more often if required~~ as needed, to evaluate the products or services upon which a formal request for product or service certification has been made by CMRA. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Committee by CMRA.

Each certified product or service shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the ~~anniversary date~~ end of the Certification Term to determine if the product or service should either continue to be certified or be recommended for decertification.

The price of a product formally requested to be certified by CMRA shall be based upon a "Fair Market Value." The cost may be established by submitting the cost of providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

~~Policy and Procedure~~—Certification of Products.

7.1. Formal Request.

TRICOR and CMRA shall submit to the Committee formal requests for product and service Certifications along with supporting data regarding quality, price and availability. The following is required for each product and service submitted for Certification:

- ; Product or service name
- ; General description of product or service
- ; Current or proposed Edison item number
- ; An identification of the agencies that would benefit from TRICOR's or CMRA's product or service offering
- ; Packaging of the product
- ; Additional information, if requested by the Committee

The following documentation is required, if applicable, for each product or service submitted in order for the Committee to review the quality of the product or service offered:

- ; Product or service specifications
- ; Materials or chemical composition and the approximate amount of usage of each for unit of production
- ; Product warranties (e.g., warranty against defects; warranty as to fitness for purpose)
- ; Description of inspection program
- ; Description of quality control program
- ; Production time
- ; Description of assembly or mix process
- ; Independent laboratory evaluation, as may be requested by the Committee
- ; Additional information, as may be requested by the Committee
- ; Submit product sample, as may be requested by the Committee

The following documentation is required, if applicable, for each product or service submitted in order to review the price of the product or service:

- ; Unit of measurement
- ; Unit price
- ; Breakdown of unit price by cost of supplies, labor, factory overhead, and profit, if applicable
- ; Supply copies of invoices to support the cost of supplies, and calculations of any factory overhead or profit applied, if requested by the Committee
- ; Costs associated with delivery and any other associated delivery costs, and who will be responsible for payment
- ; Estimated annual sales volume based upon price
- ; Minimum order quantities
- ; Volume or any other discounts offered for the purchase of the product or service
- ; Supply pricing on at least three (3) comparable products or services from three different companies, if possible. If it is not possible to supply pricing for at least three (3) comparable products or services from three (3) different companies, a memorandum must be supplied justifying why it is impossible to obtain at least three (3) comparable prices. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified. The cost of comparable products should take into account volume discounts and other pricing structures used in private industry. The price of comparable products should be F.O.B. destination, unless otherwise stipulated.
- ; Any other special requirements or terms and conditions

The following documentation is required, if applicable, for each product or service submitted in order to review the availability of the product or service:

- ; Description of the delivery terms, including, but not limited to: destinations to which TRICOR or CMRA will not deliver and the means of delivery
- ; Delivery time (from point the order is received until reaching delivery)

- destination)
- ; Description of Return Goods Policy
- ; Specific conditions under which a restocking charge will be levied and how much that charge will be
- ; A survey of three (3) companies from which comparable prices were obtained to determine the time in which the private sector could supply comparable products to the State. The survey should take into account the quantity ordered and the complexity of the product or service.

7.2. *Committee Review.*

7.2.1. *Quality, Price, Availability.*

Committee review will be based upon, but not be limited to, the documentation required to be submitted to the Committee. If requested by the Committee, TRICOR or CMRA will submit, as part of its quality report, an independent laboratory evaluation of a given certified product. The program for evaluation will include a product comparison chart that establishes brands or models manufactured by the private sector, which are comparable to the products submitted by TRICOR or CMRA for Certification. The review will involve a determination as to whether the quality is satisfactory or meets the State's standards for quality.

The Committee will review the price of the three (3) comparable products. If TRICOR's or CMRA's price is higher than comparable products or services, the Committee will require documentation of costs. The Committee will determine whether the TRICOR or CMRA pricing is at fair market value based on the documentation provided by TRICOR or CMRA or such other information as may be available relating to price or quality of the good or service for which certification is sought.

The survey conducted by TRICOR or CMRA will be used to compare the delivery time of TRICOR or CMRA in order to determine if the product can be supplied within a reasonable time frame. The Committee review will also be based upon other documentation required to be submitted to the Committee per the Formal Request Section.

7.2.2. *Committee Recommendation to the Procurement Commission Staff Form of Recommendation.*

The Committee's recommendation to certify or not certify the product or service will be submitted at least monthly to Procurement Commission Staff and documented in the Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date,

submitted by TRICOR or CMRA shall be used to support the Committee's review of price, quality and availability.

7.2.3. *Recommendation Not to Certify.*

If the Committee recommends against certifying a certain product or service, the Committee's recommendation shall be reported and based upon one or more of the following criteria:

- ; The price is not fair taking into consideration the cost of comparable products or services and the costs of the work center in supplying the product or service.
- ; The quality is not satisfactory or does not meet acceptable State quality standards.
- ; TRICOR or CMRA cannot supply the product within a reasonable time frame.

7.2.4. *Approval for Certification.*

Procurement Commission Staff approval is required to certify a product or service.

7.2.5. *Effective Date of Certification.*

The effective date of a product or service approved for Certification will be the ~~first day of the following month upon approval~~ date as determined by Procurement Commission Staff, which will be reported to the Procurement Commission and entered into the Edison System.

8. ~~Policy and Procedure~~ **Reevaluation of a Certified Product or Service.**

8.1. *Review of a Certified Product or Service by the Committee.*

Each certified product or service shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the ending date of the Certification ~~term~~ Term in order to determine if the product or service should either continue to be certified or ~~recommended for decertification~~ not certified by the Committee to Procurement Commission Staff. The following documentation is required for each product or service being reevaluated in order to perform the end of Certification term review:

8.2. *Price.*

TRICOR or CMRA shall conduct a survey of three (3) original vendors, if possible, who were contacted for comparison of prices for Certification to determine:

- ; Current price for comparison to the Certification products or service price.

- ; If there have been any changes in the product or service since the original comparison which would account for changes in price.
- ; If there has been any change in market conditions or technology.

If it is not possible to supply information noted above concerning pricing from the three (3) original vendors or from at least three (3) vendors who produce the same or similar product or service, a memorandum must be supplied to the Committee justifying why it is impossible. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified.

8.3. *Quality and Availability.*

The following shall be obtained for reevaluation of the certified product or service under review:

- ; The Complaint to Vendor file shall be obtained from the Department of General Services for review by the Committee.
- ; A current production model shall be supplied to the Committee by TRICOR or CMRA to determine if the same or better quality or production standards are being maintained.
- ; A list of the number of orders placed or the dollar volume of sales during the current Certification term shall be supplied by TRICOR or CMRA to the Committee.

8.4. *Committee Recommendation.*

8.4.1. *Form of the Recommendation.*

The Committee's recommendation to certify or not certify the product or service will be submitted monthly to the Procurement Commission Staff and documented in the Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison of private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR and CMRA shall be used to support the Committee's review of price, quality and availability.

8.4.2. *Recommendation Not to Recertify.*

If the recommendation from the Committee is to not continue Certification of the product or service, the cause for not recommending shall be based upon any of the following criteria:

- ; The price is not fair taking into consideration the cost of comparable products or services and the costs of the work center in supplying the product or service.
- ; The quality is not satisfactory or does not meet acceptable State quality standards.
- ; TRICOR or CMRA cannot supply the product within a reasonable time frame.

8.4.3. *Approval for Recertification.*

Procurement Commission Staff approval is required for recertification upon reevaluation of the certified product or service with reporting of such approval to the Commission.

9. ~~Policy and Procedure~~—Decertification.

9.1. *Conditions for Decertification.*

Products or services which have been previously certified by Procurement Commission Staff are subject to decertification when one of the following conditions exists:

- ; A sufficient number of complaints are issued by an agency relating to the unavailability or poor quality of the products or services at issue.
- ; Design modifications or changes in material were made by TRICOR or CMRA that diminish the quality of the product.
- ; Price increases are requested by TRICOR or CMRA that are not supported by the work center's costs, and are beyond the current fair market price for comparable products or services.
- ; By request of TRICOR or CMRA upon supplying reasonable justification for decertification.
- ; Submission of sufficient criteria for not recommending recertification during the reevaluation process.

9.2. *Committee Recommendation.*

The Committee will make recommendations regarding decertification to Procurement Commission Staff based upon at least one of the conditions listed in the Decertification Section.

9.3. *Approval of Decertification.*

Procurement Commission Staff approval is required to remove a product from the certified products catalog or to decertify a service. Any products or services that are decertified by Procurement Commission Staff will be reported to the [Procurement Commission](#).

10. ~~Policy and Procedure-Changes to Certified Service Change, Product Design or Composition Change~~Goods or Services.

10.1. ~~Conditions for Certified Service Change, Product Design or Composition Change~~Requests to Change Certification for Goods or Services.

All requests for any ~~service~~, design, composition, or other significant changes or modification to any product or service that has been certified must be submitted in writing by TRICOR or CMRA to the Committee within sixty (60) days prior to the scheduled change or modification as an addendum.

10.2. *Documentation Required for Approval.*

TRICOR or CMRA must also submit the following together with its request for a change:

- ; Complete documentation of the nature of the change or modification.
- ; The reason for the change or modification.
- ; Any changes in price, quality or availability information submitted with the original request for Certification.
- ; A list or primary customers of the certified product to be changed.

10.3. *Committee Review of Change.*

The Committee will review the change in the product or service to determine if the change has affected the quality, price or availability as currently certified.

10.4. *Causes for Rejection of Change.*

If any one of the following occurs, it will be cause for not recommending a change in the product or service:

- ; The price change is not supported by the ~~work-center~~Work Center's costs and is beyond the current fair market value price for comparable ~~products~~goods or services.
- ; The quality of the product or service has been lessened and is no longer satisfactory or no longer meets the State's quality standards.
- ; The ~~product~~good or service can no longer be supplied within a reasonable time frame.

10.5. *Committee Recommendation.*

The Committee will make recommendations regarding acceptance or rejection of a change to a certified good or service to Procurement Commission Staff based upon information supplied as required in Policy and Procedure- Certified Service Change,

Product Design, or Composition Change section.

10.6. *Approval of Change.*

Procurement Commission Staff approval is required for a design, composition, or other significant changes or modifications to any product from the certified products catalog or certified service and shall be reported to the Procurement Commission.

10.7. *Disapproval of Change to a Certified Product or Service.*

If the Procurement Commission Staff disapproves the modification, TRICOR or CMRA has the option of continuing with the currently certified product or service, or modifying the product or service and being subject to decertification.

11. Policy and Procedure - Certified Product or Service Price Increase ~~for~~ Decrease.

11.1. *Conditions for Price Increase ~~for~~ Decrease for Certified Product or Service Firm Price Period.*

Prices for ~~products~~goods or services certified by Procurement Commission Staff ~~for a term of twelve (12) months or less~~ shall ~~be remain~~ firm for ~~three hundred sixty-five (365) days following the date of Certification or recertification~~the Certification Term or any remainder of the Certification Term after a price increase or decrease is approved by Procurement Commission Staff.

11.2. *Request for Price Increase.*

~~Request~~A request for a price increase of a certified product ~~after the firm price period may~~shall be submitted in writing by TRICOR or CMRA to the Committee. TRICOR or CMRA must also submit sufficient documentation to justify the increased price.

11.3. *Documentation Required for a Price Increase.*

The following must be submitted by TRICOR or CMRA to the Committee as documentation to justify the increase in price:

- ; The cost of raw material, labor, overhead and any profit before the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- ; The cost of raw material, labor, overhead and any profit after the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- ; Any other information, upon request of the Committee.

11.4. *Committee Review of the Request.*

The Committee ~~will~~shall conduct a survey of private industry, and such other documentation supplied by TRICOR or CMRA, to determine the cost of comparable products or services to which the Committee's review of the price increase will be compared for reasonableness and meeting the fair market price criteria for TRICOR or CMRA.

11.5. *Committee Recommendation of Price Increase.*

The Committee will make recommendations regarding acceptance or rejection of a price increase to Procurement Commission Staff based upon whether the price increase is supported by the work center's costs and whether those cost are reasonable and meet the fair market criteria for TRICOR or CMRA.

11.6. *Approval of Pricing Change.*

Procurement Commission Staff approval is required for a price increase to any product or service from the certified product's catalog or certified service, and such approval shall be reported to the Procurement Commission.

11.7. *Effective Date of Price Increase.*

Price increases, when approved, will be effective on the first day of the following month. Price increases for products or services will be entered into Edison. No increase shall be effective until approved by the Procurement Commission Staff. Approval of any price increase ~~renews the firm price period~~will remain in effect for the remainder of the Certification Term.

11.8. *Price Increase Rejection.*

When the Procurement Commission Staff rejects a request for a price increase, TRICOR and CMRA will be notified of the Procurement Commission Staff's decision prior to the first of the following month. TRICOR or CMRA has the option of continuing with the current price or modifying the price and being subject to decertification. ~~CMRA has the option of continuing with the current price for a product or service or requesting decertification of the product or service within ninety (90) days of the Commission's decision.~~

11.9. *Certified Product or Service Price Decrease, Notice of Price Decrease,*

TRICOR or CMRA shall report to Procurement Commission Staff price decreases of certified products or services immediately upon receipt or realization of the decrease, and the price shall be proportionately reduced based upon the decrease.

11.10. Effective Date of Price Decreases.

Price decreases will be effective on the first day of the following month upon receipt of notice, and will be updated in Edison.

Related [Statutes](#), Rules and Policies

TCA § 41-22-118

TCA § 41-22-119

TCA § 41-22-120

TCA § 41-22-122

TCA § 41-22-124

TCA § 71-4-701

TCA § 71-4-702

TCA § 71-4-703

TCA § 71-4-704

TCA § 71-4-705

Approval Signature

Jessica Robertson, Chief Procurement Officer

Document comparison by Workshare Compare on Thursday, December 20, 2012 10:43:52 AM

Input:	
Document 1 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Certification of Goods and Services Recommended by the Central Non-profit Agency.docx
Description	Certification of Goods and Services Recommended by the Central Non-profit Agency
Document 2 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Certification Policy Final.docx
Description	Certification Policy Final
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	81
Deletions	52
Moved from	8
Moved to	8
Style change	0
Format changed	0
Total changes	149

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

5. Authority Delegation

CLEAN VERSION

DRAFT
Policy Number ____ - 2013
Central Procurement Office
Authority Delegation Policy and Procedures

Effective: ____ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish conditions under which the authority of the Chief Procurement Officer may be delegated with the approval of the Comptroller of the Treasury to State Agencies for the purposes of issuing, executing, and managing grants, loans, procurements, purchases, or contracts.

2. Scope.

This policy applies to all grants, loans, procurements, purchases, or contracts including revenue or no-cost contracts executed or approved by a State Agency where such execution or approval is otherwise required by the Chief Procurement Officer under statute or rule.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Agency” - means each State board, commission, committee, department, officer, or any other unit of State government.

“Contract” means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

“Central Procurement Office” – means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

“Delegated Authority” - means authority granted to a Delegated State Agency under a Delegated Grant Authority, Delegated Loan Authority, or Delegated Purchase Authority.

“Delegated Grant Authority” - means approval given by the Chief Procurement Officer and the Comptroller of the Treasury to a State Agency to issue grants for an individual program within specified limits and guidelines.

“Delegated Loan Authority” - means approval given by the Chief Procurement Officer and the Comptroller of the Treasury to a State Agency to loan funds and to enter into loan

agreements with Contracting Parties in accordance with a State or federally funded program.

“Delegated Purchase Authority” - means the approval given by the Chief Procurement Officer and the Comptroller of the Treasury to a State Agency to purchase services for an individual program, within specified limits and guidelines.

“Delegated State Agency” - means a State Agency that has received approval from the Chief Procurement Officer and the Comptroller of the Treasury to procure goods or services , award grants, enter into contracts including revenue or no-cost contracts or make loans for an individual program within specified limits and guidelines.

“Emergency Purchase” – means a State Agency purchase made during an actual emergency arising from unforeseen causes.

“Primary Agency Purchasing Official” – means the individual responsible for the day-to-day management of a State Agency’s purchasing function.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, negotiation, preparation and award of a contract, and all phases of contract administration.

“Purchase Order” means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a “purchase order” becomes a binding contract on both parties.

“Special Delegated Authority” – means approval given by the Chief Procurement Officer and the Comptroller of the Treasury to a State Agency to enter into agreements for individual programs within specified limits and guidelines.

“State” – means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

“Statewide Contract” - means a contract for goods or services established by the Central Procurement Office that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

4. Delegated Authority - Generally.

No grants, loans, procurements, purchases, or contracts including revenue or no-cost contracts shall be initiated and no obligation shall be incurred on behalf of the State by a State Agency unless a Delegated Authority is granted by the Chief Procurement Officer and Comptroller of the

Treasury. The granting of an initial or subsequent change to a Delegated Authority requires the approval of the Chief Procurement Officer and the Comptroller of the Treasury.

5. Delegated Authority Types Covered by This Policy.

This policy applies to Delegated Purchase Authority, Delegated Grant Authority, Delegated Loan Authority, Special Delegated Authority and Miscellaneous Delegated Authority. A State Agency may request other forms of Delegated Authority, which may be approved at the discretion of the Chief Procurement Officer and the Comptroller of the Treasury. Applicable Delegated Authority application templates are available on the Central Procurement Office website.

5.1. Delegated Purchase Authority.

A Delegated Purchase Authority authorizes a State Agency to make purchases for the specified program within the limits, guidelines, and conditions specified within the Delegated Purchase Authority.

A Delegated Purchase Authority may be approved when:

- The subject service needs are sporadic, and it is not possible to determine in advance their volume, delivery, or exact costs;
- It is impractical to award one or more fee-for-service contracts for the category of services with compensation based upon unit or milestone rates;
- The program needs and general categories of services are such that adequate guidelines can be developed to direct the agency in competitively procuring services;
- The procurement terms, conditions, and criteria to be followed by the agency in conducting each purchase shall be of such uniformity that the approval by the Central Procurement Office of each individual purchase is not necessary;
- The individual purchases involved are such that individual review by the Central Procurement Office is impractical; and
- The procuring agency staff has made appropriate and justified inquiries and assured the validity and justification of the maximum rates detailed in the authority.

A Delegated Purchase Authority shall set forth all provisions including but not limited to selection criteria and limitations required by the Central Procurement Office.

All purchases made pursuant to a Delegated Purchase Authority shall be made by the use of a written authorization to vendor approved by the Chief Procurement Officer. No changes shall be made to the approved authorization to vendor without a formal amendment of the approved Delegated Purchase Authority.

5.2. Delegated Grant Authority.

A Delegated Grant Authority authorizes a State Agency to award grants for a grant program within the limits, guidelines, and conditions specified within the approved Delegated Grant Authority.

Such a delegation may be approved when:

- The program needs and category of services are such that adequate guidelines can be developed to direct the agency in competitively issuing a number of similar grants; and
- The individual grants involved are of such uniformity that there is little necessity or practicality in individual review by the Central Procurement Office.

A Delegated Grant Authority shall set forth all provisions, including but not limited to selection criteria, required by the Central Procurement Office rules, policies, and applicable State statutes.

No changes shall be made to the approved grant form detailed within the Delegated Grant Authority without an amendment to the Authority.

5.3. *Delegated Loan Authority.*

A Delegated Loan Authority authorizes a State Agency to make loans and associated loan agreements for the specified program are within the limits, guidelines, and conditions specified within the approved Delegated Loan Authority.

A Delegated Loan Authority shall set forth all provisions, including but not limited to selection criteria, required by the Central Procurement Office rules, policies, and applicable State statutes.

No changes shall be made to the approved loan and associated loan agreement form detailed within the Delegated Loan Authority without an amendment to the Authority.

5.4. *Special Delegated Authority.*

A Special Delegated Authority authorizes a State Agency to make agreements or payments for the specified program without individual, independent approval review, so long as all such agreements and payments are within the limits, guidelines, and conditions specified within the approved Special Delegated Authority.

A Special Delegated Authority is unique and there is not a standard application template. The application document should be drafted in consultation with Central Procurement Office staff and include selection criteria

5.5. *Miscellaneous Delegated Authorities.*

Miscellaneous Delegated Authorities include Delegated No Cost Contract Authority (DN), Delegated Revenue Contract Authority (DR), Authorization to Vendor Less than \$1,000 Delegated Authority (DAV1000), Delegated Purchase Authority for Court Reporting Service (DPCR), Special Delegated Authority for Funding Awards (DA). State Agencies seeking authorizations relating to these authorities should utilize model application templates for these grants of authority. A Miscellaneous Delegated Authority requires the approval of the Chief Procurement Officer and the Comptroller of the Treasury.

5.6. Special Delegated Authority for Federal or State Declared Disaster.

A Special Delegated Authority for Declared Disaster is for TEMA Tennessee Emergency Management Agency (“TEMA”) use only. It authorizes TEMA to issue agreements related to funds awarded for the response to and recovery from a disaster formally declared by the Federal government or the Governor of Tennessee.

5.7. Emergency Purchase Authority.

The Chief Procurement Officer solely may delegate Emergency Purchase Authority to a State Agency to meet emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated work volume, and acts of God. Such delegations will be made when the emergency occurs outside of regular State business hours, and must not conflict with an activated Tennessee Emergency Management Agency (TEMA) declared emergency.

Delegated State Agencies may procure goods or services via the Emergency Purchase method in accordance with applicable rules, policies, and procedures. State agencies should make Emergency Purchases through the Edison system and submit in writing to the Central Procurement Office the following information as soon as practicable:

- The circumstances leading to the Emergency Purchase;
- The procurement-related actions taken in response to the emergency, including procurement methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

6. Allowable Actions Under Delegated Authority.

Purchase Orders and Contracts \$50,000 and below:

Delegated State Agencies may procure goods and services valued over \$10,000 and up to \$50,000 via the informal written, verbal or telephone quotation method in accordance with applicable rules, policies, and procedures. Purchase Orders and Contracts, within Delegated State Agency authority, are subject to the final approval of the Central Procurement Office.

Purchases Orders or Contracts may not be artificially divided by a Delegated State Agency in order to make the purchase amount fall below limitations established in rule or policy. All contracts procured under a Delegated Authority shall comply with Central Procurement Office Policy.

7. Delegated State Agency Responsibilities and Revocation of Delegated Authority.

The Delegated State Agency is responsible for ensuring it does not exceed its Delegated Authority and that all conditions of the Delegated Authority are met. Further, the head of the Delegated State Agency is responsible for ensuring all staff exercising such Delegated Authority are properly authorized and complete all required training by the Central Procurement Office to perform the assigned tasks. The exercise of the Delegated Authority shall not violate or circumvent State or Federal law, executive orders, appropriations, or Central Procurement Office rule and policy. Delegated Agencies must develop written procedures implementing the Delegated Authority. They may contain more restrictive requirements, but they must conform to the provisions of Central Procurement Office rule and policy and shall be available for public inspection and to the Central Procurement Office upon request. The Chief Procurement Officer may revoke a Delegated Authority at any time, at his or her sole discretion. The Chief Procurement Officer will notify the Comptroller of the Treasury in writing of any such revocation.

8. Limitations.

Agencies shall procure a good or service available on a Statewide or Agency Term Contract through such contract, rather than a Delegated Purchase Authority. Delegated Authority granted under this policy does not substitute for other approvals as may be required by applicable statute, rule or policy. Pre-approval may be required for certain contracts depending upon the nature of the proposed contract scope of service. The Delegated Agency must obtain signed approval or endorsement documentation as indicated in the table below:

Contract Involving	Required Pre-Approval or Pre-Endorsement
Information technology	OIR Pre-Endorsement
Medical/mental health-related professional, pharmaceutical, laboratory, or imaging	F&A eHealth Initiative Pre-Endorsement
Contract between State agencies that includes provisions for cooperative programs; Provision for State legal consultation services	Pre-approval of Governor
Provision for State legal consultation services	Pre-approval of Attorney General
Provisions auditing, services;	Pre-approval of Comptroller of the Treasury
Contract with an individual;	Pre-approval of Commissioner of Human

Contract Involving	Required Pre-Approval or Pre-Endorsement
Contract that involves training State employees (except training pursuant to an information technology system procurement); Services relating to the employment of current or prospective State employees (interviewing, screening, evaluating, et cetera)	Resources
Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has an interest	Pre-approval of State Architect

Any endorsement or approval granted to a Delegated State Agency shall remain in force and effect for five (5) years. An endorsement or approval may be revoked by the Chief Procurement Officer if a Delegated State Agency fails to comply with Central Procurement Office Policy.

9. Required Actions Under Delegated Authority.

All purchases or contracts are subject to applicable provisions of Central Procurement Office rules or policy. The Delegated State Agency must use and apply all current Central Procurement Office approved templates and forms, and maintain a procurement file for all Procurements in accordance with Central Procurement Office Policy. All relevant documentation must also be maintained in Edison as appropriate.

10. Authorized Signatories.

Requests for Delegated Authority must identify the primary Agency purchasing official and each individual proposed to have signature and approval authority under the Delegated Authority. Contracts executed by individuals not identified in a Delegated Authority as having signature authority, or otherwise approved in violation of this policy, shall be null and void.

Related Statutes, Rules and Policies

- Tenn. Code Ann. §§ 4-56-101, *et seq.*
- Tenn. Code Ann. §§ 12-3-101, *et seq.*
- Tenn. Code Ann. §§ 12-4-101, *et seq.*

Approval Signature:

Jessica Robertson, Chief Procurement Officer

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

5. Authority Delegation

**COMPARISON: SUBCOMMITTEE
UPDATES TO 11/7/12 VERSION**

DRAFT
Policy Number _____ - 2013
Central Procurement Office
Authority Delegation Policy and Procedures ~~for Procurements~~

Effective: ~~Upon approval by the Procurement Commission of the State of Tennessee~~ _____ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish conditions under which the authority of the Chief Procurement Officer may be delegated with the approval of the Comptroller of the Treasury to State Agencies for the purposes of issuing, executing, and managing grants, loans, ~~Procurements~~procurements, purchases, or contracts.

2. Scope.

This policy applies to all grants, loans, ~~Procurements~~procurements, purchases, or contracts including revenue or no-cost contracts executed or approved by a State Agency where such execution or approval is otherwise required by the Chief Procurement Officer under statute or rule.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Agency” - means each State board, commission, committee, department, officer, or any other unit of State government.

“Contract” means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

“~~EPO~~Central Procurement Office” – means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

“Delegated Authority” - means authority granted to a Delegated State Agency under a Delegated Grant Authority, Delegated Loan Authority, or Delegated Purchase Authority.

“Delegated Grant Authority” - means approval given by the Chief Procurement Officer and the Comptroller of the Treasury to a State Agency to issue grants for an individual program within specified limits and guidelines.

“Delegated Loan Authority” - means approval given by the Chief Procurement Officer and the Comptroller of the Treasury to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program.

“Delegated Purchase Authority” - means the approval given by the Chief Procurement Officer and the Comptroller of the Treasury to a State Agency to purchase services for an individual program, within specified limits and guidelines.

“Delegated State Agency” - means a State Agency that has received approval from the Chief Procurement Officer and the Comptroller of the Treasury to procure goods or services, award grants, [enter into contracts including revenue or no-cost contracts](#) or make loans for an individual program within specified limits and guidelines.

“Emergency ~~Procurement~~[Purchase](#)” – means a State Agency purchase made during an actual emergency arising from unforeseen causes.

“Primary Agency Purchasing Official” – means the individual responsible for the day-to-day management of a State Agency’s purchasing function.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, negotiation, preparation and award of a contract, and all phases of contract administration.

“Purchase Order” means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a “purchase order” becomes a binding contract on both parties.

“Special Delegated Authority” – means approval given by the Chief Procurement Officer and the Comptroller of the Treasury to a State Agency to enter into agreements for individual programs within specified limits and guidelines.

“State” – means the State of Tennessee ~~and, including~~ its [departments](#), agencies, ~~boards and commissions as the context requires~~ [and entities that fall under its purview](#).

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

“Statewide Contract” - means a contract for goods or services established by the ~~CP~~[Central Procurement Office](#) that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

4. Policy and Procedure. Delegated Authority - Generally.

No grants, loans, ~~Procurements~~[procurements](#), purchases, or contracts [including revenue or no-cost contracts](#) shall be initiated and no obligation shall be incurred on behalf of the State by a

State Agency unless a Delegated Authority is granted by the Chief Procurement Officer [and Comptroller of the Treasury](#). The granting of [an initial or subsequent change to](#) a Delegated Authority requires the approval of the [Chief Procurement Officer and the Comptroller of the Treasury](#).

5. Delegated Authority Types Covered by This Policy.

This policy applies to Delegated Purchase Authority, Delegated Grant Authority, Delegated Loan Authority, ~~and~~ Special [Delegated Authority and Miscellaneous](#) Delegated Authority. A State Agency may request other forms of Delegated Authority, which may be approved at the discretion of the Chief Procurement Officer and the Comptroller of the Treasury. Applicable Delegated Authority application templates are available on the ~~CPO~~ [Central Procurement Office](#) website.

5.1. Delegated Purchase Authority.

A Delegated Purchase Authority authorizes a State Agency to make purchases for the specified program ~~without individual, independent approval review so long as such purchases are~~ within the limits, guidelines, and conditions specified within the Delegated Purchase Authority.

A Delegated Purchase Authority may be approved when:

- The subject service needs are sporadic, and it is not possible to determine in advance their volume, delivery, or exact costs;
- It is impractical to award one or more fee-for-service contracts for the category of services with compensation based upon unit or milestone rates;
- The program needs and general categories of services are such that adequate guidelines can be developed to direct the agency in [competitively](#) procuring services;
- The procurement terms, conditions, and criteria to be followed by the agency in conducting each purchase shall be of such uniformity that the approval by the ~~CPO~~ [Central Procurement Office](#) of each individual purchase is not necessary;
- The individual purchases involved are such that individual review by the ~~CPO~~ [Central Procurement Office](#) is impractical; and
- The procuring agency staff has made appropriate [and justified](#) inquiries and assured the ~~fairness~~ [validity and justification](#) of the maximum rates detailed in the authority.

A Delegated Purchase Authority shall set forth all provisions [including but not limited to selection criteria](#) and limitations required by the ~~Department of Finance and Administration Office of Contracts Review Policy Guidelines~~ [Central Procurement Office](#).

All purchases made pursuant to a Delegated Purchase Authority shall be made by the use of a written authorization to vendor approved by the Chief Procurement Officer. No

changes shall be made to the approved authorization to vendor without a formal amendment of the approved Delegated Purchase Authority.

5.2. Delegated Grant Authority.

A Delegated Grant Authority authorizes a State Agency to award grants for a grant program ~~without individual, independent approval review so long as such grants are~~ within the limits, guidelines, and conditions specified within the approved Delegated Grant Authority.

Such a delegation may be approved when:

- The program needs and category of services are such that adequate guidelines can be developed to direct the agency in competitively issuing a number of similar grants; and
- The individual grants involved are of such uniformity that there is little necessity or practicality in individual review by the ~~CPO~~ Central Procurement Office.

A Delegated Grant Authority shall set forth all provisions, including but not limited to selection criteria, required by the ~~CPO~~ Central Procurement Office rules, policies, and applicable State statutes.

No changes shall be made to the approved grant form detailed within the Delegated Grant Authority without an amendment to the Authority.

5.3. Delegated Loan Authority.

A Delegated Loan Authority authorizes a State Agency to make loans and associated loan agreements for the specified program ~~without individual, independent approval review so long as such loans and associated agreements~~ are within the limits, guidelines, and conditions specified within the approved Delegated Loan Authority.

A Delegated Loan Authority shall set forth all provisions, including but not limited to selection criteria, required by the ~~CPO~~ Central Procurement Office rules, policies, and applicable State statutes.

No changes shall be made to the approved loan and associated loan agreement form detailed within the Delegated Loan Authority without an amendment to the Authority.

5.4. Special Delegated Authority.

A Special Delegated Authority authorizes a State Agency to make agreements or payments for the specified program without individual, independent approval review, so long as all such agreements and payments are within the limits, guidelines, and conditions specified within the approved Special Delegated Authority.

A Special Delegated Authority is unique and there is not a standard application template. The application document should be drafted in consultation with [CPO Central Procurement Office](#) staff, [and include selection criteria](#)

5.5. Miscellaneous Delegated Authorities.

[Miscellaneous Delegated Authorities include Delegated No Cost Contract Authority \(DN\), Delegated Revenue Contract Authority \(DR\), Authorization to Vendor Less than \\$1,000 Delegated Authority \(DAV1000\), Delegated Purchase Authority for Court Reporting Service \(DPCR\), Special Delegated Authority for Funding Awards \(DA\).](#) [State Agencies seeking authorizations relating to these authorities should utilize model application templates for these grants of authority.](#) [A Miscellaneous Delegated Authority requires the approval of the Chief Procurement Officer and the Comptroller of the Treasury.](#)

5.6. Special Delegated Authority for Federal or State Declared Disaster.

A Special Delegated Authority for Declared Disaster is for ~~TEMA~~-~~TEMA~~Tennessee Emergency Management Agency (“TEMA”) use only. It authorizes TEMA to issue agreements related to funds awarded for the response to and recovery from a disaster formally declared by the Federal government or the Governor of Tennessee.

Allowable Actions Under Delegated Authority

~~Purchase Orders and Contracts \$50,000 and below~~

~~Delegated State Agencies may procure goods and services valued over \$10,000 and up to \$50,000 via the informal written, verbal or telephone quotation method in accordance with applicable rules, policies, and procedures. Purchase Orders and Contracts, within Delegated State Agency authority, are subject to the final approval of the Central Procurement Office. Purchases Orders or Contracts may not be artificially divided by a Delegated State Agency in order to make the purchase amount fall below limitations established in rule or policy.~~

5.7. Emergency ~~Procurement~~Purchase Authority.

The Chief Procurement Officer [solely](#) may delegate Emergency ~~Procurement~~[Purchase Authority](#) to a State Agency to meet emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated work volume, and acts of God. Such delegations will be made when the emergency occurs outside of regular State business hours, and must not conflict with an activated Tennessee Emergency Management Agency (TEMA) declared emergency.

Delegated State Agencies may procure goods or services via the Emergency ~~Procurement~~[Purchase](#) method in accordance with applicable rules, policies, and procedures. State agencies should make Emergency ~~procurements~~[Purchases](#) through the

Edison system and submit in writing to the [CPO Central Procurement Office](#) the following information as soon as practicable:

- The circumstances leading to the ~~emergency Procurement~~ [Emergency Purchase](#);
- The ~~Procurement~~ [procurement](#)-related actions taken in response to the emergency, including ~~Procurement~~ [procurement](#) methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

6. Allowable Actions Under Delegated Authority.

Purchase Orders and Contracts \$50,000 and below:

Delegated State Agencies may procure goods and services valued over \$10,000 and up to \$50,000 via the informal written, verbal or telephone quotation method in accordance with applicable rules, policies, and procedures. Purchase Orders and Contracts, within Delegated State Agency authority, are subject to the final approval of the Central Procurement Office. Purchases Orders or Contracts may not be artificially divided by a Delegated State Agency in order to make the purchase amount fall below limitations established in rule or policy. All contracts procured under a Delegated Authority shall comply with Central Procurement Office Policy.

7. Delegated State Agency Responsibilities and Revocation of Delegated Authority.

~~All grants, loans, Procurements, purchases, or contracts initiated under a Delegated Authority are subject to applicable provisions of CPO rule and policy.~~ The Delegated State Agency is responsible for ensuring it does not exceed its Delegated Authority and that all conditions of the Delegated Authority are met. Further, the head of the Delegated State Agency is responsible for ensuring all staff exercising such Delegated Authority are properly authorized, ~~skilled~~, and complete all required training by the Central Procurement Office to perform the assigned tasks. The exercise of the Delegated Authority shall not violate or circumvent State or Federal law, executive orders, appropriations, or [CPO Central Procurement Office](#) rule and policy. Delegated Agencies must develop written procedures implementing the Delegated Authority. They may contain more restrictive requirements, but they must conform to the provisions of [CPO Central Procurement Office](#) rule and policy and shall be available for public inspection and to the [CPO Central Procurement Office](#) upon request. The Chief Procurement Officer may revoke a Delegated Authority at any time, at his or her sole discretion. The Chief Procurement Officer will notify the Comptroller of the Treasury in writing of any such revocation.

8. Limitations.

~~No purchases for goods or services covered by~~ Agencies shall procure a good or service available on a Statewide or Agency Term Contract ~~may be purchased under~~ through such contract, rather

than a Delegated [Purchase](#) Authority. Delegated Authority granted under this policy does not substitute for other approvals as may be required by applicable [statute](#), rule or policy. Pre-approval may be required for certain contracts depending upon the nature of the proposed contract scope of service. ~~Pursuant to CPO Rules and applicable statutes, regardless of CPO Delegated Authority, the~~ [The](#) Delegated Agency must obtain signed approval or endorsement documentation as indicated in the table below:

Contract Involving	Required Pre-Approval or Pre-Endorsement
Information technology	OIR Pre-Endorsement
Medical/mental health-related professional, pharmaceutical, laboratory, or imaging	F&A eHealth Initiative Pre-Endorsement
Contract between State agencies that includes provisions for cooperative programs; Provision for State legal consultation services	Pre-approval of Governor
Provision for State legal consultation services	Pre-approval of Attorney General
Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year; Provisions for financial management (including electronic data processing systems impacting financial management), auditing , or accounting auditing , services; Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing	Pre-approval of Comptroller of the Treasury
Contract with an individual; Contract that involves training State employees (except training pursuant to an information technology system procurement); Services relating to the employment of current or prospective State employees (interviewing, screening, evaluating, et cetera)	Pre-approval of Commissioner of Human Resources Commissioner
Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has	Pre-approval of State Architect

Contract Involving	Required <u>Pre-Approval</u> or <u>Pre-Endorsement</u>
an interest	

Any endorsement or approval granted to a Delegated State Agency shall remain in force and effect for five (5) years. An endorsement or approval may be revoked by the Chief Procurement Officer if a Delegated State Agency fails to comply with Central Procurement Office Policy.

9. Required Actions Under Delegated Authority.

All purchases or contracts are subject to applicable provisions of ~~CPO rule and~~ Central Procurement Office rules or policy. The Delegated State Agency must use and apply all current ~~CPO~~ Central Procurement Office approved ~~model~~ templates and forms, and maintain a procurement file for all Procurements in accordance with ~~CPO policies and procedures~~ Central Procurement Office Policy. All relevant documentation must also be maintained in Edison as appropriate.

10. Authorized Signatories.

Requests for Delegated Authority must identify the primary Agency purchasing official and each individual proposed to have signature and approval authority under the Delegated Authority. Contracts executed by individuals not identified in a Delegated Authority as having signature authority, or otherwise approved in violation of this policy, shall be null and void.

Request and Approval Process

~~Delegated Authority Forms:~~

- ~~Delegated Purchase Authority (Appendix A)~~
 - ⊖ ~~DPAV—Authorization to Vendor to make a purchase pursuant to an approved Delegated Purchase Authority~~
- ~~Delegated Grant Authority (Appendix B)~~
- ~~Delegated Loan Authority (Appendix C)~~
- ~~Delegated No-Cost Contract Authority~~
- ~~Delegated Purchase Authority for Court Reporting Service~~
- ~~Delegated Revenue Contract Authority~~
- ~~Special Delegated Authority for Funding Awards~~
- ~~Special Delegated Authority for a Declared Disaster—TEMA use only~~

Related Statutes, Rules and Policies

~~[TBD]~~

Tenn. Code Ann. §§ 4-56-101, et seq.

Tenn. Code Ann. §§ 12-3-101, et seq.

Tenn. Code Ann. §§ 12-4-101, et seq.

Approval Signature:

Jessica Robertson, Chief Procurement Officer

Document comparison by Workshare Compare on Thursday, December 20, 2012 10:40:02 AM

Input:	
Document 1 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Delegated Authority Policy.docx
Description	Delegated Authority Policy
Document 2 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Authority Delegation final.docx
Description	Authority Delegation final
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Legend:	
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Statistics:	
	Count
Insertions	98
Deletions	65
Moved from	9
Moved to	9
Style change	0
Format changed	0
Total changes	181

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

**6. Subrecipient Uniform Reporting, Cost
Allocation Plans, and Monitoring**

CLEAN VERSION

DRAFT
Policy Number ____ - 2013
Central Procurement Office
Subrecipient Uniform Reporting, Cost Allocation Plans, and Monitoring
Policy and Procedures

Effective: ____ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To provide uniformity in the reporting of, and controls over, the expenditure of awards in connection with the delivery of services by subrecipients of federal and State awards.

To establish guidelines for subrecipient monitoring by Grantor State Agencies.

2. Scope.

These policies and procedures apply to all State agencies that award State or federal funds or non-cash assistance to subrecipients.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Award” - means any grant of money, loans, non-cash assistance, etc. awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law.

“Cognizant State Agency” - means the State Agency whose funds comprise the greatest percentage of Awards received by a subrecipient as determined by the Department of Finance and Administration (F&A) as defined in F&A Policy 3.

“Cost Allocation Plan” - means the method of distributing to various programs, costs which benefit more than one program and are not directly assigned as approved by the Department of Finance and Administration.

“Central Procurement Office” - means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

“Endowment Grant” - means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general

public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

"Grant" - means a Grant does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

"Grant Budget" - means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee may be reimbursed.

"Grantee" - means the person or entity receiving an Award.

"Grantor State Agency" - means a State Agency that provides an Award to a person or entity.

"State" - means the State of Tennessee and its agencies, boards and commissions as the context requires.

"Subrecipient" - means a non-federal entity that expends State or federal funds received from the State to carry out a State or federal program. Subrecipients may also include, by example only, natural persons, not-for-profit organizations, for-profit organizations, cities, municipalities, counties, authorities, the State and its agencies, boards, commissions, or private and public colleges and universities if they receive federal funds from a State department or agency.

"Vendor" - means a dealer, distributor, merchant, or other seller providing goods or services that are in support of project activities. These goods or services may be for an organization's own use or for the use of beneficiaries of a State or federal program.

4. Grantee Selection Process.

Competition is encouraged with all Grantee selections. If competition is not sought, the Grantor State Agency is required to justify the selection of the Grantee to the Central Procurement Office for approval on such forms as required by the Central Procurement Office.

5. Advance Payments.

Upon approval by the Chief Procurement Officer, a grant contract may authorize a partial, periodic, or total advance payment. The Grantor Agency must provide a written justification for any type of advance payment. All grant contracts with approved advanced payments will be reported to the Comptroller of the Treasury.

6. Cognizant Agency Determination Process.

The Cognizant State Agency shall be responsible for approval of the cost allocation plan of the Grantee State Agency. Other funding State Agencies, which also have funds at the Grantee State Agency, must abide by the methods of cost allocation approved by the Cognizant State Agency.

Determination of the Cognizant State Agency shall be made by the Department of Finance and Administration. Once assigned, the term of responsibility shall be indefinite, although responsibility may be reassigned upon written request and justification to the Department of Finance and Administration by either the Cognizant State Agency or the Grantee State Agency.

7. Grant Budget/Cost Allocation Plan.

Allocation Plan requirements apply to subrecipients other than cities, counties (and subdivisions thereof), and state colleges universities and technology centers. Affected Subrecipients, include private not-for-profit entities that are subject to accounting and financial reporting standards promulgated by the Financial Accounting Standards Board (FASB), and governmental not-for-profit entities that are subject to Governmental Accounting Standards Board (GASB) standards. Vendor contracts are exempt from this requirement.

Acceptable allocation methods to be used by Grantee shall be determined by the Cognizant State Agency. Methods used for allocating costs may differ between Grantees. Once a Grantee receives approval for its method of cost allocation, all other Grantor State Agencies shall accept the Grantee's program application. However, Grantor State Agencies are not required to fully fund the costs that are charged to a particular program under an allocation method if such costs are not allowable under the Grantor State Agency's agreement with the Grantee or exceed the prescribed funding percentage or budgets.

7.1 Types of Costs.

7.1.1. *Direct costs.*

Direct costs are those costs that can be identified to benefit a specific program. Such costs include:

- Salaries of persons who provide direct services to program beneficiaries and work on only one program (e.g. aging director, transportation program director);
- Travel costs that can be specifically identified to benefit a particular program;
- Equipment purchased for use in only one program;
- Maintenance or insurance for purchased equipment;
- Supplies which are utilized in only one program;
- A contract for professional services which benefits a single program; and
- Printing which benefits a single program.

7.1.2. *Allocable direct costs.*

Allocable direct costs are those that benefit more than one program, but do not fall under the criteria of administrative costs. Such costs include:

- Salaries and benefits of program employees whose work benefits more than one program (e.g. nurses, eligibility workers, etc.);

- Travel costs of employees whose work benefits more than one program;
- Occupancy costs of programs;
- Telephone costs of programs;
- Supplies utilized by more than one program;
- Rental and maintenance of equipment used by more than one program;
- Audit costs; and
- Contracted Services that benefit more than one program.

7.1.3. *Administrative costs.*

Administrative costs are those that benefit the operations of the entire entity, but cannot be identified to specific programs. Such costs include:

- Executive director's salary and benefits (or the administrative portion thereof if the executive director spends time on program-related activities);
- Fiscal Officer's salary and benefits;
- Secretarial support of administrative employees;
- Supplies of administrative employees;
- Travel of administrative employees;
- Occupancy costs (e.g. rent and utilities) of administrative employees;
- Postage and telephone costs of administrative employees; and

7.2 Liability Insurance.

7.2.1. *Allocation Methods.*

The periodic allocation of actual expenditures, rather than the use of a fixed or provisional indirect cost rate, is the most equitable method of cost allocation. The following are allowable methods to allocate administrative costs and allocable direct costs. Any exceptions to these methods must receive prior approval by the Cognizant State Agency.

Administrative costs allocable to programs should be accumulated in a separate cost pool. After allocating the administrative cost pool its share of the allocable direct costs, the total should be periodically allocated to the programs based on the percentage of direct program salaries versus total direct salaries, applied to total administrative costs.

Administrative costs may also be allocated by using total costs to distribute administrative costs. The actual administrative costs are allocated to each program based on its percentage of total actual direct costs for the period after allocation of allocable direct costs.

Usually, the appropriate time for allocation of allocable direct costs is when they are recorded on the books. However, cost pools may be used for various categories of allocable direct costs for periodic allocation to programs and the

administrative cost pool. Examples of acceptable methods for the allocation of allocable direct costs include:

- Salaries and Benefits – allocate on the basis of time records, records of the number of clients served, or other approved bases.
- Travel – allocate on the same basis as salaries and benefits.
- Occupancy costs for program areas – allocate based on the number of square feet occupied by the program area as a percentage of total square feet allocated to all program areas.
- Telephone costs – allocate based on the number of personnel, number of lines, or other equitable method for local service.
- Supplies – allocate based on the number of personnel per program, number of clients served, or other equitable method.
- Contracts for services benefitting more than one program – allocate based on the number of clients served or other equitable method.
- Equipment rental and maintenance – allocate based on usage logs or other equitable method.

7.2.2. Instructions for Cost Allocation Plans

Each subrecipient shall prepare a narrative describing in detail the methods used to allocate costs to the various programs. The plan should include an organizational chart and documents and schedules to support the allocation methods.

The following guidelines should be used when preparing the Cost Allocation Plan:

- The nature of the charges to be allocated will depend on the sophistication of the accounting system. The more sophisticated the system, the fewer the types of charges will be treated as allocable direct expense and included for distribution. For example, if each employee keeps a detailed time report, the payroll expenditures might be charged directly to each program, and cost allocation per se would not be involved.
- The cost allocation plan must include plans for allocation of allocable direct costs as well as administrative costs. Allocable direct costs will be included with other direct costs of the program in reports to the grantor. Allocations that are reported in separate line items on the grantor reports should involve the administrative cost pool only. An entity may wish to have more than one cost allocation pool so that certain types of costs are allocated on different bases.
- All proposed cost allocation plans developed by the Grantee must be reviewed and approved by the entity's designated Cognizant State Agency.
- Once the cost allocation plan has been approved by the Cognizant State Agency, all other funding state agencies must accept the approved plans. Where a contracting state agency has reason to believe that special factors

affecting its awards necessitate special consideration, the contracting State Agency should communicate this to the Cognizant State Agency.

- If a dispute arises between the Cognizant State Agency and a Grantor State Agency, the dispute shall be resolved through an appeals process headed by the Commissioner of the Department of Finance and Administration or his or her designee.

8. Subrecipient Contract Monitoring Plan - General Rule.

All State agencies affected by this Policy shall develop and submit an annual monitoring plan for review and approval to the Central Procurement Office annually by October 1.

The monitoring plan is a summary of the agency's planned monitoring activities for the current annual monitoring cycle and must include:

- The total subrecipient contract population;
- All subrecipient contracts to be monitored during the agency monitoring cycle;
- The identification of the agency monitoring cycle (e.g., the State or federal fiscal year);
- Sample monitoring guides to be utilized for each State or federal program;
- Full-time equivalents and personnel classifications for all staff dedicated to monitoring activities;
- A program description of each State or federal program to be monitored;
- A risk assessment for each subrecipient and its related contracts;
- An explanation of the criteria used to assign risk to subrecipients and their related contracts;
- A summary of the findings from the previous monitoring cycle; and
- An explanation of the agency's corrective action process.

Any changes to the agency monitoring plan following approval by the Central Procurement Office shall be documented by the agency and maintained with their approved plan. Changes to the population of contracts to be monitored should be well documented with an explanation accompanying the changes.

9. How to Distinguish Between a Subrecipient and a Vendor.

If it is determined that the grantee is a subrecipient, monitoring requirements set forth in this policy shall apply.

There may be unusual circumstances or exceptions to the characteristics of subrecipients and vendors. When determining whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all subrecipient characteristics will be present. Judgment should be used in determining whether a contract represents a subrecipient or a vendor relationship. If the contractual relationship with the State meets the vendor criteria, the State agency must ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and contract provisions.

Any entity meeting the subrecipient criteria will be subject to subrecipient contract monitoring. This includes private non-profit entities, for-profit entities, governmental entities, and State and local governments.

To distinguish a subrecipient from a vendor, the characteristics below from OMB Circular A-133, Section 210 should be considered.

9.1 *Subrecipient.*

9.1.1 *Subrecipient Characteristics.*

A subrecipient determines who is eligible to receive the State or Federal financial assistance available through the program that is administered:

- A subrecipient determines the means and methods for carrying out the State or Federal program.
- A subrecipient must fulfill the scope of work requirements.

A subrecipient has its performance measured against whether the objectives of the State or Federal program are met through methods such as, but not limited to:

- A subrecipient must meet performance goals.
- The State must monitor the subrecipient to ensure funds are properly expended.
- The subrecipient must submit periodic progress reports or a year-end report.

A subrecipient has responsibility for programmatic decision making :

- A subrecipient has the authority to make decisions within the terms of agreement.
- A subrecipient determines how to implement its program.
- A subrecipient determines the type of assistance to program beneficiaries.

A subrecipient has responsibility for adherence to applicable State or federal program compliance requirements:

- A subrecipient shall comply with applicable statutes, regulations, rules, and policies.
- The State shall monitor the subrecipient for compliance with program requirements.

9.2 *Vendor*

9.2.1 *Vendor's Characteristics*

Vendor's characteristics include the following:

- The vendor provides goods or services to many different purchasers.

Goods or services are provided by the vendor in the normal course business operations and where:

- The vendor controls the means and methods of how it will produce its goods and services.
- The vendor is not required to provide periodic or year-end reports.
- The vendor receives payment after the goods or services are delivered and accepted or deemed satisfactory.
- The vendor's performance is measured against whether it meets contract specifications, not whether it achieves a program's performance outcomes.

The vendor operates in a competitive environment, i.e., more than one vendor provides similar goods or services.

The vendor provides goods or services that are ancillary to the operation of a State or Federal program.

The vendor is not subject to compliance requirements of the State or Federal program, e.g., subrecipient monitoring.

10. State Monitoring Requirements.

All subrecipient grants must be monitored by the Grantor State Agency at least once every three years. However, it is the Grantor State Agency's responsibility to monitor at a frequency required by the Federal Government. Additionally, more frequent monitoring should be conducted if there are findings from the previous monitoring efforts.

Subrecipient grants with federal frequency monitoring requirements should be reviewed in accordance with such requirements.

Both State and federally funded subrecipient grants shall be reviewed for compliance with the core monitoring areas listed in Section XI of this Policy. All applicable core monitoring areas must be addressed in each monitoring report.

Risk should be assigned to all subrecipients by the Grantor State Agency. At a minimum, the scope of a review must include the program-specific monitoring requirements and the core monitoring areas listed in Section XI of this Policy.

When the Grantor State Agency is selecting the population of contracts to be included in the monitoring plan, the following should be considered:

- The level of programmatic or financial risk to the State;
- Whether the grant has been monitored in the past three years; and
- Whether the grant has had prior findings indicating serious deficiencies.

10. Core Monitoring Areas.

In addition to State or federal program specific monitoring requirements, all monitoring activities undertaken by any State agency should address the following areas:

- All applicable requirements of Title VI of the *Civil Rights Act of 1964*, as defined in the Title VI Compliance Commission Advisory Memorandum No. 3, April 14, 2004.
- The applicable core monitoring areas, as defined by OMB Circular No. A-133 Compliance Supplement. Currently, these core areas include: activities allowed or unallowed; allowable costs/cost principles; cash management; Davis-Bacon Act; eligibility; equipment and real property management; matching, level of effort, and earmarking; period of availability of funds; procurement, suspension and debarment; program income; real property acquisition and relocation assistance; reporting and special tests and provisions.

11. Exception.

Pursuant to Tenn. Code Ann. §§ 42-3-114 and 42-2-203, the Tennessee Department of Transportation (TDOT) may accept and expend transit and aviation grant dollars according to the terms and conditions as prescribed by the federal government.

The federal government permits and encourages grantees to incur preliminary incidental costs prior to the grant start date. For such TDOT subrecipient grants, preliminary incidental costs incurred by the grantee may be reimbursed.

12. Reporting Requirements.

Grantor State agencies shall issue reports summarizing any findings or observations identified during monitoring reviews within 30 business days of completing all field work. Reports shall be distributed to the subrecipient entity and the Comptroller of the Treasury, Division of State Audit. The State agency shall retain a copy of the report.

Upon receipt of a monitoring report with findings or observations, the subrecipient shall prepare a corrective action plan detailing the actions to be taken to correct such findings. The corrective action plan shall include:

- The name of the contact person responsible for the corrective action plan;
- The corrective actions to be taken; and
- The anticipated completion date.

The corrective action plan shall be submitted to the Grantor State Agency for review and approval. It is the responsibility of the Grantor State Agency to notify the subrecipient, in a timely manner, of the approval or rejection of the corrective action plan. If a corrective action plan is not approved, the State Agency and the subrecipient shall work together to develop solutions for correcting the monitoring report findings.

13. Compliance Reviews.

Agency records obtained pursuant to this Policy shall be subject to evaluation by the Chief Procurement Officer or the Comptroller of the Treasury, or their duly appointed representatives.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

Approval Signature:

Jessica Robertson, Chief Procurement Officer

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

**6. Subrecipient Uniform Reporting, Cost
Allocation Plans, and Monitoring**

**COMPARISON: SUBCOMMITTEE
UPDATES TO 11/7/12 VERSION**

DRAFT
Policy Number _____ - 2013
Central Procurement Office
Subrecipient Uniform Reporting, Cost Allocation Plans, and Monitoring
Policy and Procedures ~~for Procurements~~

Effective: ~~Upon approval by the Procurement Commission of the State of Tennessee~~ ___ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. ~~I.~~ **Purpose.**

~~A.~~ To provide uniformity in the reporting of, and controls over, the ~~costs-~~ associated expenditure of awards in connection with the delivery of services by subrecipients of federal and State ~~grant funds~~ awards.

~~B.~~ To establish guidelines for subrecipient ~~grant~~ monitoring by Grantor State Agencies.

2. ~~H.~~ **Scope.**

These policies and procedures apply to all State agencies that award State or federal funds or non-cash assistance to subrecipients.

3. ~~III.~~ **Definitions.**

For purposes of this policy, the following terms shall have the meanings described below:

“Award” - means any grant of money, loans, non-cash assistance, etc. awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law.

~~A.~~ “Cognizant State Agency” - means the State Agency whose funds ~~compose~~ comprise the greatest percentage of ~~State grant funds~~ Awards received by a ~~Grantee~~ subrecipient as determined by the Department of Finance and Administration (F&A) as defined in F&A Policy 3.

~~B.~~ “Cost Allocation Plan” - means the method of distributing to various ~~grant contract~~ programs, costs which benefit more than one program and are not directly assigned as approved by the Department of Finance and Administration.

~~C.~~ “~~CPO~~—Central Procurement Office” - means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

~~D.~~ “Endowment Grant” - means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

~~E.~~ "Grant" ~~means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term “Grant”~~ means a Grant does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

~~F.~~ “Grant Budget” - means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, ~~a grant recipient or grant subrecipient~~ may be reimbursed.

~~G.~~ “Grantee” ~~or “Grant Recipient”~~ - means the person or entity ~~awarded a grant~~ receiving an Award.

~~H.~~ “Grantor State Agency” - means a State Agency that ~~awards a grant~~ provides an Award to a person or entity.

~~I.~~ “State” - means the State of Tennessee and its agencies, boards and commissions as the context requires.

~~J.~~ “Subrecipient” - means a non-federal entity that expends State or federal funds received from the State to carry out a State or federal program. Subrecipients may also include, by example only, natural persons, not-for-profit organizations, for-profit organizations, cities, municipalities, counties, authorities, the State and its agencies, boards, commissions, or private and public colleges and universities if they receive federal funds from a State department or agency.

~~K.~~ “Vendor” - means a dealer, distributor, merchant, or other seller providing goods or services that are in support of project activities. These goods or services may be for an organization's own use or for the use of beneficiaries of a State or federal program.

~~4. IV.~~ **Grantee Selection Process.**

Competition ~~should be~~ is encouraged with ~~grant contracts~~ all Grantee selections. If competition is not sought, the Grantor State Agency is required to ~~submit a non-competitive solicitation request to the CPO~~ justify the selection of the Grantee to the Central Procurement Office for approval on such forms as required by the Central Procurement Office.

~~V.~~ **Grant Contract Types and Templates.**

- ~~A. EG—Use for a cost reimbursement grant contract with the University of Tennessee or a Board of Regents college or university.~~
- ~~B. GE—Use for an endowment grant to an individual, business, non-profit, or a governmental entity of another state or country; a Tennessee state, local, or quasi-governmental entity; the University of Tennessee; or a Board of Regents college or university.~~
- ~~C. GG—Use for a cost reimbursement grant contract with a federal or Tennessee local or quasi-governmental entity.~~
- ~~D. GR—Use for a cost reimbursement grant contract with an individual, business, non-profit, or a governmental entity of another state or country.~~

5. ~~VI.~~ Advance Payments.

Upon approval by the Chief Procurement Officer, a grant contract may authorize a partial, periodic, or total advance payment. The Grantor Agency must provide a written justification for any type of advance payment. All grant contracts with approved advanced payments will be reported to the Comptroller of the Treasury.

6. Cognizant Agency Determination Process.

The Cognizant State Agency shall be responsible for approval of the cost allocation plan of the Grantee State Agency. Other funding State Agencies, which also have funds at the Grantee State Agency, must abide by the methods of cost allocation approved by the Cognizant State Agency. Determination of the Cognizant State Agency shall be made by the Department of Finance and Administration. Once assigned, the term of responsibility shall be indefinite, although responsibility may be reassigned upon written request and justification to the Department of Finance and Administration by either the Cognizant State Agency or the Grantee State Agency.

7. ~~VII.~~ Grant Budget/Cost Allocation Plan.

~~A.~~ Allocation Plan requirements apply to subrecipients other than cities, counties (and subdivisions thereof), and state colleges universities and technology centers. Affected Subrecipients ~~affected~~, include private not-for-profit entities that are subject ~~eto~~ accounting and financial reporting standards promulgated by the Financial Accounting Standards Board (FASB), and governmental not-for-profit entities that are subject to Governmental Accounting Standards Board (GASB) standards. ~~Fee-for-service and performance-based~~ Vendor contracts are exempt from this requirement.

~~B.~~ Acceptable allocation methods to be used by Grantee ~~Agencies~~ shall be determined by the Cognizant State Agency. Methods used for allocating costs may differ between ~~entities~~ Grantees. Once ~~an entity~~ a Grantee receives approval for its method of cost allocation, all other Grantor State Agencies shall accept ~~its~~ the Grantee's program application ~~to their programs~~. However, Grantor State Agencies are not required to fully fund the costs that are charged to a particular program under an allocation method if such costs are not allowable under ~~their~~ the Grantor State Agency's agreement with the ~~entity~~ Grantee or exceed the prescribed funding percentage or budgets.

7.1 Types of Costs.

7.1.1. Direct costs.

1. Direct costs are those costs that can be identified to benefit a specific program. Such costs include:

- a. Salaries of persons who provide direct services to program beneficiaries and work on only one program (e.g. aging director, transportation program director);
- b. Travel costs that can be specifically identified to benefit a particular program;
- c. Equipment purchased for use in only one program;
- d. Maintenance or insurance for purchased equipment;
- e. Supplies which are utilized in only one program;
- f. A contract for professional services which benefits a single program; and
- g. Printing which benefits a single program.

7.1.2. Allocable direct costs.

Allocable direct costs are those that benefit more than one program, but do not fall under the criteria of administrative costs. Such costs include:

- Salaries and benefits of program employees whose work benefits more than one program (e.g. nurses, eligibility workers, etc.);
- Travel costs of employees whose work benefits more than one program;
- Occupancy costs of programs;
- Telephone costs of programs;
- Supplies utilized by more than one program;
- Rental and maintenance of equipment used by more than one program;
- Audit costs; and
- Contracted Services that benefit more than one program.

7.1.3. Administrative costs.

2. Administrative costs are those that benefit the operations of the entire entity, but cannot be identified to specific programs. Such costs include:

- a. Executive director's salary and benefits (or the administrative portion thereof if the executive director spends time on program-related activities);
- b. Fiscal Officer's salary and benefits;
- c. Secretarial support of administrative employees;
- d. Supplies of administrative employees;
- e. Travel of administrative employees;
- f. Occupancy costs (e.g. rent and utilities) of administrative employees;

- ~~g.~~ Postage and telephone costs of administrative employees; and
 - h. ~~Liability insurance.~~
3. ~~Allowable direct costs are those that benefit more than one program, but do not fall under the criteria of administrative costs. Such costs include:~~
- a. ~~Salaries and benefits of program employees whose work benefits more than one program (e.g. nurses, eligibility workers, etc.);~~
 - b. ~~Travel costs of employees whose work benefits more than one program;~~
 - e. ~~Occupancy costs of programs;~~
 - d. ~~Telephone costs of programs;~~
 - e. ~~Supplies utilized by more than one program;~~
 - f. ~~Rental and maintenance of equipment used by more than one program; and~~
 - g. ~~Audit costs.~~

7.2 Liability Insurance.

~~D.~~ 7.2.1. Allocation Methods.

The periodic allocation of actual expenditures, rather than the use of a fixed or provisional indirect cost rate, is the most equitable method of cost allocation. The following are allowable methods to allocate administrative costs and allocable direct costs. Any exceptions to these methods must receive prior approval by the Cognizant State Agency.

1. ~~Administrative Costs~~ costs allocable to programs should be accumulated in a separate cost pool. After allocating the administrative cost pool its share of the allocable direct costs, the total should be periodically allocated to the programs based on the percentage of direct program salaries versus total direct salaries, applied to total administrative costs.

2. ~~Costs~~ Administrative costs may also be allocated by using total costs to distribute administrative costs. The actual administrative costs are allocated to each program based on its percentage of total actual direct costs for the period after allocation of allocable direct costs.

3. Usually, the appropriate time for allocation of allocable direct costs is when they are recorded on the books. However, cost pools may be used for various categories of allocable direct costs for periodic allocation to programs and the administrative cost pool. Examples of acceptable methods for the allocation of allocable direct costs include:

- ~~a.~~ Salaries and Benefits – allocate on the basis of time records, records of the number of clients served, or other approved bases.
- ~~b.~~ Travel – allocate on the same basis as salaries and benefits.
- ~~e.~~ Occupancy costs for program areas – allocate based on the number of square feet occupied by the program area as a percentage of total square feet allocated to all program areas.

- ~~d.~~ Telephone costs – allocate based on the number of personnel, number of lines, or other equitable method for local service.
- ~~e.~~ Supplies – allocate based on the number of personnel per program, number of clients served, or other equitable method.
- ~~f.~~ Contracts for services benefitting more than one program – allocate based on the number of clients served or other equitable method.
- ~~g.~~ Equipment rental and maintenance – allocate based on usage logs or other equitable method.

~~E-7.2.2.~~ *Instructions for Cost Allocation Plans*

~~1.~~ Each subrecipient shall prepare a narrative describing in detail the methods used to allocate costs to the various programs. The plan should include an organizational chart and documents and schedules to support the allocation methods.

~~2.~~ The following guidelines should be used when preparing the Cost Allocation Plan:

- ~~a.~~ The nature of the charges to be allocated will depend on the sophistication of the accounting system. The more sophisticated the system, the fewer the types of charges will be treated as allocable direct expense and included for distribution. For example, if each employee keeps a detailed time report, the payroll expenditures might be charged directly to each program, and cost allocation per se would not be involved.
- ~~b.~~ The cost allocation plan must include plans for allocation of allocable direct costs as well as administrative costs. Allocable direct costs will be included with other direct costs of the program in reports to the grantor. Allocations that are reported in separate line items on the grantor reports should involve the administrative cost pool only. An entity may wish to have more than one cost allocation pool so that certain types of costs are allocated on different bases.
- ~~e.~~ An entity may wish to have more than one cost allocation pool so that certain types of costs are allocated on different bases.
- ~~d.~~ All proposed cost allocation plans developed by the ~~contractor/grantee~~ Grantee must be reviewed and approved by the entity's designated Cognizant State Agency.
- ~~e.~~ Once the cost allocation plan has been approved by the Cognizant State Agency, all other funding state agencies must accept the approved plans. Where a contracting state agency has reason to believe that special factors affecting its awards necessitate special consideration, the contracting State Agency should communicate this to the Cognizant State Agency.
- ~~f.~~ If a dispute arises between the Cognizant State Agency and a ~~contracting~~ Grantor State Agency, the dispute shall be resolved through an appeals process headed by the ~~Chief Procurement Officer~~ Commissioner of the Department of Finance and Administration or his or her designee.

8. ~~VIII.~~ Subrecipient Contract Monitoring Plan - General Rule.

A. All State agencies affected by this Policy shall develop and submit an annual monitoring plan for review and approval to the Central Procurement Office annually by October 1.

B. The monitoring plan is a summary of the agency's planned monitoring activities for the current annual monitoring cycle and must include:

- ~~1.~~ The total subrecipient contract population;
- ~~2.~~ All subrecipient contracts to be monitored during the agency monitoring cycle;
- ~~3.~~ The identification of the agency monitoring cycle (e.g., the State or federal fiscal year);
- ~~4.~~ Sample monitoring guides to be utilized for each State or federal program;
- ~~5.~~ Full-time equivalents and personnel classifications for all staff dedicated to monitoring activities;
- ~~6.~~ A program description of each State or federal program to be monitored;
- ~~7.~~ A risk assessment for each subrecipient and its related contracts;
- ~~8.~~ An explanation of the criteria used to assign risk to subrecipients and their related contracts;
- ~~9.~~ A summary of the findings from the previous monitoring cycle; and
- ~~10.~~ An explanation of the agency's corrective action process.

C. Any changes to the agency monitoring plan following approval by the ~~CPO~~ [Central Procurement Office](#) shall be documented by the agency and maintained with their approved plan. Changes to the population of contracts to be monitored should be well documented with an explanation accompanying the changes.

9. ~~IX.~~ How to Distinguish Between a Subrecipient and a Vendor.

A. If it is determined that the grantee is a subrecipient, monitoring requirements set forth in this policy shall apply.

B. There may be unusual circumstances or exceptions to the characteristics of subrecipients and vendors. When determining whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all subrecipient characteristics will be present. Judgment should be used in determining whether a contract represents a subrecipient or a vendor relationship. If the contractual relationship with the State meets the vendor criteria, the State agency must ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and contract provisions.

~~C.~~ Any entity meeting the subrecipient criteria will be subject to subrecipient contract monitoring. This includes private non-profit entities, for-profit entities, governmental entities, and State and local governments.

~~D.~~ To distinguish a subrecipient from a vendor, the characteristics below from OMB Circular A-133, Section 210 should be considered:

9.1 Subrecipient.

~~1-9.1.1 Subrecipient Characteristics:~~

~~a.~~ A subrecipient determines who is eligible to receive the State or ~~federal~~Federal financial assistance available through the program that is administered:

- ~~i.~~ A subrecipient determines the means and methods for carrying out ~~the State or Federal program~~ the State or Federal program.
- ~~ii.~~ A subrecipient must fulfill the scope of work requirements.

~~b.~~ A subrecipient has its performance measured against whether the objectives of the State or ~~federal~~Federal program are met through methods such as, but not limited to:

- ~~i.~~ A subrecipient must meet performance goals.
- ~~ii.~~ The State must monitor the subrecipient to ensure funds are properly expended.
- ~~iii.~~ The subrecipient must submit periodic progress reports or a year-end report.

~~e.~~ A subrecipient has responsibility for programmatic decision making :

- ~~i.~~ A subrecipient has the authority to make decisions within the terms of agreement.
- ~~ii.~~ A subrecipient determines how to implement its program.
- ~~iii.~~ A subrecipient determines the type of assistance to program beneficiaries.

~~d.~~ A subrecipient has responsibility for adherence to applicable State or federal program compliance requirements:

- ~~i.~~ A subrecipient shall comply with applicable statutes, regulations, rules, and policies.
- ~~ii.~~ The State shall monitor the subrecipient for compliance with program requirements.

9.2 Vendor

9.2.1 Vendor's Characteristics

~~2.~~ Vendor's characteristics include the following:

- ~~a.~~ The vendor provides goods or services to many different purchasers.

~~b.~~ Goods or services are provided by the vendor in the normal course business operations and where:

- ~~i.~~ The vendor controls the means and methods of how it will produce its goods and services.
- ~~ii.~~ The vendor is not required to provide periodic or year-end reports.
- ~~iii.~~ The vendor receives payment after the goods or services are delivered and accepted or deemed satisfactory.
- ~~iv.~~ The vendor's performance is measured against whether it meets contract specifications, not whether it achieves a program's performance outcomes.

~~c.~~ The vendor operates in a competitive environment, i.e., more than one vendor provides similar goods or services.

~~d.~~ The vendor provides goods or services that are ancillary to the operation of a State or ~~federal~~[Federal](#) program.

~~e.~~ The vendor is not subject to compliance requirements of the State or ~~federal~~[Federal](#) program, e.g., subrecipient monitoring.

10. ~~X.~~ State Monitoring Requirements.

~~A.~~ All subrecipient grants must be monitored by the ~~Cognizant~~[Grantor State](#) Agency at least once every three years. However, it is the ~~Cognizant~~[Grantor State](#) Agency's responsibility to monitor at a frequency required by the Federal Government. Additionally, more frequent monitoring should be conducted if there are findings from the previous monitoring efforts.

~~B.~~ Subrecipient grants with federal frequency monitoring requirements should be reviewed in accordance with such requirements.

~~C.~~ Both State and federally funded subrecipient grants shall be reviewed for compliance with the core monitoring areas listed in Section XI of this Policy. All applicable core monitoring areas must be addressed in each monitoring report.

~~D.~~ Risk should be assigned to all subrecipients by the ~~Cognizant~~Grantor State Agency. At a minimum, the scope of a review must include the program-specific monitoring requirements and the core monitoring areas listed in Section XI of this Policy.

~~E.~~ When the ~~Cognizant~~Grantor State Agency is selecting the population of contracts to be included in the monitoring plan, the following should be considered:

- ~~1.~~The level of programmatic or financial risk to the State;
- ~~2.~~Whether the grant has been monitored in the past three years; and
- ~~3.~~Whether the grant has had prior findings indicating serious deficiencies.

~~XI.~~10. Core Monitoring Areas.

~~A.~~ In addition to State or federal program specific monitoring requirements, all monitoring activities undertaken by any State agency should address the following areas:

- ~~1.~~All applicable requirements of Title VI of the *Civil Rights Act of 1964*, as defined in the Title VI Compliance Commission Advisory Memorandum No. 3, April 14, 2004.
- ~~2.~~The applicable core monitoring areas, as defined by OMB Circular No. A-133 Compliance Supplement. Currently, these core areas include: activities allowed or unallowed; allowable costs/cost principles; cash management; Davis-Bacon Act; eligibility; equipment and real property management; matching, level of effort, and earmarking; period of availability of funds; procurement, suspension and debarment; program income; real property acquisition and relocation assistance; reporting and special tests and provisions.

~~XII.~~11. Exception.

Pursuant to Tenn. Code Ann. §§ 42-3-114 and 42-2-203, the Tennessee Department of Transportation (TDOT) may accept and expend transit and aviation grant dollars according to the terms and conditions as prescribed by the federal government.

The federal government permits and encourages grantees to incur preliminary incidental costs prior to the grant start date. For such TDOT subrecipient grants, preliminary incidental costs incurred by the grantee may be reimbursed.

~~XIII.~~12. Reporting Requirements.

~~A.~~Grantor State agencies shall issue reports summarizing any findings or observations identified during monitoring reviews within 30 business days of completing all field work. Reports shall be distributed to the subrecipient entity and the Comptroller of the Treasury, Division of State Audit. The State agency shall retain a copy of the report.

~~B.~~ Upon receipt of a monitoring report with findings or observations, the subrecipient shall prepare a corrective action plan detailing the actions to be taken to correct such findings. The corrective action plan shall include:

- ~~1.~~ The name of the contact person responsible for the corrective action plan;
- ~~2.~~ The corrective actions to be taken; and
- ~~3.~~ The anticipated completion date.

~~C.~~ The corrective action plan shall be submitted to the Grantor State Agency for review and approval. It is the responsibility of the Grantor State Agency to notify the subrecipient, in a timely manner, of the approval or rejection of the corrective action plan. If a corrective action plan is not approved, the State Agency and the subrecipient shall work together to develop solutions for correcting the monitoring report findings.

~~XIV.~~ 13. **Compliance Reviews.**

Agency records obtained pursuant to this Policy shall be subject to evaluation by the Chief Procurement Officer or the Comptroller of the Treasury, or their duly appointed representatives.

Related Statutes, Rules and Policies

~~[TBD]~~

Tenn. Code Ann. §§ 4-56-101, et seq.

Tenn. Code Ann. §§ 12-3-101, et seq.

Tenn. Code Ann. §§ 12-4-101, et seq.

Approval Signature:

Jessica Robertson, Chief Procurement Officer

Document comparison by Workshare Compare on Thursday, December 20, 2012 10:58:42 AM

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**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

**7. Energy Efficiency Standards and Life
Cycle Costing**

CLEAN VERSION

DRAFT
Policy Number ____ - 2013
Central Procurement Office
Energy Efficiency Standards and Life Cycle Costing
Policy and Procedures

Effective: ___ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a process by which commodities and products shall be procured by the State in accordance with Federal and State energy efficiency regulations.

2. Scope.

These policies and procedures apply to all procurements, contract awards, and amendments by which products with energy efficiency standards apply.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Energy Efficient Products” means those products that meet or exceed applicable Energy Efficiency Standards.

“Energy Efficiency Standards”- shall have the meaning set forth in Tenn. Code Ann. § 12-3-603(3).

"Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

"State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

4. Energy Efficiency Standards.

4.1. Description of Energy Efficiency Standards.

Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that has established energy efficiency standards that are used by the Federal government when Contracting for major energy-consuming products, as well as best practices regarding energy efficiency.

4.2. Conditions of Use for Energy Efficient Products

Life cycle costs of commodities as developed and disseminated by the Federal government that are purchased by the state or its political subdivisions shall meet established energy efficiency standards where feasible.

Where Federal energy efficiency standards are established, life cycle costs shall be used by the State in Contracting for major energy consuming products. In determining life cycle costs, the acquisition cost of the product, product performance, cost of operation, energy consumption, projected cost of energy over the useful life of the product and the anticipated resale or salvage value of the product may all be utilized to develop specifications and in the evaluation of bids received to determine total cost. Pursuant to T. C. A. § 12-3-605, State of Tennessee agencies shall use energy efficiency standards prescribed by Energy Star for the purchase of energy consuming products. The Energy Star website (<http://www.energystar.gov>) provides a qualified list of products and commodities meeting Energy Star's minimal energy usage specifications, life cycle costing calculations, life cycle cost formula information and qualified products that meet Energy Star's rating for energy consumption and sustainability. The Energy Star rating can be found on products in more than 40 product categories. Only brands and models provided on the Energy Star website's list of qualified products and commodities may be used as "acceptable brands and models" on bid documents.

The minimal energy specifications for products and commodities listed on the Energy Star Qualified Products List may be included in the line item specifications on bid documents for the purchase of major energy consuming products.

Related Statutes, Rules and Policies

T. C. A. § 12-3-601, *et seq.*

Approval Signature:

Jessica Robertson, Chief Procurement Officer

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

**7. Energy Efficiency Standards and Life
Cycle Costing**

**COMPARISON: SUBCOMMITTEE
UPDATES TO 11/7/12 VERSION**

DRAFT
Policy Number _____ - 2013
Central Procurement Office
Energy Efficiency Standards and Life Cycle Costing
Policy and Procedures ~~for Procurements~~

Effective: ~~Upon approval by the Procurement Commission of the State of Tennessee~~ ___ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a process by which commodities and products shall be procured by the State in accordance with Federal and State energy efficiency regulations.

2. Scope.

These policies and procedures apply to all procurements, contract awards, and amendments by which products with energy efficiency standards apply.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Energy Efficient Products” means those products that meet or exceed applicable Energy Efficiency Standards.

“Energy Efficiency Standards”- shall have the meaning set forth in Tenn. Code Ann. § 12-3-603(3).

"Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

"State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

4. ~~Policy and Procedure.~~ Energy Efficiency Standards.

4.1. Description of Energy Efficiency Standards.

Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that has established energy efficiency standards that are used by the Federal government when Contracting for major energy-consuming products, as well as best practices regarding energy efficiency.

4.2. *Conditions of Use for Energy Efficient Products*

Life cycle costs of commodities as developed and disseminated by the Federal government that are purchased by the state or its political subdivisions shall meet established energy efficiency standards where feasible.

Where Federal energy efficiency standards are established, life cycle costs shall be used by the State in Contracting for major energy consuming products. In determining life cycle costs, the acquisition cost of the product, product performance, cost of operation, energy consumption, projected cost of energy over the useful life of the product and the anticipated resale or salvage value of the product may all be utilized to develop specifications and in the evaluation of bids received to determine total cost. Pursuant to T. C. A. § 12-3-605, State of Tennessee agencies shall use energy efficiency standards prescribed by Energy Star for the purchase of energy consuming products. The Energy Star website (<http://www.energystar.gov>) provides a qualified list of products and commodities meeting Energy Star's minimal energy usage specifications, life cycle costing calculations, life cycle cost formula information and qualified products that meet Energy Star's rating for energy consumption and sustainability. The Energy Star rating can be found on products in more than 40 product categories. Only brands and models provided on the Energy Star website's list of qualified products and commodities may be used as "acceptable brands and models" on bid documents.

The minimal energy specifications for products and commodities listed on the Energy Star Qualified Products List may be included in the line item specifications on bid documents for the purchase of major energy consuming products.

Related Statutes, Rules and Policies

T. C. A. § 12-3-601, *et seq.*

Approval Signature:

Jessica Robertson, Chief Procurement Officer

Document comparison by Workshare Compare on Thursday, December 20, 2012 10:47:50 AM

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**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

8. Business Conduct and Ethics

CLEAN VERSION

DRAFT
Central Procurement Office
Business Conduct and Ethics
Policy and Procedures

Effective: ____ day of _____, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a code of business and ethical conduct for employees involved in the procurement or contracting processes on behalf of the State of Tennessee.

2. Scope.

The Central Procurement Office recognizes that persons involved in the procurement or contracting process on behalf of the Central Procurement Office and State agencies represent the State in all facets of their work. All employees of the Central Procurement Office and State agencies involved in the procurement or contracting process are expected to conduct themselves such that their personal and professional conduct does not have a negative effect on the work of the Central Procurement Office or the procuring State Agency or reflect poorly on the public image, reputation, or credibility of the State. Accordingly, these policies and procedures apply to all employees of the Central Procurement Office and procuring State Agencies involved with procurements, solicitations, negotiations, contract awards and amendments to such awarded contracts, or protest and termination hearings with respect to procurements.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

“Immediate Family” – means a Central Procurement Office or procuring State Agency employee’s spouse, parent, sibling, or child.

“Procurement” - means requesting, buying, purchasing, renting, leasing, or otherwise acquiring any goods or services on behalf of the State.

"Procurement"- means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

“State” – means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

4. Requirement of Good Faith and Fair Dealing.

All procurement professionals involved in the public procurement process, which includes without limitation, solicitations, negotiation, performance, award, administration of State contracts or hearing of protests, must act in good faith and deal with the public in a fair and impartial manner. Each Central Procurement Office and procuring State Agency employee must act with honesty and integrity and shall remove himself or herself from the procurement process in the event he or she cannot act in good faith or conduct his or her work in a fair and unbiased manner.

5. Fiduciary Duty.

Public employment is a public trust. All procurement professionals owe a fiduciary duty to the State and each employee plays an important role in ensuring that the State's needed goods and services are procured in an efficient and economical manner on terms and conditions in the best interests of the State.

6. Avoiding Conflicts of Interest.

All Central Procurement Office Employees or employees of procuring State agencies should avoid any actions, relationships, or business transactions that conflict with the State's best interests or otherwise create conflicts of interests, real or perceived, that taint the procurement process or the reputation of the State.

No employee of Central Procurement Office or procuring State Agency that is involved in the procurement process shall participate in any portion of the procurement process when:

- The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement;
- The employee, any member of the employee's immediate family, or persons with whom the employee has personal or professional relationships that preclude the employee from acting in a fair and impartial manner, holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like;
- The employee owns or controls an interest of more than one percent (1%) in any business that has a financial interest arising from the procurement;
- The employee, any member of the employee's immediate family, or persons with whom the employee has personal or professional relationships that preclude the employee from acting in a fair and impartial manner, has a financial interest arising from the procurement; or
- The employee, a member of the employee's immediate family, or persons with whom the employee has personal or professional relationships that impair the employee's ability to act in a fair and impartial manner, is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror, or contractor.

7. Prohibition against Rebates, Gifts, Compensation.

No Central Procurement Office or procuring State Agency employee shall solicit, demand, accept, or agree to accept from any person, which includes without limitation, a bidder, offeror,

contractor, or subcontractor, any rebate, gift, money, or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation in connection with the procurement process.

8. Site Visits Related to a Procurement.

Site visits needed to properly evaluate goods or services for a pending or future solicitation are allowed subject to the following conditions:

- If site visits are required within the solicitation for evaluation purposes, the State, and not the respondent being evaluated, must pay for such visits.
- Exceptions to this policy may be made by the Chief Procurement Officer or his or her designee. Any exception must be made on a case-by-case basis. If an exception is made, a written determination signed by the Chief Procurement Officer or his or her designee shall be included in the contract file.
- State employees making such site visits will incur and recover travel costs from the State entity for which the procurement is being conducted in accordance with State travel regulations.
- No direct reimbursement of individuals by a respondent is permitted. The procuring agency will determine all costs incurred by State employees in connection with the site visit and bill the appropriate respondent for reimbursement of costs by means of a check payable to the State entity.

9. Disclosures Related to Procurements.

All persons participating in the Procurement Process shall execute a disclosure substantially in form to Attachment A to this policy. From time-to-time, evaluation panel members, by virtue of the nature of their roles as evaluators, will be privy to confidential or sensitive information that is only available to panel members. The Chief Procurement Officer shall require participants to execute a confidentiality agreement, substantially in form to Attachment B to this policy, whereby the participants agrees not to disclose any information, whether written or oral, received by the participants during the solicitation process.

10. Required Disclosures.

An employee of the Central Procurement Office or procuring State Agency involved in a procurement shall make disclosures to the Chief Procurement Officer in the following situations:

- When the employee has family or personal or professional relationships that conflict with, or give the appearance of a conflict;
- When the employee has an interest, familial, personal, professional or financial, that conflicts with the best interests of the State;
- The employee was previously employed by a bidder, offeror, or contractor involved in the procurement;
- When the employee is aware of or should be aware of any other facts or circumstances that compromise the employee's ability to carry out his or her fiduciary duty to the State and act in a fair and impartial manner with respect to the State or the public.

Annual Disclosure.

All Central Procurement Office or procuring State Agency employees shall execute an annual conflict of interest questionnaire on such forms as prescribed by the Chief Procurement Officer. The annual conflict of interest questionnaire shall be maintained by the Director of Category Management and Legal Team.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

Approval Signature:

Jessica Robertson, Chief Procurement Officer

ATTACHMENT A
CONFLICT OF INTEREST DISCLOSURE STATEMENT

INSTRUCTIONS FOR THE STATEMENT SIGNATORY:

Complete the space provided with the Procurement number applicable to the statement.

Complete, sign and date the applicable section (development or evaluation).

Complete each space provided beside the disclosure statements by either "initialing" the statement (to indicate an affirmation of the corresponding statement) OR by writing "N/A" (to indicate that the corresponding statement is not applicable).

If a possible conflict of interest is identified, a description of such should be attached to this document.

**Solicitation
NUMBER:**

--	--

INDIVIDUAL INVOLVED WITH PROCUREMENT DEVELOPMENT—

	I did not identify any potential conflict of interest, financial or otherwise, regarding my involvement with the development, formulation, drafting or review of the subject RFP or its scope of services.
	I identified the following possible conflict of interest issues, detailed and attached hereto, which might adversely reflect on or threaten the integrity of the subject RFP process:

SIGNATURE & DATE: _____

PRINTED NAME: _____

INDIVIDUAL INVOLVED WITH PROPOSAL EVALUATIONS—

	I reviewed the attached listing of service providers making proposals in response to the subject RFP and did not identify any potential conflict of interest, financial or otherwise, regarding my ability to fairly evaluate OR assist with the evaluation of all proposals.
	I reviewed the attached listing of service providers making proposals in response to the subject RFP and identified the following possible conflict of interest issues, detailed and attached hereto, which might adversely reflect on my ability to fairly evaluate OR assist with the evaluation of all proposals.

SIGNATURE & DATE: _____

PRINTED NAME: _____

ATTACHMENT B

**ATTESTATION REGARDING CONFIDENTIALITY IN THE EVALUATION OF [INSERT
PROCUREMENT METHOD] # _____ FOR _____**

Employee Name: _____

Employee Phone Number: _____

Employee Email Address: _____

I, _____ (*print name*), do hereby attest, certify, warrant, and assure that I shall not disclose any procurement evaluation information related to [INSERT PROCUREMENT METHOD] # _____ for _____ until the Notice of Intent to Award is communicated in writing or electronic transmission to all respondents.

Employee's Signature

Date

**DRAFT POLICIES AND PROCEDURES
OF THE CENTRAL PROCUREMENT
OFFICE**

8. Business Conduct and Ethics

**COMPARISON: SUBCOMMITTEE
UPDATES TO 11/7/12 VERSION**

DRAFT
Central Procurement Office
Business Conduct and Ethics
Policy and Procedures ~~for Procurements~~

Effective: ~~Upon approval by the Procurement Commission of the State of Tennessee~~ day of , 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a code of business and ethical conduct for employees involved in ~~procurements~~ the procurement or contracting processes on behalf of the State of Tennessee ~~and its agencies.~~

2. Scope.

The Central Procurement Office recognizes that persons involved in the procurement activities or contracting process on behalf of the Central Procurement Office and State agencies represent the State in all facets of their work. All employees of the Central Procurement Office and State agencies involved in the procurement or contracting process are expected to conduct themselves such that their personal and professional conduct does not have a negative effect on the work of the Central Procurement Office or the procuring State ~~agency~~ Agency or reflect ~~badly~~ poorly on the public image, reputation, or credibility of the State. Accordingly, these policies and procedures apply to all employees of the Central Procurement Office ~~or~~ and procuring State ~~agencies~~ Agencies involved with procurements, solicitations, negotiations, contract awards and amendments to such awarded contracts, or protest and termination hearings with respect to procurements.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

“Immediate Family” – means a Central Procurement Office or procuring State Agency employee’s spouse, parent, sibling, or child.

“Procurement” - means requesting, buying, purchasing, renting, leasing, or otherwise acquiring any goods or services on behalf of the State.

~~“Procurement Process”~~ “Procurement” - means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes, without limitation, all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, negotiation, preparation and award of a contract, and all phases of contract administration. The term “Procurement Process” also includes, without limitation, protests of contract awards and due process hearings with respect to contract terminations.

“State” – means the State of Tennessee ~~and, including~~ its departments, agencies, ~~boards and commissions as the context requires~~ and entities that fall under its purview.

4. Requirement of Good Faith and Fair Dealing.

All procurement professionals involved in the public procurement process, which includes without limitation, solicitations, negotiation, performance, award, administration of State contracts or hearing of protests, must act in good faith and deal with the public in a fair and impartial manner. Each Central Procurement Office and procuring State Agency employee must act with honesty and integrity and shall remove himself or herself from the procurement process in the event he or she cannot act in good faith or conduct his or her work in a fair and unbiased manner.

5. Fiduciary Duty.

Public employment is a public trust. All procurement professionals owe a fiduciary duty to the State and each employee plays an important role in ensuring that the State’s needed goods and services are procured in an efficient and economical manner on terms and conditions in the best interests of the State.

6. Avoiding Conflicts of Interest.

All Central Procurement Office Employees or employees of procuring State agencies should avoid any actions, relationships, or business transactions that conflict with the State’s best interests or otherwise create conflicts of interests, real or perceived, that taint the procurement process or the reputation of the State.

No employee of Central Procurement Office or procuring State ~~agency~~ Agency that is involved in the procurement process shall participate in any portion of the procurement process when:

- ~~(1)~~ The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement;
- ~~(2)~~ The employee, any member of the employee’s immediate family, or persons with whom the employee has personal or professional relationships that preclude the employee from acting in a fair and impartial manner, holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like;
- ~~(3)~~ The employee owns or controls an interest of more than one percent (1%) in any business that has a pecuniary financial interest arising from the procurement;
- ~~(4)~~ The employee, any member of the employee’s immediate family, or persons with whom the employee has personal or professional relationships that preclude the employee from acting in a fair and impartial manner, has a pecuniary financial interest arising from the procurement; or
- ~~(5)~~ The employee, a member of the employee’s immediate family, or persons with whom the employee has personal or professional relationships that impair the employee’s ability to act in a fair and impartial manner, is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror, or contractor.

Required Disclosures.

~~State employees involved in a procurement shall make disclosures to the Chief Procurement Officer in the following situations:-~~

- ~~(1) When the employee has family or personal or professional relationships that conflict with, or give the appearance of a conflict;-~~
- ~~(2) When the employee has an interest, familial, personal, professional or pecuniary, that conflicts with the best interests of the State;~~
- ~~(3) When the employee is aware of or should be aware of any other facts or circumstances that compromise the employee's ability to carry out his or her fiduciary duty to the State and act in a fair and impartial manner with respect to the State or the public.~~

7. **Prohibition against Rebates, Gifts, Compensation.**

No Central Procurement Office or procuring State Agency employee shall solicit, demand, accept, or agree to accept from any person, which includes without limitation, a bidder, offeror, contractor, or subcontractor, any rebate, gift, money, or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation in connection with the procurement process. ~~(Tenn. Code Ann. § 12-3-106).~~

8. **Site Visits Related to a Procurement.**

Site visits needed to properly evaluate goods or services for a pending or future solicitation are allowed subject to the following conditions:

- ~~(1)~~ If site visits are required within the solicitation for evaluation purposes, the State, and not the respondent being evaluated, ~~should~~must pay for such visits.
- ~~(2)~~ Exceptions to this policy may be made by the Chief Procurement Officer or his or her designee. Any exception must be made on a case-by-case basis. If an exception is made, a written determination signed by the Chief Procurement Officer or his or her designee shall be included in the contract file.
- ~~(3)~~ State employees making such site visits will incur and recover travel costs from the State entity for which the procurement is being conducted in accordance with State travel regulations.
- ~~(4)~~ No direct reimbursement of individuals by a respondent is permitted. The procuring agency will determine all costs incurred by State employees in connection with the site visit and bill the appropriate respondent for reimbursement of costs by means of a check payable to the State entity.

9. **Disclosures Related to ~~Solicitations~~ Procurements.**

All persons ~~serving as a member on an evaluation panel~~participating in the Procurement Process shall execute a disclosure substantially in form to Attachment A to this policy. From time-to-time, evaluation panel members, by virtue of the nature of their roles as evaluators, will be privy to confidential or sensitive information that is only available to panel members . The Chief Procurement Officer ~~may~~shall require ~~panel members~~participants to execute a confidentiality agreement, substantially in form to Attachment B to this policy, whereby the ~~panel member~~participants agrees not to disclose any information, whether written or oral, received by the ~~panel member~~participants during the solicitation process.

10. Required Disclosures.

An employee of the Central Procurement Office or procuring State Agency involved in a procurement shall make disclosures to the Chief Procurement Officer in the following situations:

- When the employee has family or personal or professional relationships that conflict with, or give the appearance of a conflict;
- When the employee has an interest, familial, personal, professional or financial, that conflicts with the best interests of the State;
- The employee was previously employed by a bidder, offeror, or contractor involved in the procurement;
- When the employee is aware of or should be aware of any other facts or circumstances that compromise the employee's ability to carry out his or her fiduciary duty to the State and act in a fair and impartial manner with respect to the State or the public.

Annual Disclosure.

All Central Procurement Office or procuring State Agency employees shall execute an annual conflict of interest questionnaire on such forms as prescribed by the Chief Procurement Officer. The annual conflict of interest questionnaire shall be maintained by the Director of Category Management and Legal Team.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, et seq.

~~T. C. A. §~~Tenn. Code Ann. §§ 12-3-101, et seq.

~~Tenn. Code Ann. A. §§§ 12-4-101, et seq.~~~~T. C. A. § 4-56-101 et seq.~~

Approval Signature:

Jessica Robertson, Chief Procurement Officer

ATTACHMENT A

CONFLICT OF INTEREST DISCLOSURE STATEMENT

INSTRUCTIONS FOR THE STATEMENT SIGNATORY:

Complete the space provided with the **RFP Procurement** number applicable to the statement.

Complete, sign and date the applicable section (development or evaluation).

Complete each space provided beside the disclosure statements by either “initialing” the statement (to indicate an affirmation of the corresponding statement) OR by writing “N/A” (to indicate that the corresponding statement is not applicable).

If a possible conflict of interest is identified, a description of such should be attached to this document.

**RFP Solicitation
NUMBER:**

--

INDIVIDUAL INVOLVED WITH RFP PROCUREMENT DEVELOPMENT—

	I did not identify any potential conflict of interest, financial or otherwise, regarding my involvement with the development, formulation, drafting or review of the subject RFP or its scope of services.
	I identified the following possible conflict of interest issues, detailed and attached hereto, which might adversely reflect on or threaten the integrity of the subject RFP process:

SIGNATURE & DATE: _____

PRINTED NAME: _____

INDIVIDUAL INVOLVED WITH PROPOSAL EVALUATIONS—

	I reviewed the attached listing of service providers making proposals in response to the subject RFP and did not identify any potential conflict of interest, financial or otherwise, regarding my ability to fairly evaluate OR assist with the evaluation of all proposals.
	I reviewed the attached listing of service providers making proposals in response to the subject RFP and identified the following possible conflict of interest issues, detailed and attached hereto, which might adversely reflect on my ability to fairly evaluate OR assist with the evaluation of all proposals.

SIGNATURE & DATE: _____

PRINTED NAME:

ATTACHMENT B

ATTESTATION REGARDING CONFIDENTIALITY IN THE EVALUATION OF [INSERT PROCUREMENT METHOD] # _____ FOR _____

Employee Name: _____

Employee Phone Number: _____

Employee Email Address: _____

I, _____ (*print name*), do hereby attest, certify, warrant, and assure that I shall not disclose any ~~cost proposal or technical proposal~~ procurement evaluation information related to [INSERT PROCUREMENT METHOD] # _____ for _____ until ~~all technical evaluations are complete.~~ the Notice of Intent to Award is communicated in writing or electronic transmission to all respondents.

Employee's Signature

Date

Document comparison by Workshare Compare on Thursday, December 20, 2012 10:42:02 AM

Input:	
Document 1 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Business Conduct and Ethics.docx
Description	Business Conduct and Ethics
Document 2 ID	file://C:\1ahdata\1ahdata\Back Desk Files\Procurement Policies\Business Conduct and Ethics Policy Final.docx
Description	Business Conduct and Ethics Policy Final
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	54
Deletions	54
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	120