

Policy Number 2013-009
Central Procurement Office
Business Conduct and Ethics Policy and Procedures

Effective: May 28, 2013
Last Amended: March 20, 2014
Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

The purposes of this Policy Number 2013-009 are as follows:

- To establish a code of business and ethical conduct for Central Procurement Office or Covered State Agency Personnel involved in Procurement or Contract Administration on behalf of the State of Tennessee.
- To prescribe an Organizational Conflicts of Interest policy applicable to Central Procurement Office or Covered State Agency Personnel who are involved in Procurement or Contract Administration and to provide guidance in identifying and managing Organizational Conflicts of Interest, all of which serves to:
 - Promote full and open competition, integrity, and transparency in Procurement or Contract Administration;
 - Promote an environment conducive to Contracting Parties providing goods or services to the State in an impartial and objective manner;
 - Provide guidance to enable Contracting Parties to make informed decisions while conducting business with the State; and
 - Protect the validity of the State's Procurement or Contract Administration, protect the State's interests, and protect the State's confidential and sensitive information.

2. Scope.

The Central Procurement Office recognizes that Personnel involved in Procurement or Contract Administration on behalf of the Central Procurement Office and Covered State Agencies represent the State in all facets of their work. All Central Procurement Office and Covered State Agency Personnel involved in Procurement or Contract Administration 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 Covered State Agency or reflect poorly on the public image, reputation, or credibility of the State. Accordingly, this policy applies to all Personnel of the Central Procurement Office and Covered State Agencies involved in Procurement or Contract Administration, which includes by way of example, drafting Solicitations, negotiations, evaluations of Responses, contract awards and amendments to contracts, protests or termination hearings with respect to contracts. Moreover, this policy

requires all Central Procurement Office or Covered State Agency Personnel involved in Procurement or Contract Administration to manage Organizational Conflicts of Interest through Avoidance, Mitigation or Waiver, as described below, when they know of the existence of an Organizational Conflict of Interest.

3. Definitions.

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

“Affiliate” of a Contracting Party means (i) any member, partner or joint venture member of the Contracting Party; (ii) any shareholder of the Contracting Party having an interest of at least ten percent (10%) in any class of stocks; (iii) any Person that directly or indirectly through one or more intermediaries Controls (as hereinafter defined), or is Controlled by, or is under common Control with, the Contracting Party or any of the Contracting Party’s shareholders, members, partners or joint venture members; or (iv) any entity for which ten percent (10%) or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by (a) the Contracting Party, (b) any of the shareholders, members, partners or joint venture members of the Contracting Party, or (c) any affiliate of the Contracting Party.

“Biased Ground Rules” means the requirements for a contract or prerequisites for competition for a contract that have been written by a Person who, as a part of its performance of a State contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the Person who established the requirements or prerequisites, or any of its Affiliates, seeks to compete.

“Contract Administration” means the roles within the Central Procurement Office or a Covered State Agency associated with contract management, which includes evaluating contractor performance, managing contract compliance, and whether or not to renew or extend a contract. Contract Administration does not include ancillary State Agency programmatic roles related to a contract or ministerial roles, such as paying contract invoices or administrative support functions.

“Contracting Party” means any Person, or its Affiliates or subcontractors, retained by the State to perform Procurement or program implementation services for the State, or proposing to perform such services.

“Control” means the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting securities, by contract, Immediate Family relationship or otherwise.

“Covered State Agency” means a State Agency that is not exempt from the rules and regulations, or policies and procedures of the Central Procurement Office under the provisions of Tenn. Code Ann. § 12-3-102.

“Employee” means natural persons who are employees of the State of Tennessee and State Agencies.

“Immediate Family” means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

“Impaired Objectivity” means when a Person evaluates Responses or contract performance for its own products or services or for the products or services of competitors. Impaired Objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the Person will be harmed through the free and unbiased exercise of that judgment.

“Organizational Conflict of Interest” means, as to Procurements, contracts or proposed contracts with the State, a circumstance arising out of a Contracting Party’s existing or past activities, business or financial interests, Immediate Familial relationships, contractual relationships, or organizational structure (e.g., parent entities, subsidiaries, Affiliates, etc.) that results in:

- (i) Impaired Objectivity of a Contracting Party;
- (ii) An Unfair Competitive Advantage for any Respondent with respect to a Procurement;
- (iii) Biased Ground Rules; or
- (iv) Impropriety, as determined by the Chief Procurement Officer, with respect to any of the State’s Procurements or contracts.

“Person” means any individual, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, government (or any agency or political subdivision thereof), other business entity, or other organization recognized by law.

“Personnel” means all employees, evaluators or subject matter experts, whether or not an employee of the Central Procurement Office, a Covered State Agency, or the State, involved in drafting Solicitations, evaluating Responses, providing advice or assistance in connection with evaluating Responses, or awarding contracts pursuant to a Procurement on behalf of the Central Procurement Office or a Covered State Agency.

“Procurement” means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by the Rules of the Central Procurement Office or this policy. 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.

“Respondent” means a Person with the capacity to contract and sue and be sued who has submitted a Response to a solicitation.

“Response” means a written response to a Solicitation for goods or services.

“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.

“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.

“Unfair Competitive Advantage” means a situation that exists when a Person competing for the award of a contract has obtained:

- (i) Access to proprietary or confidential State information, or other State information that is not available to the public or other Respondents, and that would assist Respondents in responding to a Solicitation or in obtaining the contract; or
- (ii) Scoring criteria or points allocation information, or other source selection information, that is relevant to the contract but is not available to all Respondents to a Solicitation and that would assist the Respondents in responding to a Solicitation or in obtaining the contract.

4. Requirement of Good Faith and Fair Dealing.

All Central Procurement Office or Covered State Agency Personnel involved in public Procurement or Contract Administration must act in good faith and deal with the public in a fair and impartial manner. All Central Procurement Office or Covered State Agency Personnel must act with honesty and integrity and shall remove themselves from Procurement or Contract Administration in the event they cannot act in good faith or conduct their work in a fair and unbiased manner.

5. Fiduciary Duty.

Involvement by Personnel in the Procurement or Contract Administration involves a public trust. All Central Procurement Office or Covered State Agency Personnel owe a fiduciary duty to the State and all Personnel play an important role in ensuring that the State’s needed goods or services are procured in an efficient, transparent and economical manner on terms and conditions in the best interests of the State.

6. Avoiding Conflicts of Interest.

All Central Procurement Office or Covered State Agency Personnel should avoid any actions, relationships, or business transactions that conflict with the State’s best interests or otherwise create individual or Organizational Conflicts of Interests that taint the procurement process or the reputation of the State.

No Personnel of the Central Procurement Office or a Covered State Agency who is involved in Procurement or Contract Administration shall participate in any portion of the process when:

- The Personnel is contemporaneously employed by a Respondent to a Solicitation;
- The Personnel, any member of the Personnel’s Immediate Family, or persons with whom the Personnel has a personal relationship that precludes the Personnel from acting in a fair and impartial manner, or holds a position with a Respondent or Affiliate or subcontractor as an officer, director, trustee, partner or the like;
- The Personnel, any member of the Personnel’s Immediate Family, or persons with whom the employee has a personal relationship that precludes the Personnel from acting in a fair and impartial manner; or The Personnel, a member of the Personnel’s Immediate Family, or persons with whom the Personnel has a personal relationship that impairs the Personnel’s ability to act in a fair and impartial manner, is negotiating, or has an

arrangement concerning prospective employment with Respondents, Contracting Parties, subcontractors, or Affiliates.

7. Prohibition against Rebates, Gifts, Compensation.

No Central Procurement Office or Covered State Agency Personnel shall solicit, demand, accept, or agree to accept from any Person, which includes without limitation, Respondents, Contracting Parties, subcontractors or Affiliates, any rebate, gift, money, or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation in connection with Procurement or Contract Administration.

8. Organizational Conflicts of Interest.

- A. All Central Procurement Office or Covered State Agency Personnel shall at all time conduct and carry out their duties and responsibilities in a manner intended to uphold high ethical standards and to comply with this policy. If Personnel of the Central Procurement Office or a Covered State Agency have actual knowledge of an Organizational Conflict of Interest, the Organizational Conflict of Interest shall be disclosed to the Chief Procurement Officer and shall be Avoided, Mitigated or Waived as more particularly described in Section 8.D. below.
- B. The Central Procurement Office or a Covered State Agency must consider potential Organizational Conflicts of Interest during preparation of all Solicitation documents, during the evaluation of Responses, during the award of contracts and must disclose the existence of Organizational Conflicts of Interest that become known or discovered at any time during the term of any contract.
- C. All Respondents or Contracting Parties must disclose the existence of Organizational Conflicts of Interest that are known or discovered at any time during the Procurement process or during the term of any contract awarded pursuant to a Procurement, and must upon request, disclose all facts bearing on Organizational Conflicts of Interest.
- D. Upon identification of an Organizational Conflict of Interest, the Central Procurement Office or any Covered State Agency shall, as soon as reasonably possible, simultaneously notify the Chief Procurement Officer of the Organizational Conflict of Interest and submit to the Chief Procurement Officer a plan to address the Organizational Conflict of Interest, which plan shall include actions or agreements necessary to Avoid, Mitigate, or Waive (as these terms are described below) the Organizational Conflict of Interest.
 - i. Avoidance may involve the removal or limitation of Personnel of the Central Procurement Office or any Covered State Agency from being involved in the drafting of the Solicitation, Procurement activities, evaluation of Responses, or management of a contract awarded to a Respondent or the award of future contracts.
 - ii. Mitigation may involve specific actions by a Respondent, a Contracting Party or Personnel of the Central Procurement Office or any Covered State Agency to limit the effect of an Organizational Conflict of Interest. Mitigation may also

involve more general efforts or recognitions when the circumstances are covered by applicable State statutes, rules, policies or procedures.

- iii. The Central Procurement Office or any Covered State Agency may, upon written approval of the Chief Procurement Officer, waive the requirement to resolve an Organizational Conflict of Interest if the Chief Procurement Officer concurs with the determination of the Central Procurement Office or Covered State Agency that resolution is not feasible or is not in the best interests of the State. Such determination must be documented in writing and maintained by the Central Procurement Office or the Covered State Agency.
- iv. No Organizational Conflict of Interest occurs when (i) all material facts of the transaction and the basis for a possible Organizational Conflict of Interest are disclosed and the contract, Procurement or transaction is approved by the Chief Procurement Officer or (ii) the Procurement, contract, or transaction is fair to the State, which such determination shall be documented in writing and filed with and approved by the Chief Procurement Officer.
- v. Neither the Central Procurement Office nor a Covered State Agency shall commence with implementation of the plan to Avoid, Mitigate, or Waive the Organizational Conflict of Interest, as required by subparagraphs 8.D.i, 8.D.ii. or 8.D.iii., until the Central Procurement Office or Covered State Agency has documented the basis in writing and has received written approval of the plan from the Chief Procurement Officer.
- vi. In all instances where an Organizational Conflict of Interest exists in a Procurement or contract in which the Chief Procurement Officer has participated, the use of the term “Chief Procurement Officer” in Section 8 of this policy, shall mean the Procurement Commission or its designee.

9. Site Visits Related to a Procurement.

Site visits to Respondent locations 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.
- Central Procurement Office or Covered State Agency Personnel 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 Personnel by a Respondent is permitted. The Central Procurement Office or Covered State Agency will determine all costs incurred by Personnel in connection with the site visit and bill the appropriate Respondent for reimbursement of costs by means of a check payable to the State Agency.

10. Required Disclosures for Central Procurement Office and Covered State Agency Personnel.

All Personnel of the Central Procurement Office or a Covered State Agency involved in Procurement or Contract Administration shall make disclosures to the Chief Procurement Officer in the following situations:

- When the Personnel has family or personal relationships that conflict with, or could potentially give rise to an individual or Organizational Conflict of Interest;
- When the Personnel has an interest, Immediate Familial, personal, professional or financial interest, that conflicts with the best interests of the State;
- When the Personnel was previously employed by a Respondent or Contracting Party involved in the procurement;
- When the Personnel is aware of or should be aware of any other facts or circumstances that compromise the Personnel'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;
- When the Personnel has knowledge of an Organizational Conflict of Interest that arises during the Procurement or contract processes.

All Personnel of the Central Procurement Office or any Covered State Agency who participate in Solicitation development for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., an RFQ or a RFP) shall execute a disclosure substantially in form to Attachment A to this policy, the Solicitation Development Conflict of Interest Disclosure Statement. Any potential conflict shall be brought to the attention of the Chief Procurement Officer to determine whether re-assignment is warranted.

From time-to-time, Personnel, by virtue of the nature of their roles as evaluators, will be privy to confidential or sensitive information that is only available to evaluation team members. The Chief Procurement Officer shall require Personnel participating in Response evaluation for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., RFQ or a RFP) to execute a confidentiality agreement, substantially in form to Attachment B1 to this policy, whereby the Personnel agree not to disclose any information, whether written or oral, received by the Personnel during the evaluation process.

All Personnel of the Central Procurement Office or a Covered State Agency who participate in the Response evaluation for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., an RFQ or a RFP) shall execute a disclosure substantially in form to Attachment B2 to this policy, the Response Evaluation Conflict of Interest Disclosure Statement. Any potential conflict shall be brought to the attention of the Chief Procurement Officer to determine whether re-assignment is warranted.

Covered State Agency Personnel Procurement or Contract Administration roles are also responsible for filing annual conflict of interest disclosures in accordance with their particular agency's policies and procedures. If no policies and procedures exist within the Personnel's agency, then the Personnel shall file an annual conflict of interest and confidentiality attestation in accordance with the policies and procedures of the Central Procurement Office. Filing an annual disclosure statement does not absolve Personnel involved in a particular procurement from disclosing known individual or Organizational Conflicts of Interest on a case-by-case basis.

Such disclosures shall be made available to the Central Procurement Office upon request. The annual conflict of interest disclosures of Covered State Agency Personnel shall be maintained by the Covered State Agency.

All Central Procurement Office Personnel with Procurement or Contract Administration roles shall execute an annual conflict of interest and confidentiality attestations substantially in form to Attachment C to this policy. Filing an annual disclosure statement does not absolve Personnel involved in a particular procurement from disclosing known individual or Organizational Conflicts of Interest on a case-by-case basis. The annual attestations of Central Procurement Office Personnel 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.*

ATTACHMENT A

SOLICITATION DEVELOPMENT CONFLICT OF INTEREST DISCLOSURE STATEMENT

INSTRUCTIONS FOR THE STATEMENT SIGNATORY:

Complete the space provided with the Solicitation number applicable to the statement.

Complete, sign and date the applicable section (solicitation development or response 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:**

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PERSONNEL INVOLVED WITH SOLICITATION 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 Solicitation or its specifications or scope of services.
	I identified the following possible individual or Organizational Conflict of Interest issues, detailed and attached hereto, which might adversely reflect on or threaten the integrity of the subject Procurement process:

SIGNATURE & DATE:

PRINTED NAME:

ATTACHMENT B1

**ATTESTATION REGARDING CONFIDENTIALITY IN THE EVALUATION OF [INSERT
PROCUREMENT METHOD] # _____ FOR _____**

Personnel Name: _____

Personnel Phone Number: _____

Personnel Email Address: _____

I, _____ (*print name*), do hereby attest, certify, warrant, and assure that I shall not disclose any Procurement evaluation information, including but not limited to the identity of evaluators or the number or identity of Respondents related to [INSERT PROCUREMENT METHOD] # _____ for _____ until the Notice of Intent to Award is communicated in writing or electronic transmission to all Respondents.

Personnel's Signature

Date

ATTACHMENT B2

RESPONSE EVALUATION CONFLICT OF INTEREST DISCLOSURE STATEMENT

IMPORTANT: COMPLETE AND SIGN ATTACHMENT B1 PRIOR TO ATTACHMENT B2

INSTRUCTIONS FOR THE STATEMENT SIGNATORY:

Complete the space provided with the Solicitation number applicable to the statement.

Complete, sign and date the applicable section (solicitation development or response evaluation).

Complete each space provided beside the disclosure statements by either “initialing” the statement (to indicate an affirmative 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:**

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PERSONNEL INVOLVED WITH RESPONSE EVALUATIONS—

	I reviewed the attached listing of prospective Respondents expressing an interest in the subject Solicitation 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 Responses.
	I reviewed the attached listing of prospective Respondents expressing an interest in the subject Solicitation and identified the following possible Organizational 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 OR that may give rise to an Organizational Conflict of Interest.

SIGNATURE & DATE:

PRINTED NAME:

ATTACHMENT C

CENTRAL PROCUREMENT OFFICE OR COVERED STATE AGENCY EMPLOYEE ANNUAL ATTESTATIONS

Employee Name: _____

Employee Phone Number: _____

Employee Email Address: _____

CONFLICT OF INTEREST

I, _____ (print name), do hereby attest, certify, warrant and assure that I will not participate in any portion of a Procurement that involved a potential conflict of interest, financial or otherwise.

Furthermore, I _____ (print name), do hereby attest, certify, warrant and assure that I will make disclosures to the Chief Procurement Officer in the following situations:

- When I have an Immediate Family or a personal relationship that conflicts with, or potentially creates a conflict;
- When I have an interest, Immediate Familial, personal, professional or financial, that conflicts with the best interests of the State;
- If I was previously employed by a Respondent involved in the Procurement;
- When I am aware of or should be aware of any other facts or circumstances that compromise my ability to carry out my fiduciary duty to the State and act in a fair and impartial manner with respect to the State or the public;
- When I have actual knowledge of an Organizational Conflict of Interest involving a Solicitation, a contract award, or the circumstances giving rise to an Organizational Conflict of Interest during the term of any contract awarded pursuant to a Solicitation.

CONFIDENTIALITY

I, _____ (print name), do hereby attest, certify, warrant, and assure that I shall not disclose any Procurement evaluation information related to a Procurement until the Notice of Intent to Award is communicated in writing or electronic transmission to all Respondents.

Employee's Signature

Date