State of Tennessee

PUBLIC CHAPTER NO. 403

SENATE BILL NO. 170

By Norris, Ketron

Substituted for: House Bill No. 164

By McCormick, McDaniel, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 56; Title 12, Chapter 3 and Title 12, Chapter 4, relative to state procurement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-56-102, is amended by deleting the section in its entirety and by substituting instead the following:

4-56-102.

(a)(1) There is created a procurement commission, which shall consist of the commissioners of general services and finance and administration, and the comptroller of the treasury. The chief procurement officer shall serve as a non-voting member.

(2) The commission shall adopt a procedure governing its proceedings, and the chief procurement officer shall keep a permanent and accurate record of all of its proceedings.

(3) All departments and agencies shall submit existing rules related to procurement to the commission for the commission's review, comment, and recommendations for any changes to such rules. Prior to forwarding draft rules related to procurement to the secretary of state, all departments shall submit such draft rules to the commission for the commission's review and comment together with any recommendations for changes to such draft rules.

(4) The attorney general and reporter shall serve as legal counsel to the commission in accordance with the requirements of § 8-6-301.

(b)(1) The commission has the power and authority, except as otherwise provided in this chapter, to review, comment, and approve draft rules and regulations, policies, standards, and procedures to be followed consistent with this chapter and title 12, chapters 3 and 4, and to make recommendations for changes thereto, governing the procurement of goods and services, contracting, agency contract and grant management, training and professional development, and the disposal of goods and services by the state.

(2) The commission is authorized to promulgate necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, as well as policies and procedures to implement this chapter.

(3) The commission shall not exercise authority over the award or administration of any particular contract or grant.

SECTION 2. Tennessee Code Annotated, Section 4-56-103, is amended by deleting the section in its entirety and by substituting instead the following:

4-56-103.

(a) Creation of Committee.

(1) There is created a state protest committee, which shall consist of the commissioners of general services and finance and administration, and the treasurer.

(2) The committee shall adopt procedures governing its operations, and the chief procurement officer shall keep a permanent and accurate record of all of its proceedings.

(3) If a member is not available to hear a scheduled protest, the member is authorized to appoint a designee to hear the scheduled protest on the member's behalf.

(b) Appeals to Committee.

(1) The committee is authorized to act on any appeal of the chief procurement officer's decision of a protest.

(2) Any committee member whose department is the requestor of a procurement or the resulting contract may not hear the protest.

(3) The chief procurement officer shall provide the minutes of the protest proceedings to each committee member and to the comptroller of the treasury and shall post the final determination within fifteen (15) business days to the single public procurement website.

SECTION 3. Tennessee Code Annotated, Section 4-56-104, is amended by deleting the section in its entirety and by substituting instead the following:

4-56-104.

(a) There is created a procurement office headed by the chief procurement officer in such department as the governor shall designate, after consulting with the comptroller of the treasury, which shall take effect as provided in § 4-56-104(b).

(b) Effective July 1, 2011, the governor shall appoint the chief procurement officer, who shall be a person:

(1) Qualified by training and relevant and recent experience in large scale public procurement of goods and services, establishment of contracts, contract oversight, providing training and contract administration, and demonstrated executive and organizational ability to perform the duties of this office; and

(2) Qualified by training or relevant and recent experience in administering programs to encourage and enhance economic opportunities for small businesses and minority-owned businesses.

(c) The chief procurement officer shall be a full-time public official of the state as an executive service employee appointed by the governor to serve at the pleasure of the governor.

(d)(1) Necessary personnel in the department of general services involved in the procurement of goods and necessary personnel in the department of finance and administration involved in the procurement of services, as required by the procurement officer, shall be transferred to the procurement office together with the funding for the compensation and benefits for such personnel.

(2) The chief procurement officer is authorized to employ such additional personnel as are necessary to carry out the purposes of this chapter, upon the approval of the governor.

(3) The compensation of employees of the procurement office shall be fixed by the governor.

(e)(1) All contracts and contract rights and responsibilities, and renewals for such contracts, in existence with the department of general services and the department of finance and administration with respect to the duties transferred by this section shall be preserved and transferred to the procurement office.

(2) Any bidding procedure or negotiations concerning any such procedure which is in the process but not complete shall continue under the purview of the procurement officer.

(3) All documents, books, records, papers or other writings in the possession of the department of general services and the department of finance and administration with respect to the duties transferred by this section shall be transferred to and remain in the custody of the procurement office.

(4) Any rules, regulations, orders, decisions and policies formerly issued or promulgated by the departments of finance and administration or general services whose functions have been transferred under this section to the procurement office shall remain in full force and effect and shall hereafter be administered and enforced by the procurement officer. The commission shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies formerly issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

(f) Subject to this chapter and other procurement laws under the jurisdiction of the chief procurement office, the chief procurement officer may adopt operational procedures governing the internal functions of the procurement office.

SECTION 4. Tennessee Code Annotated, Section 4-56-105, is amended by deleting the section in its entirety and by substituting instead the following:

4-56-105.

The chief procurement officer has the power and duty to:

(1) Effective January 1, 2012, establish a single, public procurement website that includes how to do business with the state; registration for bidders; posting of all procurements in process and related status to award; and a database of established contracts by state agencies, departments and institutions;

(2) Effective April 1, 2012, develop a transition plan that provides for the implementation by date and action to consolidate the procurement and contracting for goods, services and grants; to include employee job classifications for the state procurement office and agency procurement functions that include development and training plans and other plans as prescribed and approved by the commission;

(3) Develop and propose to the general assembly any changes required to consolidate statutes;

(4) Develop proposed rules and regulations, policies, standards and procedures consistent with this chapter and title 12, chapters 3 and 4 and approved by the commission that establish:

(A) A central procurement process with opportunities for strategic sourcing;

(B) A central contract management process;

(C) A central grant management process that will assist agencies in identifying grant opportunities and provide for a central database of information regarding grant recipients and sub-recipients for monitoring purposes;

(D) A central performance and quality assurance process that assists agencies in identifying risk areas and recommending contract performance and management best practices; and

(E) A central bidder relations management process to include a central bidder registration database and program for conducting business with the state, which provides bidders and vendors with training and assistance with technical matters, procurement notification, and contract and grant awards.

(5) Develop and conduct training to foster professional development and certification for the state procurement office and agency procurement staff to promote procurement excellence, either independently or in cooperation with other state governments, municipalities or other units of local government, or other persons. In conducting this training, the chief procurement officer shall:

(A) Prescribe professional and accountability standards and guidelines for procurement, contract, grant, performance and quality assurance management personnel;

(B) Conduct or participate in procurement education and training programs;

(C) Conduct research into existing and new methods of procurement; and

(D) Establish and maintain an electronic library of education and training courses and technical reference resources;

(6) Delegate authority to designees or to any department, agency, or official, subject to additional approvals including approval by the comptroller of the treasury and such other requirements as prescribed in rules, regulations, standards, policies and procedures approved by the commission;

(7) Establish and maintain agenda and minutes of the commission and the council and all actions of both, which shall be open to public inspection during regular office hours and on the single public procurement website in accordance with bylaws established by the council and commission. The chief procurement officer shall chair the council. Except as otherwise indicated, all requirements of this section shall be ready for implementation by the chief procurement officer by April 1, 2012;

(8) Prescribe the manner in which goods and services shall be purchased, delivered, stored and distributed;

(9) Require periodic reports by departments, institutions and agencies of state government of stocks of supplies, materials, and equipment on hand and prescribe the form of such reports;

(10) Prescribe the dates for making requisitions and estimates, the periods for which they are to be made and the manner of authentication;

(11) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment and of making chemical and physical tests of samples submitted with solicitation responses, and sample deliveries to determine whether deliveries have been made to departments, institutions, and agencies in compliance with specifications;

(12) Prescribe the manner for the handling and processing of specifications, estimates, requisitions, solicitations, responses to solicitations, and all reports made and required to be made to the department;

(13) Prescribe the manner in which respondents may qualify and show responsibility in compliance;

(14) Prescribe the manner for responding to solicitations on lease-purchase contracts and multi-year contracts for the rental of personal property;

(15) Prescribe the manner that provides for and regulates the advertisement, soliciting, and letting of state contracts that include escalator clauses;

(16) Resolve controversies concerning protests of qualification of respondents, suspension from competing, solicitations, and stay of award prior to actual award;

(17) Prescribe the manner for conducting discussions and negotiations, particularly with respect to participants and safeguarding of information, for all solicitation types;

(18) Prescribe the process to be followed in making data available to respondents of solicitations;

(19) Prescribe the process to be followed by agencies in requisitioning goods or services through the central procurement office; and

(20) Provide for any other matters that may be necessary to give effect to the powers and duties of the chief procurement officer under this section by rules and regulations, standards, policies and procedures approved by the commission.

SECTION 5. Tennessee Code Annotated, Section 4-56-106, is amended by deleting the section in its entirety and by substituting instead the following:

4-56-106.

(a)(1) Effective November 1, 2011, there is created an advisory council on state procurement. There shall be five (5) voting members of the council. There shall be seven (7) non-voting members of the council representing the proposer and vendor community and other procurement professionals. All members shall have a demonstrable working knowledge of the state procurement process. In making the appointments to the advisory council, the appointing authorities shall give due consideration to the need for geographic, age, racial, gender, and ethnic diversity on the council.

(2) The five (5) voting members of the council shall consist of one (1) representative of state agencies appointed by the commissioner of general services, one (1) representative from the department of general services to be appointed by the commissioner of general services, one (1) representative from the department of finance and administration to be appointed by the commissioner of finance and administration, one (1) representative from the office of the comptroller of the treasury to be appointed by the comptroller of the treasury, and the chief procurement officer who shall serve as chair. The initial appointments by the commissioners shall be made prior to November 1, 2011. The initial appointment by the comptroller of the treasury shall be made prior to November 1, 2011. Any vacancy shall be filled for the unexpired term by the appointing authority making the initial appointment. The pattern established for initial appointments shall be followed for appointments by the appropriate officials when appointments are to fill expired terms.

(b)(1) Voting members appointed by the commissioner of general services shall serve a staggered four-year term, beginning November 1, 2011. These voting members of the council shall, upon expiration of the member's term, be eligible for reappointment and shall serve until a successor is appointed.

(2) The terms shall be staggered so that the terms of only two (2) voting members shall terminate at the same time.

(A) The term of one (1) voting member initially appointed by the commissioner of general services and the voting member appointed by the commissioner of finance and administration shall be for a two-year term to begin on November 1, 2011, to expire on October 31, 2013, and the successors shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(B) The term of the other voting member initially appointed by the commissioner of general services shall be for a three-year term to begin on November 1, 2011, to expire on October 31, 2014, and the successor shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(C) The chief procurement officer shall be an ex officio member whose term shall begin November 1, 2011.

(D) The one (1) voting member appointed by the comptroller of the treasury shall be appointed for a four-year term to begin on November 1, 2011, to expire on October 31, 2015. The successor shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(3) Proxy voting is prohibited by voting members of the council; provided, however, that, in instances where a voting member will be absent from a vote of the council, the member's appointing authority is authorized to appoint an alternate or designee for the vote.

(c)(1) Except as provided in subsections (a) and (b), the seven (7) non-voting members shall be selected to serve staggered four-year terms as follows:

(A) The speaker of the house of representatives, the speaker of the senate, and the governor shall each appoint two (2) representatives, with one (1) representative from the bidder or vendor community and one (1) representative recommended by the National Institute of Government Purchasing. The final advisory non-voting member appointment shall be appointed by the chair of the fiscal review committee. The initial appointments to the council shall be made prior to November 1, 2011, by the speaker of the senate and the speaker of the house of representatives. The pattern established for initial appointments shall be followed for appointments by the appropriate officials when appointments are to fill expired terms;

(B) The non-voting member appointed by the chair of the fiscal review committee shall serve a two-year term, beginning November 1, 2011, until the term expires October 31, 2013. The non-voting member appointed by the chair of fiscal review shall be eligible for reappointment to succeeding two-year terms without limitation; the two-year term of office of successor appointees shall begin November 1, and expire October 31 of the appropriate year; and

(C) The initial appointments of the non-voting members shall be staggered. The speaker of the senate and the speaker of the house of representatives shall each initially appoint one (1) member for a two-year term to begin November 1, 2011, and expire October 31, 2013, and one (1) member for a three-year term to begin November 1, 2011, and expire October 31, 2014; and the governor shall initially appoint one (1) member for a two-year term to begin November 1, 2011, and expire October 31, 2013, and one (1) member for a three-year term to begin November 1, 2011, and expire October 31, 2014. All subsequent appointments shall be for a four-year term to begin November 1, and expire October 31 of the appropriate year.

(d) Except as provided in subdivision (c)(1)(B), each non-voting member of the council, upon expiration of the member's term, shall not be eligible for reappointment for two (2) years after the conclusion of that member's term. In no event shall a non-voting member of the council serve more than four (4) consecutive years as a non-voting member of the council. In the event a member resigns or becomes ineligible for service during the member's term, a successor shall be appointed by the appropriate appointing authority to serve the remainder of the term.

(e) No employer shall discriminate in any manner against an employee who serves on the council because of the employee's service on the council. Employees who serve on the council shall not be denied any benefit from their employer because of the employee's service on the council.

(f) Members of the council shall not be paid but may be reimbursed for travel expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(g) The council shall meet at least twice each year for the discussion of problems and recommendations for improvement of the procurement process or any other matter relevant to procurement as determined by the chief procurement officer.

(h) The council shall review and issue a formal comment approved by the council on procurement policies, standards, guidelines, and procedures established by the chief procurement officer prior to being presented for approval by the commission. All reviews and formal comments shall be issued within sixty (60) days of being presented to the council by the chief procurement officer. The formal comments approved by the council shall be provided to the members of the commission, and the officers of the fiscal review committee.

(i) When requested by the chief procurement officer, the council may conduct studies, research, analyses, and make reports and recommendations with respect to subjects or matters within the authority and duties of the chief procurement officer. The chief procurement officer may appoint advisory groups to assist in specific areas,

and with respect to any other matters within the authority of the chief procurement officer.

(j) In performing its responsibilities, the council's role shall be strictly advisory, but it may do any of the following:

(1) Make recommendations to the governor, general assembly, fiscal review committee, commissioner of general services, commissioner of finance and administration, and comptroller of the treasury relating to the enactment or promulgation of laws or rules that affect this title and title 12, chapters 3 and 4;

(2) Make recommendations to the commissioner of general services and commissioner of finance and administration regarding the method and form of statistical data collections; and

(3) Monitor the performance of the chief procurement office in the implementation of legislative directives.

(k) The council may develop evaluations, statistical reports, and other information from which the general assembly may evaluate the impact of legislative changes to procurement laws.

(l) Whenever any bill is introduced in the general assembly proposing to amend this chapter, to make any change in public procurement or contract law, or to make any change in the law that may have a financial or other substantive impact on the administration of public procurement and contract law, the standing committee to which the bill is referred may refer the bill to the council. The council's review of bills relating to procurement and contract law shall include, but not be limited to, bills that propose to amend this chapter and title 12, chapters 3 and 4. All bills referred to the council shall be reported back to the standing committee to which they were assigned in a reasonable time. Notwithstanding the absence of a report from the council, the standing committee may consider the bill at any time. The chair making the referral shall immediately notify the prime sponsors of the bill of the referral and the council shall not review and comment on the proposed legislation until the prime sponsors of the bill have been notified. The comments of the council shall describe the potential effects of the proposed legislation on the procurement and contract process and its operations and any other information or suggestions that the council may determine to be helpful for the sponsors, standing committees, or the general assembly. The comments of the council may include recommendations concerning the proposed legislation. Except for reporting the recommendations for or against passage of proposed bill and responding to any inquiries made by the members of the general assembly, council staff shall not lobby or advocate for or against passage of any proposed legislation.

SECTION 6. Tennessee Code Annotated, Section 4-56-107, is amended by deleting the section in its entirety and by substituting instead the following:

4-56-107.

(a) All requests of the procuring agency to procure goods or services by negotiation with a single service provider, referred to in this section as a noncompetitive contract, shall be contemporaneously filed with the fiscal review committee of the general assembly, comptroller of the treasury and the chief procurement officer. Such requests shall document the following:

(1) Description of the goods or services to be acquired;

(2) Explanation of the need for or requirement to acquire the goods or services;

(3) Name and address of the proposed contractor's principal owner;

(4) Evidence that the proposed contractor has experience in providing the same or similar goods or services and evidence of the length of time the contractor has provided the same or similar goods or services;

(5) Explanation of whether the goods or services were purchased by the procuring agency in the past, and if applicable, the method used to purchase the goods or services and the name and address of the contractor;

(6) Description of the procuring agency's efforts to use existing state employees and resources, or in the alternative, to identify reasonable and competitive procurement alternatives, rather than to use noncompetitive negotiation;

(7) Justification of why the goods or services should be acquired through noncompetitive negotiation; and

(8) Any additional information that the fiscal review committee may direct the procuring agency to provide that will assist the committee in evaluating the contract.

(b)(1) The following contracts and contract amendments shall be subject to review by the fiscal review committee:

(A) Proposed noncompetitive contracts with a term of more than one (1) year or which contain a provision to allow for extension by either party that would extend the contract beyond twelve (12) months and which have a cumulative value of not less than two hundred fifty thousand dollars ($250,000), including all possible extensions; and

(B) Any amendment to a contract meeting the term and dollar threshold requirements as described in subdivision (b)(1)(A), regardless of whether the original contract was procured through competitive or noncompetitive means, where the amendment:

(i) Increases or decreases the maximum liability;

(ii) Extends or shortens the contract term;

(iii) Changes the entity or name of the entity with which the state is contracting; or

(iv) Otherwise changes an original contract or amended contract in a substantive manner.

(2) If the chief procurement officer or delegated state agency is unable to determine whether a proposed contract or amendment would be subject to review by the fiscal review committee, the chief procurement officer or delegated state agency shall contact the fiscal review committee staff for a determination.

(3) The contracts subject to review shall include all contracts of the executive branch that otherwise meet the requirements of subdivision (b)(1), including, but not limited to, contracts of higher education, including the board of regents, the University of Tennessee, and the Tennessee higher education commission. Highway and road improvement contracts reviewed by the department of transportation, contracts reviewed by the state building commission and debt issuance contracts reviewed by the comptroller of the treasury shall not be subject to this review.

(4) The fiscal review committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other state contract or contract amendment in accordance with the procedures established in this section without regard to whether the contract or contract amendment meets the requirements of subdivision (b)(1).

(5) The fiscal review committee shall have forty (40) business days from receipt of the request as provided in this section to comment on the proposed contract. After this forty-day period, any such contract authorized by the chief procurement officer may be executed. All other requests to negotiate noncompetitive contracts shall be reviewed by the fiscal review committee after approval by the chief procurement officer. With respect to such requests, the fiscal review committee shall be provided the same information to be submitted in accordance with this subsection (a). The chair or the chair's designee, after consultation with the comptroller of the treasury, shall have authority to waive the forty-day period for comment and authorize the chief procurement officer to execute contracts or amendments that are determined to be in the best interest of the state, and to proceed with reporting and comment by the committee at their next scheduled meeting.

(A) If an exception is granted to any request, approved in accordance with subdivision (a)(1) or rules promulgated pursuant to § 4-56-103, then any such exception shall be filed with the fiscal review committee for its perusal, comment and review.

(B) The procurement office shall file a goods and services contract report quarterly with the fiscal review committee. The report shall list contracts approved in accordance with rules authorized by § 4-56-103 during the prior quarter and detail whether each contract procurement was competitive.

(C) Each procuring agency granted a special delegated authority, pursuant to rules authorized by § 4-56-103, to establish goods and services contracts shall report to the fiscal review committee a list of all contracts awarded under the delegated authority. The list of contracts awarded shall be filed quarterly and shall include the contractor name, contract period, contract amount, method used to select the contractor, and the completion date for a monitoring review, as defined by any applicable policy developed by the chief procurement officer and any other information the procuring agency wishes to include.

(D) The department of transportation shall report to the fiscal review committee on approved highway and road improvement contracts that would otherwise meet the requirements of subdivision (b)(1) within thirty (30) days of approval, including all of the information specified in subsection (a) and any other information the committee deems necessary or helpful. The fiscal review committee shall have the option to conduct a separate hearing on highway and road improvement contracts approved by the department of transportation.

(E) The state building commission shall report to the fiscal review committee on contracts it has approved that would otherwise meet the requirements of subdivision (b)(1) within thirty (30) days of approval, including all of the information specified in subsection (a) and any other information the committee deems necessary or helpful. The committee shall have the option to conduct a separate hearing on contracts approved by the building commission.

SECTION 7. Tennessee Code Annotated, Sections 4-56-108 -- 4-56-110, are amended by deleting the sections in their entireties and by substituting instead the following:

4-56-108.

(a) The comptroller of the treasury shall review and approve such procurements, contracts, grants, and other related documents prior to the public posting on the single procurement website of such procurements; after posting any amendments thereto; after recommendation for award; and prior to execution of the contract as applicable for the following:

(1) Delegation of procurement or contract authority by the chief procurement officer. All initial, reduced or revoked delegations as provided under § 12-3-401 shall be reported to the comptroller of the treasury in such format and time interval as reasonable. All periodic reviews of purchasing activities of any state agency granted such delegation shall be provided to the comptroller of the treasury;

(2) Procurement and contracts for goods and services where authority exists under both the state building commission and the central procurement office to procure and contract;

(3) Procurement and contracts for auditing services;

(4) Cooperative agreement to participate, sponsor, conduct or administer as provided in § 12-3-512 with any other entity;

(5) Fee for service procurement or contracts with a maximum liability in excess of five million dollars ($5,000,000), which may be increased or decreased by action of the commission;

(6) Grant contracts with a maximum liability in excess of five million dollars ($5,000,000), which may be increased or decreased by action of the commission;

(7) Fee for service procurement or contracts for new or replacement information systems and technical infrastructure projects for goods and services in excess of five hundred thousand dollars ($500,000), which may be increased or decreased by action of the commission;

(8) Procurement or contracts that would utilize competitive or noncompetitive negotiations with a maximum liability in excess of two hundred fifty thousand dollars ($250,000), which may be increased or decreased by action of the commission. Competitive or noncompetitive negotiation shall not be utilized by a state agency unless such procurement is performed by the central procurement office;

(9) Procurement or contracts for which the state would receive revenue;

(10) Procurement or contracts that would incur no cost;

(11) Procurement or contracts that propose a term that exceeds sixty (60) months;

(12) Procurement or contracts that propose a limitation of liability that is less than two (2) times the maximum liability;

(13) Procurement or contracts that propose to change the records, annual report and audit or monitoring provisions;

(14) Procurement or contracts that would provide for the negotiation of a necessary, mandatory or standard contract clause;

(15) Procurement that would provide that a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal;

(16) Procurement or contract that provides an automatic price escalator; and

(17) Such other procurements, contracts or other items as may be directed by the commissioner of finance and administration or by the commission.

(b) Without limitation of the audit authority of the comptroller of the treasury, the comptroller is authorized to examine any documents under the authority of the chief procurement officer.

(c) Cancellation of procurements or rejection of all responses to a procurement shall be documented in accordance with rules and regulations, standards, policies and procedures as approved by the commission and the reason for the cancellation or rejection of all bids for a procurement shall be provided to the comptroller of the treasury within three (3) business days after such determination.

(d) Any protest after notice of intent to award by an aggrieved respondent received by the chief procurement officer or the protest committee shall be filed with the comptroller of the treasury within three (3) business days of receipt. All responses to the aggrieved respondent regarding the protest whether allowed or not, shall be filed with the comptroller of the treasury at the same time provided to the aggrieved respondent.

(e) Contracts shall contain on the last page of the secured contract document the signature and approval date of all required approvers to be a fully executed document and for the release of a purchase order against the contract.

(f) The comptroller of the treasury shall be provided view access to any information or data from any system housing procurement and contract related data, information, and processes.

(g) The chief procurement officer shall post on the single procurement website reports or data queries, subject to approval by the comptroller of the treasury as to format and time interval for update. Such reports shall include, but are not limited to, the following:

(1) Noncompetitive, sole source or proprietary contracts;

(2) Cancellation of procurements or contract awards;

(3) Cancellation of contracts before term extension or for cause;

(4) Protests to chief procurement officer and protest committee;

(5) Emergency procurements and contracts;

(6) Contracts with term extensions beyond sixty (60) months;

(7) Rule exceptions approved by the chief procurement officer; and

(8) Persons or entities that are prevented from contracting or submitting a response to a procurement.

SECTION 8. Tennessee Code Annotated, Section 12-3-101, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-101.

Except as provided in §§ 12-3-102 and 12-3-103, all goods and services, and all telephone, telegraph, electric light, gas, power, postal services, and the leasing of any equipment required for the use of state government, shall be purchased and contracted for by the central procurement office consistent with the requirements of this chapter and any rules, regulations or policies and procedures approved by the procurement commission.

SECTION 9. Tennessee Code Annotated, Section 12-3-102, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-102.

(a) Procurements and contracts by and for the following state governmental entities shall be exempt from the operation of this chapter:

(1) The legislative branch;

(2) The judicial branch;

(3) The University of Tennessee system and the Tennessee board of regents system;

(4) Contracts advertised and awarded by the state building commission pursuant to § 4-15-102. If there is a question whether a contract or procurement requires state building commission or central procurement office approval, the chief procurement officer and the state architect shall determine in writing the procurement method or the contract form that is in the best interest of the state. Any such agreement reached by the chief procurement officer and the state architect shall be subject to the approval of the comptroller of the treasury;

(5) Construction and engineering contracts entered into by the department of transportation pursuant to title 54, chapter 5;

(6) Contracts for procurement of services in connection with the issue, sale, purchase, and delivery of bonds, notes and other debt obligations or the administration, safekeeping, and payment after delivery of such debt obligations by the state or any of its agencies;

(7) Contracts for appraisal, relocation or acquisition services related to the acquisition of land that are entered into by the department of transportation pursuant to title 54, chapter 5; and

(8) Administrative contracts for specific service signs pursuant to title 54, chapter 5, part 11, shall be awarded to the vendor who offers the lowest responsible response. The basis of all responses shall be the least cost to the retail user of the signs. All administrative contracts shall be awarded on an objective, competitive basis pursuant to rules and regulations promulgated by the department of transportation.

(b) Notwithstanding subsection (a), any or all state entities exempt from the requirements of this part, as well as any private nonprofit institution of higher education chartered in this state, are authorized to procure goods or services under this chapter through the central procurement office.

SECTION 10. Tennessee Code Annotated, Section 12-3-103, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-103.

(a) Contracts for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups with high ethical standards, shall not be based upon competitive procurement methods, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive procurement in this section shall not prohibit any entity enumerated from interviewing eligible persons or entities to determine the capabilities of such persons or entities.

(b) Any person providing fiscal agent, financial advisor or advisory services covered by this part shall perform such services only pursuant to a written contract specifying the services to be rendered, the costs of the services, and the expenses to be covered under such contract.

(c) Any person providing fiscal agent, financial advisor or advisory services covered by this part who desires to respond, directly or indirectly, on any bonds, notes or other obligations of such entity sold pursuant to public, competitive sale shall receive in writing prior to the sale the permission of such entity to respond either directly or indirectly on the obligations.

(d) For the purposes of this section, "providing fiscal agent, financial advisor or advisory services" means a relationship that exists when a person renders, or enters into an agreement to render, financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services.

(e) A financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

SECTION 11. Tennessee Code Annotated, Section 12-3-104, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-104.

Whenever any state department or agency applies to the department of general services to lease or rent any equipment, the department of general services shall first ascertain whether or not any such equipment is available for use from any other department, institution, or agency. The department of general services shall have the power to request the transfer of any such equipment from one (1) department, institution, or agency to another with the approval of the head of the transferring department, institution, or agency.

SECTION 12. Tennessee Code Annotated, Sections 12-3-105 through 12-3-133, are amended by deleting the sections in their entireties.

SECTION 13. Tennessee Code Annotated, Section 12-3-201, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-201.

As used in this chapter, unless the context otherwise requires:

(1) "Central procurement office" means the government agency established in § 4-56-104;

(2) "Chief procurement officer" means the person holding the position established in § 4-56-104, as the head of the central procurement office and with the powers and duties set forth in § 4-56-105;

(3) "Committee" means the state protest committee as established in § 4-56-103;

(4) "Contract" means any duly authorized and legally binding written agreement for the procurement of goods and services;

(5) "Council" means the advisory council on state procurement established in § 4-56-106;

(6) "Data" means any recorded information, regardless of its form or characteristic;

(7) "Energy efficiency standard" means a performance standard that prescribes the relationship of the energy use of a product to its useful output of services;

(8) "Goods" mean all personal property, including, but not limited to, supplies, equipment, materials, printing, and insurance. "Goods" does not include real property;

(9) "Grant" means any grant awarded to the state or awarded by the state to any person to support a program authorized by law. "Grant" does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award;

(10) "Invitation to bid" means all documents, whether attached or incorporated by reference, utilized for soliciting bids for the lowest cost, responsive and responsible bidder;

(11) "Major energy-consuming product" means any article so designated by the chief procurement officer in consultation with the central procurement office staff;

(12) "Political subdivision" means any authority, city, town, municipality, county or instrumentality of any authority, city, town, municipality or county within the state;

(13) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring of any goods or services. "Procurement" also includes all functions that pertain to the obtaining of 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;

(14) "Procurement commission" means the state procurement commission, as established in § 4-56-102;

(15) "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;

(16) "Request for proposal" means a written solicitation for written proposals to provide goods or services to the state or a state governmental entity based upon specified evaluation criteria;

(17) "Respondent" includes a "bidder" or "proposer" that is a natural person or legal entity that has properly registered as required by the state. The terms "bidder" and "proposer" may be used interchangeably as the context requires;

(18) "Response" means a written response to a solicitation for goods and services;

(19) "Responsible" means a person who has the capacity in all respects to perform fully the contract requirements, as well as the integrity and reliability, which will assure good faith performance;

(20) "Responsive" means a person who has submitted a response that conforms in all material respects to the competitive procurement;

(21) "Services" means all services and agreements obligating the state, except services for highway and road improvements governed by title 54 and design and construction services governed by title 4, chapter 15;

(22) "Solicitation" means any type of document that invites responses and may include, by way of example, an "invitation to bid", a "request for proposal" or a "competitive negotiation";

(23) "Specification" means any description of the physical, functional, performance characteristics, or 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;

(24) "State agency" means any state governmental entity, other than the central procurement office and those state entities exempted by § 12-3-102, that is authorized to enter into contracts by this title or its implementing regulations, or by way of delegation from the chief procurement officer, or that utilizes any goods or services procured under this title;

(25) "State governmental entity" means any agency, authority, board, commission, department, or office within the executive, legislative or judicial branches of state government or any autonomous state agency, authority, board, commission, council, department, office, or institution of higher education; and

(26) "Vendor" means a natural person or legal entity that has been established by the department of finance and administration's division of accounts as a vendor through proper authority for which payment may be made by the state.

SECTION 14. Tennessee Code Annotated, Section 12-3-202, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-202. Subject to the regulations and requirements of the Tennessee regulatory authority and other state or federal bodies, the central procurement office is authorized to extend the use of the state network long distance telephone service to students at state universities and colleges. If the central procurement office extends such service, it shall charge the institution the amount that it costs the state for such service.

SECTION 15. Tennessee Code Annotated, Sections 12-3-203 through 12-3-262, are amended by deleting these sections in their entireties.

SECTION 16. Tennessee Code Annotated, Section 12-3-301, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-301.

(a) Before April 1 of each year, each state agency shall compile and submit to the chief procurement officer and the comptroller of the treasury, a written acquisition plan for the upcoming fiscal year forecasting the specific categories and quantities of goods and services anticipated for purchase by the state agency. The chief procurement officer shall develop procedures to ensure uniformity among the various state agencies both in the manner of calculating such forecasts and in the style and format used for submitting such written acquisition plans to the chief procurement officer. The information contained within such forecasts shall be based on good faith estimates and shall not be construed in any way to legally bind or authorize the state agency to make any purchase in conflict with the other requirements of this chapter. This subsection (a) shall not apply to those entities exempt from this chapter pursuant to § 12-3-102.

(b) Before July 1 of each year, the chief procurement officer shall compile and publish the written acquisition plans submitted by the various agencies pursuant to this subsection (a), within an annual report that shall be entitled "The Forecast of Acquisition Plans for State Departments and Agencies for Fiscal Year _____–_____." A copy of the report shall be posted on the central procurement office's website.

(c) It is the duty of all state agencies to furnish to the central procurement office, upon request, data relating to purchases and purchase estimates.

(d) An agency is permitted to amend or supplement its written acquisition plan before the end of a given fiscal year for unforeseen circumstances pursuant to rules, regulations and policies approved by the commission.

SECTION 17. Tennessee Code Annotated, Section 12-3-302, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-302.

(a) Any statement or agreement in which the respondent is asked to indicate a willingness to meet the low price, if such respondent is not the low respondent, is adverse to the competitive procurement standards and shall not be included in any solicitation to be awarded by any state agencies.

(b) This section shall apply to divisible contracts.

(c) This section shall not apply when applicable law permits negotiated contracts.

(d) For the purposes of this section, contracts for the administration of specific service signs pursuant to title 54, chapter 5, part 11, shall not be negotiable.

SECTION 18. Tennessee Code Annotated, Sections 12-3-303 through 12-3-314, are amended by deleting the sections in their entireties and by substituting instead the following:

12-3-303.

(a) Any contract for goods or services entered into by an executive branch state agency shall be executed by the head of such state agency and approved by the chief procurement officer. Notwithstanding any other provision of the law to the contrary, approval of the chief procurement officer and no other officer of the state government is necessary, except as follows:

(1) Contracts for financial management or accounting services shall also be approved by the commissioner of finance and administration;

(2) Contracts for auditing services shall also be approved by the comptroller of the treasury;

(3) Contracts for engineering or architectural services shall also be approved by the office of the state architect;

(4) Contracts of all state colleges and universities operated by the board of trustees of the University of Tennessee or the state board of regents do not need to be approved by the chief procurement officer, provided that these contracts shall be subject to applicable provisions of the rules and policies promulgated by the central procurement office and approved by the procurement commission; or

(5) Those procurements, contracts, grants, and other documents subject to approval by the comptroller of the treasury pursuant to § 4-56-108 or otherwise required by law.

(b) All contracts for rendering public relations, advertising or related services entered into by or on behalf of agencies and departments of the executive branch of state government shall be restricted to provide for only the rendition of media advertising and related design and production services, except as otherwise determined in accordance with policies established by the procurement commission.

(c)(1) This section shall not apply to construction and engineering contracts entered into by the department of transportation pursuant to title 54, chapter 5, or to contracts for projects required by law to be approved by the state building commission.

(2) This section shall not apply to contracts to hire additional counsel for the state or any of its departments, institutions or agencies; provided, that all such contracts shall be made in accordance with § 8-6-106, except for legal counsel employed pursuant to any statute concerning the issuance and sale of bonds, notes, or other obligations.

(3) This section shall not apply to contracts for procurement of services in connection with the issue, sale, purchase, and delivery of bonds, notes and other debt obligations or the administration, safekeeping, and payment after delivery of such debt obligations by the state or any of its agencies.

(d) All contracts for goods and services shall be posted on the state procurement office's website, at a minimum providing the following information, as applicable, regarding each request for goods or services:

(1) Business unit or agency requesting;

(2) Contract number;

(3) Brief description of the contract;

(4) Type of contract;

(5) Commencement date of the contract;

(6) Ending date of the contract;

(7) Maximum liability; and

(8) Status of the contract.

12-3-304.

(a) When any state agency required by this chapter to purchase goods or services through the central procurement office, contracts for the purchase of goods or services contrary to provisions of this chapter or the rules and regulations made hereunder, such contract shall be void and of no effect.

(b) When the central procurement office contracts for the purchase of goods or services contrary to the provisions of this chapter or the rules and regulations made hereunder, such contract shall also be void and of no effect.

(c) If any state agency, including the central procurement office, purchases any goods or services contrary to the provisions of this chapter or the rules and regulations made hereunder, then the chief procurement officer or head of such state agency shall be personally liable for the costs thereof, and if such goods or services are so unlawfully purchased and paid for out of state monies, then the amount thereof may be recovered in the name of the state in an appropriate action instituted by the state.

12-3-305.

(a) The central procurement office or the procuring state governmental entity shall be responsible for the effective management of all contracts procured under its authority and shall adopt regulations or policies that define service contracting fundamentals. Such regulations or policies shall include, but are not limited to, contract management and monitoring of vendors, grants and sub-recipient relationships. The regulations for monitoring shall, at a minimum, require the filing of the monitoring plan with the chief procurement officer before any contracts are approved.

(b) Any state agency, when entering into contracts with any organizations that agree to provide services to third parties, shall, subject to approval by the chief procurement officer and the comptroller of the treasury, establish guidelines for such organizations. These guidelines shall define the responsibility and prescribe procedures to be followed by the contracting agencies including, but not limited to, the use of generally accepted accounting procedures, sound business practices, and compliance with related state and federal regulations regarding the fiscal policies of nonprofit organizations. The guidelines established shall be used as prerequisites for the state's agreement to provide matching or other state funds or federal funds or entering into a third party contract.

(c) Every solicitation issued for the purpose of establishing a contract shall include the maximum liability or total estimated purchase by agencies of state government for the current contract period, if applicable, and for the new contract period. More than one (1) contract may be let for the supply of any given class or type

of goods or services and any contract may provide for the cancellation thereof by either party. Contracts executed or proposed to be executed for periods of time of more than twelve (12) months shall be subject to the policies, rules and regulations of the central procurement office, as approved by the procurement commission, and shall meet the following conditions:

(1) Such contracts may contain a provision giving the state the right of cancellation for convenience for periods of time established by the chief procurement officer;

(2) Such contracts shall contain a provision giving the state the right of cancellation at the end of any fiscal year without notice, in the event that funds to support the contract become unavailable; and

(3) No contract may be let for periods of time in excess of sixty (60) months, unless the chief procurement officer determines the contract is in the best interest of the state and approves the contract in accordance with rules and regulations, and policies and procedures approved by the procurement commission, as being in the best interest of the state.

(d) After contracts have been awarded, the chief procurement officer shall certify to state agencies the sources of services and supply and the contract price of the various goods and services covered by the contracts. It is unlawful for any state agency to purchase any goods or services covered thereby from any sources other than those certified by the chief procurement officer, except as otherwise provided in this chapter.

12-3-306.

(a) A state governmental entity shall not contract to acquire goods or services, and no person may contract to supply goods or services to a state governmental entity, unless, prior to, or contemporaneous with, entering into the contract, the person contracting to supply goods or services and its affiliates register with the department of revenue to collect and remit the sales and use tax levied by the Retailers' Sales Tax Act, compiled in title 67, chapter 6. Nothing in this section shall require a person or affiliate to register if the person or affiliate does not make sales to customers in the state of tangible personal property or services, which if the sales occurred wholly within the state, would be taxable under title 67, chapter 6. This provision is specifically applicable to foreign persons, notwithstanding the fact that such foreign persons or their affiliates may not otherwise be legally obligated to collect and remit such tax.

(b) For purposes of this section:

(1) "Affiliates" means each and every affiliate of the person contracting with the state or other state entities, as the term "affiliate" is defined in § 48-103-102;

(2) "Other state entities" has the same meaning as in § 12-4-601; and

(3) "Person" or "persons" has the same meaning as in § 67-6-102.

(c) The commissioner of revenue and the chief procurement officer shall develop procedures for compliance with this section with approval by the procurement commission.

12-3-307.

Contracting state agencies that establish the procedural and administrative accountability requirements shall apply these requirements to all matching funds. The established procedural and administrative requirements shall remain in effect for the entire fiscal year covered by the third party contract, and no contracting agency shall modify or amend these procedures without the state agency's approval.

12-3-308.

(a) Notwithstanding any other provision of law to the contrary, state and local governments shall contract for goods and services provided through, or administered by, the departments of children's services, health, and human services without

discrimination against religious organizations or discrimination based on race, age, color, sex, or national origin and shall provide beneficiaries of assistance under the programs established by law with forms of disbursement that are redeemable with these organizations that are awarded a contract. State and local governments may use any state, federal, local or other monies available for these purposes.

(b) State and local governments shall allow contracts with religious organizations to provide goods and services provided through, or administered by, the departments of children's services, health, and human services and to accept forms of disbursement under any program established on the same basis as any other nongovernmental provider without impairing the religious character of these organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under these programs. The programs shall be implemented consistent with the first amendment of the United States Constitution. State and local governments shall not discriminate against an organization that is, or applies to be, a contractor to provide assistance or that accepts forms of disbursement on the basis that the organization has a religious character.

(c) A religious organization with a contract described in this section shall retain its independence from federal, state and local governments, including the religious organization's control over the definition, development, practice and expression of its religious beliefs. State and local governments shall not require a religious organization to alter its form of internal governance or to remove religious art, icons, scripture or other symbols in order to be eligible to contract to provide assistance or to accept grants or other forms of disbursement funded under any program or public contract.

(d) If a person, who applies for or receives goods, services or disbursements, objects to the religious character of the organization or institution from which the person receives, or would receive, assistance funded under any program, the state or local government shall provide the person, within a reasonable period of time after the date of the objection, with assistance from an alternative provider that is accessible to the person if an alternative provider is available and the value of which is not less than the value of assistance that the person would have received from the religious organization. Organizations shall provide notice to people receiving assistance of the right to object pursuant to this subsection (d).

(e) A religious organization's exemption provided under § 702 of the Civil Rights Act of 1964, codified in 42 U.S.C. § 2000e-1(a), regarding employment practices is not affected by its participation in, or receipt of, monies from programs described in this section. Nothing in this section allows religious organizations to discriminate in employment practices on the basis of race, age, color, sex or national origin.

(f) Except as otherwise provided by law, a religious organization shall not discriminate against a person in regard to rendering assistance funded under any program described in this section on the basis of religion, a religious belief or refusal to participate in a religious practice, or on the basis of race, age, color, sex or national origin.

(g) Except as provided in subsection (h), any religious organization that contracts to provide goods, services or assistance funded under any program is subject to audit by the comptroller of the treasury, and is required to comply with the same rules and laws as other contractors to account in accordance with generally accepted auditing principles for the use of the monies provided under the program.

(h) If a religious organization segregates public monies provided under these programs into separate accounts, only the programs funded by financial assistance provided with these monies are subject to audit by the comptroller of the treasury.

(i) Appeals from the decisions of the head of a state agency, board or commission may be made to the commissioner of finance and administration in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(j) No monies provided directly to institutions or organizations to provide services and administer programs under this section may be spent for sectarian worship, instruction or proselytization. This subsection (j) does not apply to the contracting for the services of chaplains by state and local governments.

(k) For the purposes of this section, "state and local governments" means state agencies, boards and commissions and political subdivisions of this state.

(l) No funds provided by any state or local government for goods and services to religious organizations shall supplant present funding of programs provided by such groups but shall be a supplement to the activities rendered by these groups.

12-3-309.

(a) Prohibited contracts:

(1) No state governmental entity shall contract to acquire goods or services from any person who knowingly utilizes the services of illegal immigrants in the performance of a contract for goods or services entered into with a state governmental entity.

(2) No person may contract to supply goods or services to a state governmental entity if that person knowingly utilizes the services of illegal immigrants in the performance of a contract to supply goods or services entered into with the state or a state entity.

(b) After January 1, 2007, no person may enter into a contract to supply goods or services to a state governmental entity without first attesting in writing that the person will not knowingly utilize the services of illegal immigrants in the performance of the contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract.

(c) If any person who contracts to supply goods or services to a state governmental entity, or who submits a response to contract to supply goods or services to a state governmental entity, is discovered to have knowingly utilized the services of illegal immigrants in the performance of the contract to supply goods or services to a state governmental entity, the chief procurement officer shall declare that person to be prohibited from contracting for or submitting a response for any contract to supply goods or services to a state governmental entity for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract to supply goods or services to a state governmental entity.

(d) Any person who is prevented from contracting for or submitting a response for a contract to supply goods or services to a state governmental entity for one (1) year pursuant to subsection (c) may appeal the imposition of the one-year prohibition by utilizing an appeals process to be established by the chief procurement officer and approved by the procurement commission.

(e) The chief procurement officer is authorized to promulgate rules and regulations to effectuate the purposes of this section and shall be approved by the procurement commission. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

12-3-310.

(a) As used in this section, "call center" includes a person who performs services, including, but not limited to, data entry services, electronic governmental transfers, or other electronic, telephone and telecommunication services.

(b) The chief procurement officer shall promulgate regulations pursuant to title 4, chapter 56, authorizing a preference in the evaluation of proposals for state contracts requiring vendors of call center services to only employ, use, or contract with citizens of the United States who reside in the United States, or any person authorized to work in the United States pursuant to federal law, including legal resident aliens in the United States to provide call center services.

(c) Any respondent seeking this preference shall supply such supporting documentation as the state may require and shall certify that it will provide services solely by citizens of the United States who reside within the United States, or persons authorized to work in the United States pursuant to federal law, including legal resident aliens in the United States. The certification shall acknowledge and confirm the right of the state to audit and monitor compliance and seek appropriate remedies for noncompliance.

SECTION 19. Tennessee Code Annotated, Title 12, Chapter 3, Part 4, is amended by adding the following language as a new section:

12-3-401.

(a) The chief procurement officer may authorize any or all state agencies to procure all or any specific types and classes of goods or services, without following the procedures relating to the requisitioning of such goods or services through the central procurement office. The comptroller of the treasury shall review and approve such delegations as required by procurement commission policy. The chief procurement officer shall consider the individual state agency's purchasing record in these delegations and shall periodically review purchasing activities of any state agency granted such delegation, and may reduce or revoke such delegated purchasing authority.

(b) It is intended that delegation of purchase authority may be made by state agency, by type of good or service, by dollar amount of procurement, or by any combination thereof, in order to reduce the procurement time required and to increase the amount of purchases made from any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business, as defined in § 12-3-514.

(c) Upon delegated authority, any procurement not exceeding fifty thousand dollars ($50,000), for which a source of supply has not otherwise been established, shall be made without requisitioning such goods or services through the central procurement office; provided, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

(d) All requisitions and solicitations provided for in this section shall be posted on the state procurement office's website, at a minimum providing the following information, as applicable, regarding each such procurement:

(1) Procuring agency;

(2) Requisition number;

(3) Vendor;

(4) Total amount of requisition;

(5) Line item of description; and

(6) Line item amount.

SECTION 20. Tennessee Code Annotated, Section 12-3-501, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-501.

Unless otherwise authorized by law, state contracts shall be awarded by competitive sealed solicitations by the central procurement office in the manner set forth in § 12-3-502, except as provided in § 12-3-401 and §§ 12-3-503 -- 12-3-508.

SECTION 21. Tennessee Code Annotated, Section 12-3-502, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-502.

(a) The central procurement office shall publicly advertise a copy of the solicitation. All responses received by the central procurement office shall be opened and examined at the time and place specified in the solicitation. Any and all responses may be rejected pursuant to subsection (b).

(b) Whenever the chief procurement officer approves the rejection of all responses for a certain solicitation, the chief procurement officer shall file a notice of such action with the comptroller of the treasury and shall take such action only for one (1) or more of the following reasons:

(1) Unreasonably high prices;

(2) Error in the solicitation;

(3) Cessation of need;

(4) Unavailability of funds; or

(5) Any other reason determined to be in the best interest of the state.

(c) Submission of a response shall not create rights, interests, or claims of entitlement in any respondent, including the lowest apparent respondent in terms of cost.

(d)(1) Correction or withdrawal of inadvertently erroneous responses, before or after award, or cancellation of awards or contracts based on such mistakes, shall be permitted with approval of the chief procurement officer. All cancellation of awards or contracts shall be filed with the comptroller of the treasury.

(2) After response opening, no changes in prices or other provisions of responses prejudicial to the interest of the state or fair competition shall be permitted.

(3) Except as otherwise provided by regulation or policy of the procurement commission, all decisions to permit the correction or withdrawal of responses, or cancel awards or contracts based on response mistakes, shall be supported by a written determination made by the chief procurement officer and such determination shall be filed with the comptroller of the treasury.

(e) Only criteria or factors set forth in the solicitation may be used in evaluating a response.

(f) After response evaluation and prior to award of the contract, the chief procurement officer shall issue a notice of intent to award to all respondents to the solicitation. Notification by the state of intent to award shall not create rights, interests, or claims of entitlement in any respondent.

(g) Upon issuance of the intent to award, all data relating to the procurement shall be made available for inspection to each respondent of the solicitation, upon request. No contract shall be awarded by the chief procurement officer without providing respondents a reasonable opportunity for inspection. The chief procurement officer shall establish procedures for providing inspection by respondents to solicitations. Such procedures shall be approved by the procurement commission. Notification by the state of intent to award shall not create rights, interests, or claims of entitlement in any respondent.

(h) Each contract shall be awarded in the name of the state, with reasonable promptness by written notice to the respondent to whom a contract will be awarded in accordance with the criteria for award as set forth in the solicitation.

(i) Procurement and performance bonds or other security may be required for any contract. Any such requirement shall be set forth in the solicitation. The chief procurement officer shall promulgate rules establishing the requirements for the use and appropriate amount of such bonds or other security with approval by the procurement commission.

SECTION 22. Tennessee Code Annotated, Section 12-3-503, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-503.

(a) The procurement commission may grant the chief procurement officer authority to establish informal solicitation rules, regulations, policies and procedures for procurements. The maximum amount of the procurement shall be determined in accordance with the following:

(1) If all of the members of the procurement commission agree, the amount shall be up to fifty thousand dollars ($50,000) or less; and

(2) Procurement requirements shall not be artificially divided in order to constitute an informal procurement under this section.

(b) The procurement commission may grant the chief procurement officer authority to establish small purchase rules, regulations, policies, and procedures. The maximum amount of the purchases shall be determined in accordance with the following:

(1) If all the members of the procurement commission agree, the amount shall be up to ten thousand dollars ($10,000) or less; and

(2) Purchasing requirements shall not be artificially divided in order to constitute a small purchase under this section.

(c) Notwithstanding subsections (a) and (b), such state agencies shall actively solicit responses from any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business in accordance with title 12, chapter 3, part 11.

SECTION 23. Tennessee Code Annotated, Section 12-3-504, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-504.

The chief procurement officer shall identify goods or services that may not be procured by competitive means because of the existence of a single source of supply. The chief procurement officer shall submit to the procurement commission, for approval rules, policies, and procedures prescribing the manner in which such procurements may be accomplished, which may include noncompetitive negotiation. Sole source goods and services shall be purchased only in accordance with these rules, policies, and procedures approved by the procurement commission.

SECTION 24. Tennessee Code Annotated, Section 12-3-505, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-505.

The chief procurement officer is authorized to purchase for a state governmental entity in the open market specific goods or services for immediate delivery to meet emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated volume of work, and acts of God. The chief procurement officer may delegate this authority to any state agency; provided, that a report on the circumstances of any such emergency and the actions taken by such state agency as a result of the emergency shall be transmitted in writing as soon as possible by such state agency to the chief procurement officer. The report shall set forth the prices at which goods and services were purchased and the total amount of the purchase. The chief procurement officer shall keep each report on file in the permanent records of the central procurement office. All emergency purchases shall be posted on the single public Internet website in such form as prescribed by the procurement commission. All emergency purchases shall, if practicable, be made on the basis of competitive procurement.

SECTION 25. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following language as a new § 12-3-506:

12-3-506.

In accordance with rules and regulations of the central procurement office approved by the procurement commission and adopted pursuant to title 4, chapter 56, part 1, and title 12, chapters 3 and 4, the chief procurement officer is authorized to negotiate with vendors who maintain a general services administration pricing agreement with the United States or any agency thereof; provided, that no contract executed under this section shall authorize a price higher than is contained in the contract between the general services administration and the affected vendor.

SECTION 26. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following language as a new § 12-3-507:

12-3-507.

Except as otherwise provided by law, a contract may be entered into by competitive negotiation when it is determined by the chief procurement officer that it is in the best interest of the state. Each use of competitive negotiation shall be subject to approval by the chief procurement officer and the comptroller of the treasury in accordance with rules, policies, and procedures of the procurement commission. Notice of such approved competitive negotiations shall be posted on the central procurement office's website.

SECTION 27. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following language as a new § 12-3-508:

12-3-508.

Subject to rules of the central procurement office approved by the procurement commission, the central procurement office shall purchase or contract for all 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, in such manner as the chief procurement officer deems to be in the best interest of the state.

SECTION 28. Tennessee Code Annotated, Section 12-3-509, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-509.

When any goods or services are received by a state agency, the state agency's receiving agent shall certify electronically or in writing that the goods or services received were equal in quality and quantity to those requisitioned or ordered. The certification shall accompany the voucher directing the payment. The state shall not remit funds in payment of any voucher unless the voucher is accompanied by the certification.

SECTION 29. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following language as a new § 12-3-510:

12-3-510.

Notwithstanding the provisions of § 12-3-502, all procurement records of the department and all records of the procurement commission shall be open and accessible to the public during the regular office hours of the central procurement office or state agency, when such inspections do not interfere with the orderly operation of the central procurement office or state agency.

SECTION 30. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following language as a new § 12-3-511:

12-3-511.

The central procurement office shall not honor or act upon any requisitions from any state agency without first having ascertained from the commissioner of finance and administration, or other responsible official, the availability of funds to cover the proposed expenditure.

SECTION 31. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following language as a new § 12-3-512:

12-3-512.

The central procurement office may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of goods or services with one (1) or more other states or local governments in accordance with an agreement entered into between the participants. All cooperative purchasing conducted under this section shall be awarded through full and open competition and pursuant to policies or rules and regulations approved by the procurement commission.

SECTION 32. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following language as a new § 12-3-513:

12-3-513.

(a) For a purchase of goods and services under this chapter, the central procurement office may purchase goods and services through a competitive reverse auction process that allows responses on specified goods or services electronically

and adjustments to pricing during a specified time period. An award shall be made to the offeror determined to be the lowest responsible and responsive respondent at the close of the specified solicitation period.

(b) Policies and procedures concerning this procurement methodology, including the criteria, and the evaluation process shall be developed by the central procurement office and approved by the procurement commission.

(c) This section shall not apply to:

(1) Construction services; or

(2) Architectural or engineering services.

SECTION 33. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following language as a new § 12-3-514:

12-3-514.

(a) Prior to the commencement of an action in court concerning the controversy, any actual respondent who claims to be aggrieved in connection with a procurement authorized under title 12, chapter 3, may protest to the chief procurement officer. The protest shall be submitted in writing within seven (7) calendar days after such claimant knows or should have known of the facts giving rise to the protest. Any issues raised by the protesting party after the seven-day period shall not be considered as part of the protest. In the case of a pending award, a stay of award in accordance with subsection (e) may be requested.

(b) The signature of an attorney or protesting party on a request for consideration, protest, motion, or other document constitutes a certification by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation. If a request for consideration, protest, pleading, motion, or other document is signed in violation of this subsection (b) before or after appeal to the chief procurement officer and the protest committee, the chief procurement officer or protest committee, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties, including the affected state agency, the amount of the reasonable expenses, including reasonable attorneys' fees incurred because of the filing of the protest, a petition for a stay of award, pleading, motion, or other paper.

(c) Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond. The protesting party shall post with the chief procurement officer, at the time of filing a notice of protest, a bond payable to the state in the amount of five percent (5%) of the lowest cost proposal evaluated or, if a protest is filed prior to the opening of cost proposals, the bond payable shall be five percent (5%) of the estimated maximum liability provided in the procurement document. The protest bond shall be in form and substance acceptable to the state and shall be immediately payable to the state conditioned upon a decision by the protest committee that:

(1) A request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the chief procurement officer or protest committee, in violation of subsection (b);

(2) The protest has been brought or pursued in bad faith; or

(3) The protest does not state on its face a valid basis for protest.

(d) The bond shall be payable to the state for any other reason approved by the protest committee. The state shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination by the chief procurement officer. If the protesting party appeals the chief procurement officer's determination to the protest committee, the chief procurement officer shall hold the protest bond until instructed by the protest committee to either keep the bond or return it to the protesting party.

(1) At the time of filing notice of a protest of a procurement in which the lowest bid or lowest evaluated cost proposal is less than one million dollars ($1,000,000), a minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business protesting party may submit a written petition for exemption from the protest bond requirement of subsection (c). The petition shall include clear evidence of a minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business status. On the day of receipt, the petition shall be given to the chief procurement officer. The chief procurement officer has seven (7) calendar days in which to make a determination. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted. Should the chief procurement officer deny an exemption from the requirement, the protesting party shall post the protest bond with the chief procurement officer as required in subsection (c) within five (5) calendar days of the determination.

(2) For purposes of this subdivision (d)(1):

(A) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(i) African American: a person having origins in any of the black racial groups of Africa;

(ii) Hispanic: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(iii) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(iv) Native American: a person having origins in any of the original peoples of North America;

(B) "Minority-owned business" means a minority-owned business that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background;

(C) "Small business" means a business that is independently owned and operated, has total gross receipts of not more than ten million dollars ($10,000,000) averaged over a three-year period, or employs no more than ninety-nine (99) persons on a full-time basis;

(D) "Tennessee service-disabled veteran-owned business" means a service-disabled veteran-owned business that is a continuing, independent, for-profit business located in this state that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans. In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veterans; and

(E) "Woman-owned business" means a woman-owned business that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more

women and whose management and daily business operations are under the control of one (1) or more women.

(3) The chief procurement officer, in consultation with the head of the state agency, has the authority to resolve the protest. The chief procurement officer shall have no longer than sixty (60) calendar days from receipt of a protest to resolve the protest. The final determination of the chief procurement officer shall be given in writing and submitted to the protestor and the protest committee, and the comptroller of the treasury. If the chief procurement officer fails to resolve the protest within sixty (60) calendar days, the protesting party may request that the protest committee meet to consider the protest.

(4) If a protest is not resolved by mutual agreement within sixty (60) calendar days, the protesting party may request the matter be considered at a meeting with the protest committee. The request for consideration before the protest committee shall be made in writing within seven (7) calendar days from the date of the chief procurement officer's final determination or within seven (7) calendar days following the chief procurement officer's failure to resolve the protest within sixty (60) calendar days after receipt of the protest.

(e) Prior to the award of a contract, respondents who have protested may submit to the chief procurement officer a written petition for stay of award. Such stay shall become effective upon receipt by the state. The state shall not proceed further with the procurement process or with the award of the contract until the protest has been resolved in accordance with this section, unless the protest committee makes a written determination that continuation of the procurement process or the award of the contract without delay is necessary to protect substantial interests of the state. It shall be the responsibility of the chief procurement officer, with the assistance of the procuring agency, to seek such a determination by the protest committee. The chief procurement officer shall provide the minutes of the protest proceedings to each committee member and to the comptroller of the treasury and shall post the final determination within fifteen (15) business days to the single public procurement website.

(f) Nothing in this section shall be construed to require a contested case hearing as set forth in the Uniform Administrative Procedures Act, compiled in chapter 5 of this title. The protesting party must exhaust all administrative remedies provided in this section prior to the initiation of any judicial review of the protest.

(g) Should a protest be received by the state subsequent to a contract being completely executed pursuant to a procurement process, the Tennessee claims commission has exclusive jurisdiction to determine all monetary claims against the state, including, but not limited to, claims for the negligent deprivation of statutory rights pursuant to § 9-8-307(a)(1)(N).

(h) Protests appealed to the chancery court from the protest committee shall be by common law writ of certiorari. The scope of review in the proceedings shall be limited to the record made before the protest committee and shall involve only an inquiry into whether the protest committee exceeded its jurisdiction, followed an unlawful procedure, or acted illegally, fraudulently, or arbitrarily without material evidence to support its action.

SECTION 34. Tennessee Code Annotated, Sections 12-3-515 through 12-3-531, are amended by deleting these sections in their entireties.

SECTION 35. Tennessee Code Annotated, Section 12-3-601, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-601.

(a) A contractor who makes a contract with the state under this chapter shall, except as provided in subsection (c), submit cost or pricing data, and shall certify that, to the best of its knowledge and belief, the cost of pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

(1) The pricing of any contract awarded pursuant to sole source procurement authority pursuant to § 12-3-504, where the total contract price is expected to exceed an amount established by the procurement commission; or

(2) The pricing of any change order or contract modification which is expected to exceed an amount established by the procurement commission.

(b) Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the state, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

(c) The requirements of this section need not be applied to contracts when:

(1) The contract price is based on adequate price competition;

(2) The contract price is based on established catalogue prices or market prices;

(3) Contract prices are set by law or regulation; or

(4) It is determined in writing in accordance with regulations promulgated by the procurement commission that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

SECTION 36. Tennessee Code Annotated, Section 12-3-602, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-602.

(a) The state may, at reasonable times, and subject to regulation of the procurement commission, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the state.

(b) The state may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data are required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(c) The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing. All contracts after July 1, 2013, shall include a provision with this statutory requirement and the provision cannot be amended or removed without the written consent of the comptroller of the treasury.

SECTION 37. Tennessee Code Annotated, Section 12-3-603, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-603.

The chief procurement officer shall propose regulations for approval by the procurement commission setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs; provided, that if a written determination is made by the chief procurement officer to justify such action, such cost principles may be modified by contract and reported to the comptroller of the treasury.

SECTION 38. Tennessee Code Annotated, Sections 12-3-604 through 12-3-612, are amended by deleting these sections in their entireties.

SECTION 39. Tennessee Code Annotated, Section 12-3-701, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-701.

(a) The chief procurement officer, pursuant to policies or rules and regulations of the procurement commission, may authorize the procurement of goods and services through a solicitation process in which a limitation of liability is authorized by the chief procurement officer and set forth in the documents initiating the solicitation process. Such procurement may be undertaken only in accordance with rules and regulations describing the circumstances in which such procurement may be permitted and what types of limitations of liability may be allowed.

(b)(1) The rules and regulations, as presented to the procurement commission by the chief procurement officer, may describe the circumstances in which such procurement may be permitted and the types of limitations of liability to be allowed. The chief procurement officer may not authorize limitation of the liability of a contractor to an amount less than two (2) times the value of the contract unless the chief procurement officer determines, and the comptroller of the treasury approves, that:

(A) Allowing the limitation of liability is necessary to prevent harm to the state from failing to obtain the goods or services sought, or from obtaining the goods or services at a higher price, if the state refused to allow a limitation of liability as long as all respondents are offered the same opportunity as provided in the solicitation;

(B) The limitations and any alternative contract language are commercially reasonable in light of the risks to the state created by the type of goods or services purchased and the purposes for which they will be used; and

(C) The state shall not agree to limit the liability of any contractor for intentional torts, criminal acts, or fraudulent conduct.

(2) The rules and regulations shall also allow the chief procurement officer to authorize negotiation of a limitation on a contractor's liability with comptroller of the treasury approval in circumstances when the applicable procurement process has failed to provide a qualified respondent.

(c) Notwithstanding the foregoing or any other law to the contrary, the chief procurement officer and the comptroller of the treasury shall permit a limitation of liability to an amount not less than two (2) times the maximum liability under the contract. The limitation of liability shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. If the chief procurement officer determines that it is necessary to protect the interests of the state to increase the limitation of liability to an amount greater than that authorized under this subsection (c), the chief procurement officer, comptroller of the treasury and the commissioner of finance and administration may increase the limitation of liability of the contractor to an amount in excess of two (2) times the value of the contract.

(d) The purpose of this section is to limit the monetary damages recoverable by the state in a claim or legal action against its contractor. This section shall not be construed to authorize any further limitation on the legal rights of the state, and shall not constitute a waiver of sovereign immunity of the state, and shall not authorize a cause of action against the state in any jurisdiction.

SECTION 40. Tennessee Code Annotated, Sections 12-3-702 through 12-3-704, are amended by deleting these sections in their entireties.

SECTION 41. Tennessee Code Annotated, Section 12-3-801, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-801.

Whenever possible, all procurement specifications and scopes of work for goods and services to be purchased by the central procurement office or state agencies shall be worded or designed to permit open and competitive soliciting for the supplying of the goods or services to which they apply and all proprietary specifications and scopes of work shall be developed in accordance with rules of the central procurement office approved by the procurement commission.

SECTION 42. Tennessee Code Annotated, Section 12-3-802, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-802.

It is the duty of all state agencies to furnish to the chief procurement officer recommended specifications for all goods and services required and to be required by such state agencies. It is the duty of the chief procurement officer to canvas the recommended specifications and either approve or modify the standard specifications and scopes of work so recommended, subject to the policy and criteria of the procurement commission. All standard specifications and scopes of work shall remain on file in the central procurement office and shall be posted on the central procurement office's website. Each standard specification adopted for any good or service shall fit, insofar as possible, the requirements of the majority of the state agencies that use the same.

SECTION 43. Tennessee Code Annotated, Section 12-3-803, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-803.

After the approval and adoption of standard specifications in the manner provided in § 12-3-802, changes in, alterations to, modifications of, or additions to such standard specifications may be made in accordance with rules or policy of the central procurement office as approved by the procurement commission.

SECTION 44. Tennessee Code Annotated, Section 12-3-804, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-804.

The chief procurement officer shall make use of standard specifications whenever practicable. Goods and services purchased without standard specifications shall be made in accordance with policies and criteria established by the procurement commission.

SECTION 45. Tennessee Code Annotated, Section 12-3-805, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-805.

Whenever any department, institution, or agency of state government requisitions any goods or services for which a standard specification has not been adopted and approved, it shall be accompanied by or contain a recommended specification for such goods or services.

SECTION 46. Tennessee Code Annotated, Section 12-3-806, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-806.

(a) Whenever the chief procurement officer determines it to be advantageous, then specifications for office goods to be purchased by the state agencies shall be worded or designed so as to permit remanufactured office goods to be eligible for purchase. Such specifications may provide that remanufactured office materials, supplies and equipment be comparable in use and quality to new or currently manufactured office materials, supplies and equipment.

(b) The chief procurement officer shall prepare and submit to the governor, the speakers of the senate and the house of representatives, the chairs of the committees on government operations, and the procurement commission, a biennial report concerning the purchase of remanufactured office goods. Such report shall include the amount and frequency of such purchases, the cost savings realized by the state as a result of such purchases, and any remaining issues or areas for improvement.

SECTION 47. Tennessee Code Annotated, Section 12-3-807, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-807.

(a) Standard specifications adopted for lubricating motor oil for competitive solicitations to be let by the central procurement office, or by the appropriate

purchasing agencies for any political subdivision of the state, shall be prescribed to include re-refined or recycled lubricating motor oil. Such specifications may exclude re-refined or recycled lubricating motor oil for circumstances or equipment that require specialized treatment, upon submission of documented evidence to the procurement commission or the appropriate purchasing agency of the political subdivision to substantiate each such claim for exclusion.

(b) Standard specifications adopted for lubricating motor oil for competitive solicitations to be let by any state agency or by any political subdivision of the state, shall be prescribed to include re-refined or recycled lubricating motor oil. Such specifications may exclude re-refined or recycled lubricating motor oil for circumstances or equipment that require specialized treatment, upon submission of documented evidence to the appropriate departmental, institutional or agency head to substantiate each such claim for exclusion. The requirements of this section shall not be construed to prohibit such state agency from purchasing and contracting for the purchase of such re-refined or recycled lubricating motor oil through the central procurement office or through the appropriate local purchasing agency.

(c) Any nonprofit corporation receiving funding from the state or contracting with any department, institution, or agency of state government or political subdivision of the state to provide services to the public, shall be authorized to purchase and contract for the purchase of such re-refined or recycled lubricating motor oil as provided in this section through the central procurement office under this chapter or through the appropriate local purchasing agency.

(d)(1) The central procurement office shall compile and publish a list of business entities that commercially distribute re-refined or recycled lubricating motor oil that complies with the standard specifications adopted by the central procurement office pursuant to this section. The central procurement office shall make such list available to the various entities and political subdivisions of state government. The central procurement office shall mail such list to the chief executive of each county and each municipality.

(2) Prior to accepting competitive responses for a contract concerning lubricating motor oil, a county or municipality shall notify each business entity on the central procurement office's list of relevant facts concerning such proposed contract.

SECTION 48. Tennessee Code Annotated, Section 12-3-808, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-808.

(a) Specifications for purchases of chemical products pursuant to this chapter shall require that the manufacturer of the chemical products create and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDSSEARCH repository or the manufacturer's website so that the information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public. In lieu of posting a MSDS on MSDSSEARCH, a respondent shall include the manufacturer's URL for their MSDS in the response proposal or purchase order.

(b) The chief procurement officer shall post on the chief procurement officer's website the universal resource locator (URL) for MSDSSEARCH.

SECTION 49. Tennessee Code Annotated, Sections 12-3-809 through 12-3-813, are amended by deleting these sections in their entirety.

SECTION 50. Tennessee Code Annotated, Section 12-3-901, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-901. This part shall be known as and may be cited as the "Life Cycle Cost and Procurement Act of 1978."

SECTION 51. Tennessee Code Annotated, Section 12-3-902, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-902.

As used in this part, unless the context otherwise requires:

(1) "Energy efficiency standard" means a performance standard which prescribes the relationship of the energy use of a product to its useful output of services;

(2) "Major energy-consuming product" means any article so designated by the chief procurement officer in consultation with the central procurement office staff;

(3) "Political subdivision" means any city, town, municipality or county within the state; and

(4) "State procurement commission" means the commission established as set forth in title 4, chapter 56.

SECTION 52. Tennessee Code Annotated, Section 12-3-903, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-903.

It is hereby declared to be the policy of the state and its political subdivisions to use the life cycle costs of commodities as developed and disseminated by the federal government when purchased by the state or its political subdivisions where feasible as provided in this part.

SECTION 53. Tennessee Code Annotated, Section 12-3-904, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-904.

The chief procurement officer, to the maximum extent feasible, shall determine which commodities and products purchased by the state may be purchased according to energy efficiency standards based on rules and regulations, policies, and procedures approved by the procurement commission.

SECTION 54. Tennessee Code Annotated, Section 12-3-905, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-905.

(a) The chief procurement officer, in consultation with the central procurement office staff, shall adopt rules and regulations approved by the procurement commission relative to energy efficiency standards for major energy-consuming products to be procured by the state.

(b) When federal energy efficiency standards exist, the procurement commission, in consultation with the department of general services, shall, where feasible, adopt standards at least as stringent as the federal standards.

(c) For the purpose of implementing this part only, the central procurement office shall advise and consult with the chief procurement officer as an ex officio member.

(d) All future office equipment, appliances, lighting and heating and cooling products and systems purchased by and for state agencies shall be Energy Star qualified; provided, that such Energy Star qualified products and systems are commercially available.

(e) Existing purchasing contracts for all state agencies that do not provide as options Energy Star qualified office equipment, appliances, lighting and heating and cooling products and systems shall not be renewed upon expiration. All future contracts for state agencies shall provide as options Energy Star qualified office equipment, appliances, lighting and heating and cooling products and systems.

(f) The central procurement office, in consultation with the department of finance and administration, shall establish and publish guidelines providing direction to all state agencies regarding implementation of this section.

SECTION 55. Tennessee Code Annotated, Section 12-3-906, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-906.

When energy efficiency standards are established, the procurement commission shall adopt rules requiring life cycle costs to be used by the chief procurement officer in contracting for major energy-consuming products. In determining life cycle costs, the procurement commission and the chief procurement officer may consider the acquisition cost of the product, the energy consumption and the projected cost of energy over the useful life of the product, and the anticipated resale or salvage value of the product.

SECTION 56. Tennessee Code Annotated, Section 12-3-907, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-907.

Except when private act or state law prohibits, every political subdivision shall adopt and incorporate in its procurement policies energy efficiency standards and life cycle costing employed by the state in its procurement policies.

SECTION 57. Tennessee Code Annotated, Section 12-3-908, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-908.

(a) Executory contracts for the purchase of commodities by a political subdivision included in this part shall be voidable by the circuit courts upon the bringing of an action by an aggrieved party.

(b) The court may void the contract upon the showing by the aggrieved party that:

(1) The party is a seller of the commodity;

(2) The party is doing business in the state;

(3) The commodity to be sold has an energy efficiency rating and life cycle cost lower than the commodity contracted for by the purchaser;

(4) The purchaser is a political subdivision, and the standard for the commodity has been adopted for one (1) year by the procurement commission and has not been incorporated or adopted by the political subdivision; and

(5) The aggrieved party is ready, willing and able, without any other legal constraints, to sell the commodity to the purchaser.

SECTION 58. Tennessee Code Annotated, title 12, chapter 3, part 9, is amended by adding appropriately designated sections as follows:

12-3-909.

The chief procurement officer shall provide technical assistance to aid in the development or implementation of energy efficiency standards for procurement policies to political subdivisions that request assistance.

12-3-910.

The appropriate state agencies shall cooperate and coordinate their efforts in the development and implementation of energy efficiency standards for procurement policies to the fullest extent possible with the Tennessee municipal league, the municipal technical advisory service, the county technical advisory service, the Tennessee county services association, and any other appropriate state or local agency or group.

12-3-911.

Nothing in this part shall be construed to prohibit the adoption of an energy efficiency standard by a political subdivision when that standard has not been adopted by rules of the procurement commission, or where the standard proposed to be adopted by the political subdivision is more stringent than the standard adopted by the rules of the procurement commission.

12-3-912.

The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall apply to this part.

SECTION 59. Tennessee Code Annotated, Section 12-3-1001, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1001.

No person, firm or corporation shall be considered for contract award by the central procurement office under this chapter or under the rules and regulations established by the central procurement office, unless and until such person, firm, or corporation makes proper application to the central procurement office, as prescribed by rule or policy approved by the procurement commission, to be placed upon the permanent register of respondents. The central procurement office shall establish and maintain the register under and in compliance with the rules and regulations adopted by the procurement commission.

SECTION 60. Tennessee Code Annotated, Section 12-3-1002, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1002.

All such applications by prospective respondents shall contain:

(1) A verified statement by the applicant disclosing and setting forth the types or classes of goods or services which the applicant desires to furnish and is able to furnish to the state or any state agency;

(2) A statement disclosing whether such applicant will furnish such goods or services as a manufacturer, dealer, agent, distributor, factor, or otherwise; and

(3) Such other information as may be required by the central procurement office to establish the ability of the applicant to perform any future undertaking for the state.

SECTION 61. Tennessee Code Annotated, Section 12-3-1003, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1003.

The central procurement office shall establish and maintain from the permanent register of respondents a permanent mailing list, which shall include the names and mailing addresses of all interested respondents.

SECTION 62. Tennessee Code Annotated, Section 12-3-1004, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1004.

Notwithstanding any provision of law, rule or regulation to the contrary, the central procurement office may satisfy any requirement for mailing by distributing solicitations electronically and posting solicitations to the central procurement office Internet website. In addition, the central procurement office may receive responses electronically. In order to assure the fullest possible participation of small businesses and minority-owned businesses, the central procurement office shall not require such small businesses and minority-owned businesses to receive or respond to solicitations electronically.

SECTION 63. Tennessee Code Annotated, Sections 12-3-1007 through 12-3-1012, are amended by deleting these sections in their entirety.

SECTION 64. Tennessee Code Annotated, Section 12-3-1101, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1101.

Sections 12-3-1101 -- 12-3-1108 shall be known and may be cited as the "Tennessee Minority-Owned, Woman-Owned and Small Business Procurement and Contracting Act."

SECTION 65. Tennessee Code Annotated, Section 12-3-1102, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1102.

As used in this part, unless the context otherwise requires:

(1) "Department" means the department of general services;

(2) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(A) African American, a person having origins in any of the black racial groups of Africa;

(B) Hispanic, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(C) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(D) Native American, a person having origins in any of the original peoples of North America;

(3) "Minority-owned business" means a minority-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background;

(4) "Procurement and contracting" means the procurement of equipment, supplies, personal services, professional services, consulting services, construction contracts, and architectural and engineering services;

(5) "Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in this state and has total gross receipts of not more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis;

(6) "State agency" means any department, office, institution of higher education, board, commission, or any other state agency that receives state funds;

(7) "Tennessee service-disabled veteran" means any person who served honorably on active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service;

(8) "Tennessee service-disabled veteran-owned business" means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function, and:

(A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;

(B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or

(C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veterans;

(9) "Tennessee small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis; and

(10) "Woman-owned business" means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

SECTION 66. Tennessee Code Annotated, Section 12-3-1103, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1103.

(a) The procurement commission is authorized to adopt rules and regulations establishing criteria and standards for minority-owned, woman-owned, Tennessee service-disabled veteran-owned and Tennessee small businesses that are eligible to be included under this part. Such rules and regulations shall include methods by which eligibility can be verified and the business deemed certified.

(b) Such criteria and standards for eligibility shall include, but not be limited to, the number of employees, the total gross receipts or annual sales volume, including ownership and control.

(c) The maximum number of employees and the maximum dollar value of a small business under such rules and regulations may vary from industry to industry to the extent necessary to reflect the differing characteristics of any relevant factors of each particular industry.

(d) The governor's office of diversity business enterprises shall implement and administer a certification program and publish a directory of businesses certified as Tennessee small businesses and diversity business enterprises.

(e) Any business desiring to be certified as a Tennessee small business or diversity business enterprise shall make application to the governor's office of diversity business enterprises on an application as prescribed by such office.

SECTION 67. Tennessee Code Annotated, title 12, chapter 3, part 11, is amended by adding appropriately designated sections as follows:

12-3-1104.

(a)(1) All state agencies are required to actively solicit bids and proposals for equipment, supplies, personal services, professional services, consulting services, construction contracts, and architectural and engineering services from a minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business in order to strive to obtain a fair proportion of procurements from any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business.

(2) The amount of fair proportion shall be recommended annually by the governor's office of diversity business enterprises to the procurement commission for its review and approval. In annually determining such amount of fair proportion, the procurement commission shall establish, based on the recommendation of the governor's office of diversity business enterprises a separate amount of fair proportion for each of the four (4) subcategories of minority-owned businesses set forth within § 12-3-1102 woman-owned, Tennessee service-disabled veteran-owned businesses and small businesses. Nothing in this part shall be construed as establishing any mandatory goal or quota with respect to minority-owned business, woman-owned business, service-disabled veteran-owned business, or small businesses.

(b) Procurements shall not be deemed to be from either minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business if the business with which such contracting is done is owned by or is under the controlling interest of another business which exceeds the limitations of § 12-3-1103. No minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business to which a contract has been awarded shall subcontract any portion of such contract with any business which exceeds the limitations of § 12-3-1103 and continue to maintain eligibility under this part without express approval of the chief procurement officer.

(c) As used in subsection (a), "actively solicit bids and proposals" may include contacting the governor's office of diversity business enterprises; reviewing compiled directories of a minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business; purchasing publication of notices within newspapers of general circulation or through electronic media; and inviting any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business to submit bids or to obtain information pertaining to the submission of bids.

12-3-1105.

The departments of general services, finance and administration, transportation and economic and community development, and the state building commission shall cooperate with the governor's office of diversity business enterprises in the design and implementation of procedures for the identification of any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business, the selection for bid and proposal lists and the monitoring of procurements from minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business.

12-3-1106.

(a) The chief procurement officer, as director of the governor's office of diversity business enterprises, shall appoint a diversity business program director to work in conjunction with the departments of general services, finance and administration, transportation, economic and community development and the state building commission to:

(1) Compile and maintain a comprehensive list of any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business by cooperating with both governmental and private sector entities in locating potential sources for various products and services;

(2) Assist any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business in complying with state procurement and contracting procedures and requirements;

(3) Examine requests from state agencies for the purchase of goods or services to help determine which solicitations may offer increased opportunities for any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business; and

(4) Make recommendations to appropriate state agencies for the simplification of procurement and contract specifications and terms in order to increase the opportunities of participation by any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business.

(b) All state agencies shall fully cooperate with the governor's office of diversity business enterprises and shall provide staff support and any other assistance upon request of the chief procurement officer. This cooperation specifically includes, but is not limited to, establishing and striving to achieve annual state agency level internal goals for minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business contracting. In establishing and striving to achieve these annual goals, each agency shall work closely with the governor's office of diversity business enterprises. Each agency shall provide as requested to the governor's office of diversity business enterprises periodic reports on upcoming procurement and contract opportunities and on the level of participation by minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business in that agency's procurements and contracts.

12-3-1107.

(a) The chief procurement officer shall annually report, on or before each December 31, to the governor and to each member of the general assembly concerning the awarding of purchases to minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business and the total value of awards made during the preceding fiscal year under this part. The chief procurement officer shall also include in such annual report:

(1) The number of solicitations of minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business by category;

(2) The number of responses received from minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business by category; and

(3) The dollar amount of purchases awarded to such businesses by category.

(b) In annually reporting the information on any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business, based upon information provided by vendors, the chief procurement officer shall, in a separate section of the report, indicate the number of businesses solicited within each of the four (4) subcategories enumerated within § 12-3-1102, the number of responses received from each of the four (4) subcategories enumerated within § 12-3-1102, and the total number and dollar amount of all purchases awarded within each of the four (4) subcategories enumerated within § 12-3-1102. For purposes of evaluation, the report shall also indicate the total number and dollar amount of all purchases by all state agencies during the reporting period.

12-3-1108.

All departments, agencies and institutions of state government that purchase meat, meat food products or meat by-products, as defined in § 53-7-202, with state funds shall give preference to producers located within the boundaries of this state when awarding contracts or agreements for the purchase of such meat or meat products, so long as the terms, conditions and quality associated with the in-state producers' proposals are equal to those obtainable from producers located elsewhere.

12-3-1109.

All public education institutions using state funds to purchase meat, meat food products, or meat by-products, as defined in § 53-7-202, shall give preference in awarding contracts or agreements for the purchase of such meat or meat products to producers located within the boundaries of this state so long as the terms, conditions and quality associated with the in-state producers' proposals are equal to those obtainable from producers located elsewhere.

12-3-1110.

Notwithstanding any provision of law to the contrary, all state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities shall purchase coal mined in this state if such coal is available at a delivered price that is equal to or less than coal mined outside the state.

12-3-1111.

Notwithstanding any provision of law to the contrary, all state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities shall purchase natural gas produced from wells located in the state if such gas is available at a price which is equal to or less than natural gas produced from wells located outside the state, transportation costs taken into account.

12-3-1112.

(a) There is created the governor's office of diversity business enterprises to administer this part. All positions, resources and functions of the governor's office of diversity business enterprises existing within the department of general services shall be transferred to the procurement office on October 1, 2011.

(b) The office of diversity business enterprises shall assist small businesses and businesses owned by minorities and women to develop into viable, successful businesses. This work shall include assisting these businesses to compete successfully for the state's expenditures for goods and services.

(c) Each state agency shall designate a staff person as a small business liaison representative to the governor's office of diversity business enterprises to

coordinate the agency's efforts to utilize Tennessee small businesses and diversity business enterprises in their procurement and contracting opportunities.

(d) After appointment of the chief procurement officer, such officer, in consultation with the department of general services and the department of economic and community development, shall study opportunities available to Tennessee small businesses and diversity business enterprises in state contracting and the potential effect of enhancing such opportunities through utilization of monetary allowances. It is the legislative intent that such study shall, insofar as possible, assess the impact on Tennessee small businesses and diversity business enterprises that would have occurred if monetary allowances of varying amounts had been available. Further, it is the legislative intent that such study shall estimate the costs to the state that would have resulted from such monetary allowances.

(e) The small business advocate within the office of the comptroller of the treasury shall be qualified by training or relevant and recent experience in administering programs to encourage and enhance economic opportunities for small businesses, woman-owned businesses and minority-owned businesses. At least annually, the advocate shall attend training or other specialized instruction to enhance understanding of the particular obstacles impeding woman-owned and minority-owned businesses from normal entry into the economic mainstream. Such training shall be provided by the governor's office of diversity business enterprises in the normal course of business as part of the regular training program for state agencies. When the advocate position is filled by reassigning a current employee, such employee shall receive the requisite training prior to assuming the advocate duties.

12-3-1113.

(a) Notwithstanding any other provision of law to the contrary, all departments and agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Tennessee respondents as follows:

(1) Goods produced in this state or offered by Tennessee respondents shall be given equal preference if the cost to the state and quality are equal; and

(2) Agricultural products grown in this state shall be given first preference and agricultural products offered by Tennessee respondents shall be given second preference, if the cost to the state and quality are equal.

(b) If goods, including agricultural products, produced or grown in this state or offered by Tennessee respondents are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

(c) As used in this section:

(1) "Agricultural products" includes textiles and other similar products; and

(2) "Tennessee respondents" means a business:

(A) Incorporated in this state;

(B) That has its principal place of business in this state; or

(C) That has an established physical presence in this state.

(d) The commission and all state agencies making purchases of vegetation for landscaping purposes, including plants, shall give preference to Tennessee vegetation native to the region if the cost to the state is not greater and the quality is not inferior.

(e) All departments and agencies procuring services shall give preference to services offered by a Tennessee respondent if:

(1) The services meet state requirements regarding the service to be performed and expected quality; and

(2) The cost of the service does not exceed the cost of other similar services of similar expected quality that are not offered by a Tennessee respondent.

SECTION 68. Tennessee Code Annotated, Section 12-3-1201, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1201.

(a) The central procurement office may, upon request, purchase goods and services for any county, city, municipality, special district, school district, other local governmental unit of the state, or quasi-governmental entity organized under a city, municipality, or county. The purchases shall be made on the same terms and under the same rules and regulations as now provided for the purchase of goods and services by the central procurement office. The cost of any purchase made pursuant to this section shall be borne by the local governmental unit concerned. The central procurement office has the power to promulgate all rules and regulations necessary for the operation of this section, subject to the approval of the procurement commission.

(b) It is the intent of this section that the central procurement office advise local governments of the benefits to be derived from the use of the purchasing procedures authorized herein. Where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive procurement method, the local unit of government may, notwithstanding the local or private act, charter, or general law, purchase, without public advertisement or competitive soliciting, under the provisions of contracts or price agreements entered into by the central procurement office.

(c) To the extent permitted by federal law or regulations, local governments may make purchases of goods, except motor vehicles, or services included in federal general service administration contracts or other applicable federal open purchase contracts either directly or through the appropriate state agency; provided, that no purchase under this section shall be made at a price higher than that which is contained in the contract between the general services administration and the vendor affected.

(d)(1) Except as provided in subdivision (d)(5), when any local or private act, charter, or general law requires that a local governmental unit purchase by competitive soliciting, the local unit of government may, notwithstanding the local or private act, charter, or general law, purchase, without public advertisement or competitive soliciting, any item from local sources if such item is available for purchase under the provisions of contracts or price agreements entered into by the central procurement office, and such item is available at the same or lower cost from such local sources. This subsection (d) shall apply only in cases where the local governmental entity is not permitted to purchase from an existing contract established by the central procurement office. Any item purchased locally must be of equal or better specifications than the item under the competitive contract.

(2) The legislative body of a county by resolution or a municipality by ordinance may establish and adopt a program to encourage participation in government purchasing programs by minority-owned businesses. Such programs may include set-aside provisions which conform to federal law.

(3) This subsection (d) shall be permissive relative to sellers of motor vehicles.

(4) This subsection (d) shall have no effect unless it is approved by a two-thirds (2/3) vote of the local legislative body and such approval is filed with the comptroller of the treasury.

(5) This subsection (d) does not apply in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), or in a county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census.

SECTION 69. Tennessee Code Annotated, Section 12-3-1202, is amended by deleting the section in its entirety and by substituting instead the following:

12-3-1202.

(a) Notwithstanding any charter, private act, or general law requirements, any municipality or any county may purchase used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any federal, state, or local governmental unit or agency without public advertisement and competitive soliciting.

(b) Notwithstanding any charter, private act, or general law requirements, any municipality or any county may purchase used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any private individual or entity without public advertisement and competitive soliciting as long as the purchasing government documents the general range of value of the purchased item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser, and the price is not more than five percent (5%) higher than the highest value of the documented range.

SECTION 70. Tennessee Code Annotated, Title 12, Chapter 3, Part 12, is amended by adding appropriately designated sections as follows:

12-3-1203.

(a) Any municipality, county, utility district, or other local governmental unit of the state may, upon request, purchase supplies, equipment, and services for any other municipality, county, utility district, or other local governmental unit.

(1) The purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity.

(2) The cost of the purchase shall be borne by the local government for which the purchase was made.

(3) Where the local government making the request is required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

(b)(1) Any local education agency (LEA) may purchase equipment under the same terms of a legal bid initiated by any other LEA in Tennessee.

(2)(A) Any LEA may purchase directly from a vendor the same equipment at the same price and under the same terms as provided in a contract for such equipment entered into by any other LEA.

(B) Any LEA which purchases equipment under this subsection (b) shall directly handle payment, refunds, returns, and any other communications or requirements involved in the purchase of the equipment without involving the LEA which originated the contract. The originating LEA shall have no liability or responsibility for any purchases made by another LEA under a contract which the originating LEA negotiated and consummated.

(c)(1) Any municipality, county, utility district, or other local governmental unit of this state may purchase supplies, goods, equipment, and services under contracts or price agreements entered into by any other local governmental unit of this state. Such purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity. Any local governmental unit that purchases supplies, goods, equipment, or services under this section shall directly handle payment, refunds, returns, and any other communication or requirements involved in the purchase without involving the local governmental unit that originated the contract. The originating local governmental unit shall have no liability or responsibility for any purchases made by another local governmental unit under a contract that the originating local governmental unit negotiated and consummated. Where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive bidding, the local governmental unit may, notwithstanding the local or private act, charter, or general law,

purchase without public advertisement or competitive bidding in accordance with this section.

(2) This subsection (c) shall not apply to:

(A) Purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in § 12-3-1208; and

(B) Purchases related to any transportation infrastructure project, including, but not limited to, projects for the construction or improvement of streets, highways, bridges, tunnels, or any roadway related facility.

12-3-1204.

(a) As used in this section, "municipality," "county," and "metropolitan government" apply only to municipalities, counties, and metropolitan governments with a population greater than one hundred fifty thousand (150,000), according to the 1990 federal census or any subsequent federal census.

(b) In any municipality, county, or metropolitan government, notwithstanding any charter provision, private act, or other provision of law, a purchase, lease, or lease-purchase must be preceded by competitive solicitation only if the purchase, lease, or lease-purchase exceeds ten thousand dollars ($10,000).

(c) When the charter of a metropolitan government requires that purchases be made on the basis of competitive bidding, notwithstanding subsection (b), "competitive soliciting" for the metropolitan government means:

Dollar Amount of Purchase	**Requirement**
$1,000.00 to $3,999.99	Three (3) verbal (including telephone) quotations when possible.
$4,000 to $9,999.99	Three (3) written (including fax) quotations when possible.
$10,000 and above	Competitive sealed bids or proposals for non-emergency and non-proprietary product purchases.

(d) Any municipality, county, or metropolitan government may retain present competitive soliciting requirements and may retain the right to establish, in accordance with charter amendment or private act, whichever is applicable, different dollar amount thresholds and different requirements for competitive bids and competitive proposals from those established in this section.

(e) Nothing in this section shall be deemed to expressly or impliedly repeal § 7-52-117, or any part of that section.

(f) This section shall not supersede or be construed to supersede § 12-3-1201.

12-3-1205.

(a) Any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one (1) or more other local governments in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between local governments. Where the participants in a joint or multi-party contract are required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

(b)(1) Notwithstanding any other law to the contrary, any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the

procurement of any goods, supplies, services, or equipment with one (1) or more other governmental entities outside this state, to the extent the laws of the other state permit the joint exercise of purchasing authority, in accordance with an agreement entered into between or among the participants; provided, such goods, supplies, services, or equipment were procured in a manner that constitutes competitive bidding and were advertised, evaluated, and awarded by a governmental entity and made available for use by other governmental entities.

(2) A municipality, county, utility district, or other local government of the state may participate in a master agreement by adopting a resolution accepting the terms of the master agreement. If a participant in a joint or multi-party agreement is required to advertise and receive bids, then it will be deemed sufficient for those purposes that the purchasing entity or the entity that procured the bid complied with its own purchasing requirements. The participant shall acquire and maintain documentation that the purchasing entity or entities that procured the bid complied with its own purchasing requirements.

(3) The powers conferred by this section are in addition and supplemental to the powers conferred by any other law, and any limitations imposed by this section shall not affect powers conferred by any other law.

(4) This subsection (b) shall not apply to:

(A) Purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in § 12-3-1208; or

(B) Purchases of construction, engineering or architectural services, or construction materials.

(c) The chief procurement officer may collect information from municipalities, counties, utility districts, or any other local government unit concerning the type, cost, quality, and quantity of commonly used goods, supplies, services, or equipment being procured under cooperative purchasing agreements. The chief procurement officer may make available all such information to any municipality, county, utility district, or other local government unit upon request.

12-3-1206.

(a) Notwithstanding any other provision of law, a county, municipality and metropolitan government may transfer the ownership of assets for fire protection purchased through or with the proceeds of federal, state or local grants to volunteer fire departments within such county, municipality or metropolitan area; provided, that such volunteer fire departments are registered as non-profit organizations with the office of the secretary of state.

(b) This section shall have no effect in a county, municipality or metropolitan area unless it is approved by the appropriate legislative body.

12-3-1207.

(a) Any municipality may use competitive sealed proposals to purchase goods and services rather than competitive sealed bids when the municipal governing body, acting under the restrictions and requirements of this section and a procurement code adopted by the governing body, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the municipality. In actual emergencies caused by unforeseen circumstances, such as natural or human-made disasters, delays by contractors, delays in transportation, or unanticipated volume of work, purchases through competitive sealed proposals may be made without specific authorizing action of the municipal governing body. A record of any emergency purchase shall be made by the person or body authorizing the emergency purchase, specifying the amount paid, the items and services purchased, from whom the purchase was made, and the nature of the emergency. A report of the emergency purchase through competitive sealed proposals containing all relevant information shall be made as soon as possible by the person or body authorizing the purchase to the municipal governing body.

(b) In the decision to use competitive sealed proposals, the governing body shall follow a procurement code, which shall be adopted by the municipality by ordinance before purchases may be made under this section. The code shall contain criteria for purchasing through competitive sealed proposals and procedures consistent with this section.

(c) The procurement code shall provide that competitive sealed proposals may be used only when qualifications, experience, or competence are more important than price in making the purchase and:

(1) When there is more than one (1) solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or

(2) When there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one (1) or more solutions.

(d) The municipal technical advisory service of the University of Tennessee's institute for public service, in conjunction with the comptroller of the treasury's office, shall develop a model procurement code that may be adopted by any municipality to guide the governing body and purchasing agent in making purchases through requests for competitive sealed proposals. The model procurement code shall contain provisions allowing an aggrieved respondent to protest the intended award to another respondent if the protest is filed within seven (7) calendar days after the intended award is announced. The protest shall be filed with and decided by the municipal governing body.

(e) Adequate public notice of the request for competitive sealed proposals shall be given in the same manner provided for competitive sealed bids.

(f) Competitive sealed proposals shall be opened in a manner that avoids disclosure of contents to competing respondents during the negotiation. The proposals shall be open for public inspection after the intent to award the contract to a particular respondent is announced.

(g) The request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

(h) As provided in the request for competitive sealed proposals and in the procurement code, discussions may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with responsible respondents who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. These respondents shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before the intent to award to a particular respondent is announced to obtain the best and final offers. In conducting discussions, the purchasing agent and other municipal personnel may make no disclosure to any respondent of any information derived from proposals submitted by competing respondents.

(i) The award shall be made to the responsible respondent whose proposal the governing body determines is the most advantageous to the municipality, taking into consideration price and the evaluation factors set out in the request for competitive sealed proposals. No other factor may be used in the evaluation. The purchasing agent shall place in the contract file a statement containing the basis on which the award was made.

(j)(1) A governmental utility board shall have the same rights and be subject to the same restrictions and requirements as apply to a municipal governing body under this section. The governmental utility board shall adopt a procurement code by resolution before purchases may be made under this section.

(2) For purposes of subdivision (j)(1), a "governmental utility board" includes a board of public utilities created under title 7, chapter 52, and shall also include any other county, metropolitan government or municipal utility board or supervisory body created by private act, home rule charter or local ordinance or resolution.

(3) Nothing in this subsection (j) shall otherwise modify or impair any limitations on the contracting power of the governmental utility boards as the powers may exist under applicable law.

12-3-1208.

(a)(1) As used in this section, "local governmental unit" means and includes a county, city, municipality, special district, utility district, school district, authority or any other entity created or appointed by a local governmental unit of the state.

(2) For a purchase of goods or services, any local governmental unit may purchase goods or services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period.

(3) This section shall not apply to:

(A) Construction services, other than those relating to maintenance, repairs and renovations, the cost of which is less than twenty-five thousand dollars ($25,000);

(B) Architectural or engineering services;

(C) New or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose. "Manufactured for a special purpose" includes, but is not limited to, school buses, buses with capacity exceeding twenty-two (22) passengers used to provide public transportation, garbage trucks, fire trucks or ambulances; or

(D) New or unused construction equipment.

(b) The purchasing agent of the local governmental unit shall solicit bids by public notice inserted at least once in a newspaper of countywide circulation five (5) calendar days prior to the first day bids can be submitted. If the county in question has no newspaper with countywide circulation, the purchasing agent shall post notices on a public bulletin board in the county courthouse. The purchasing agent may also solicit bid requests by mail to prospective bidders or by distributing invitations to bid electronically via email or by posting on the entity's website. All invitations to bid shall include a general description of the goods or services to be purchased and information related to the time and place of opening bids.

(c) In order to assure the fullest possible participation of small businesses and minority-owned businesses, a local governmental unit shall provide a mechanism either through the local governmental unit itself or through a third party, if a third party source is utilized to conduct the reverse auction, to facilitate participation of small and minority-owned businesses in a reverse auction.

(d) All bid responses received shall be made available publicly at the time and place identified in the invitation to bid. An award shall be made to the offeror determined to be the lowest responsible and responsive bidder at the close of the specified bid period. Each bid, with the name and address of the bidder, shall be recorded and the names of the bidders, the amounts of their bids and the name of the successful bidder shall, after the award, be open to public inspection. All bids should be preserved for a period of sixty (60) months.

(e)(1) Prior to the initial utilization of a reverse auction, the local governmental unit shall file a plan with the comptroller of the treasury. The plan shall indicate the technology to be utilized, whether a third party source will be utilized to conduct a reverse auction or auctions, a description of policies and procedures related to the implementation of the reverse auction process and documentation of internal controls that will ensure the integrity of the process;

(2) The plan shall also indicate whether such a process will be implemented within the existing operating resources of the local governmental unit or indicate prior approval of the governing body of the local governmental unit if additional operating resources are needed.

12-3-1209.

(a)(1) Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups of high ethical standards, shall not be based upon competitive solicitations, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive soliciting in this section shall not prohibit any entity enumerated from interviewing eligible persons or entities to determine the capabilities of such persons or entities.

(b) Any person providing fiscal agent, financial advisor or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation shall perform such services only pursuant to a written contract, specifying the services to be rendered, the costs therefore, and the expenses to be covered under such contract.

(c) Any person providing fiscal agent, financial advisor or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation of this state who desires to bid, directly or indirectly, on any bonds, notes or other obligations of such entity sold pursuant to public, competitive sale shall receive in writing prior to the sale the permission of such entity to respond either directly or indirectly on the obligations.

(d) For the purposes of this section, "providing fiscal agent, financial advisor or advisory services" means a relationship that exists when a person renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services. Notwithstanding the foregoing provisions of this subsection (d), a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

(e)(1) Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state for information management services, including, but not limited to, computer program analyst services shall, upon approval by a two-thirds (2/3) vote of the governing body, be procured through a request for proposals process. The request for proposals process will invite prospective respondents to participate and will indicate the service requirements and the factors used for evaluating the proposals. Such factors shall include cost, the vendor's qualifications and any additional factor or factors deemed relevant by the procuring entity for the procurement of the service. Cost shall not be the sole criterion for evaluation. The contract for such services will be awarded to the best evaluated, responsive respondent.

(2) This subsection (e) shall only apply in counties having a population of not less than four hundred seventy thousand (470,000) nor more than four hundred eighty thousand (480,000), according to the 1980 federal census or any subsequent federal census.

12-3-1210.

Notwithstanding any law to the contrary, the Tennessee Board of Regents system and the University of Tennessee system are authorized to:

(1) Develop procedures to apply the policy of § 12-3-701 to their constituent institutions, including procedures describing the circumstances in which limitations below two (2) times the value of the contract are permitted and procedures for obtaining permission from the appropriate official of the Tennessee board of regents or the University of Tennessee;

(2) Purchase software for use restricted solely to academic teaching or research upon terms that may limit the contractor's liability or warranties; provided that, in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct; and

(3) Acquire software or services, materials, supplies and equipment free or at nominal cost upon terms that may limit the contractor's liability or warranties; provided that, in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct.

12-3-1211.

The central procurement office may establish contracts for the purchase of personal computers and related devices by public school teachers for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually. The contracts shall be established in accordance with this chapter. The central procurement office shall promulgate rules to regulate the purchases authorized in this section. The rules shall be approved by the procurement commission.

SECTION 71. Tennessee Code Annotated, Section 12-4-101, is amended by deleting the section in its entirety and by substituting instead the following:

12-4-101.

(a)(1) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. This subdivision (a)(1) shall not be construed to prohibit any officer, committeeperson, director, or any person, other than a member of a local governing body of a county or municipality, from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested.

(2)(A) Subdivision (a)(1) shall also apply to a member of the board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to title 7, chapter 54 or 58.

(B) Subdivision (a)(2)(A) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more, according to the 1980 federal census or any subsequent federal census.

(b) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

(c)(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment predates the member's initial election or appointment to the governing body of the county or municipality may vote on matters in which the member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows: "Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents." The vote of any such member having a conflict of interest who does not so inform the governing body of such conflict shall be void if challenged in a timely manner. As used in this subdivision (c)(1), "timely manner" means during the

same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(2) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment began on or after the date on which the member was initially elected or appointed to serve on the governing body of the county or municipality shall not vote on matters in which the member has a conflict of interest.

(3)(A) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, such member may abstain for cause by announcing such to the presiding officer.

(B)(i) Any member of a local governing body of a municipality who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(ii) This subdivision (c)(3)(B) shall in no way be construed to apply to any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census.

(d) This section shall apply to a member of the board of directors or officer of any nonprofit corporation required under § 8-44-102 to conduct all meetings of its governing body as open meetings.

SECTION 72. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a)(1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

(A) The employee is contemporaneously employed by a respondent to a solicitation or contractor involved in the procurement transaction;

(B) The employee, the employee's spouse, or any member of the employee's immediate family holds a position with a respondent to a solicitation, a contractor involved in the procurement transaction, such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5%);

(C) The employee, the employee's spouse, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(D) The employee, the employee's spouse, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a respondent to a solicitation or contractor involved in the procurement transaction.

(3) A public officer or employee who will derive a direct benefit from a contract with the public agency the officer or employee serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

(4) No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency the officer or employee serves.

(b) As used in this section, "immediate family" means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

SECTION 73. Tennessee Code Annotated, Section 12-4-103, is amended by designating the existing language as subsection (a) and adding the following language:

(b) A person violating subsection (a) shall be liable to the state for any and all sums paid out by the state, together with interest at the rate of eight percent (8%) per annum, growing out of any such transaction.

(c) A violation of subsection (a) is a Class E felony.

SECTION 74. Tennessee Code Annotated, Section 12-4-104, is amended by deleting the section in its entirety and by substituting instead the following:

12-4-104.

(a) It is an offense for a public employee or former public employee having official responsibility for procurement transactions to accept employment with any respondent to a solicitation or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one (1) year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that respondent to a solicitation or a contractor.

(b) It is an offense for any person who, for compensation, prepares a solicitation for or on behalf of a public body to:

(1) Submit a response to a solicitation for that procurement or any portion thereof; or

(2) Disclose to any respondent to a solicitation information concerning the procurement that is not available to the public. A public body may permit such person to submit response to a solicitation for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified respondents to a solicitation in a manner contrary to the best interest of the public body.

(c)(1) It is an offense for a contractor or subcontractor to demand or receive from any of the contractor's or subcontractor's suppliers or for a contractor to demand or receive from the contractor's subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(2) It is an offense for a subcontractor or supplier to make or offer to make any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(3) It is an offense for any person to demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

(4) If a contractor, subcontractor, supplier or any person violates any provision of this subsection (c), the amount thereof shall be conclusively presumed to have been included in the price of the contract, subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one (1) offending party shall not preclude recovery from other offending parties.

(d)(1) A contract entered into in violation of this section on or after October 1, 2011, is void. A contract that is otherwise void under this section may continue in effect until an alternative can be arranged when:

(A) Immediate termination would result in harm to the public health or welfare; and

(B) The continuation is approved by the commission.

(2) Approval of continuation of contracts under this subsection (d) shall be given for the minimum period necessary to protect the public health or welfare. The chief procurement officer and the comptroller of the treasury shall be notified immediately upon a determination that a contract violates this subsection (d).

(e)(1) As used in this section, the term "public officer" means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.

(2) A public officer or employee is involved in administering a contract if the officer or employee oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.

(3) A public officer or employee is involved in making a contract if such officer or employee participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which such officer is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.

(4) A public officer or employee derives a direct benefit from a contract if the person or the person's spouse:

(A) Has more than a ten-percent ownership or other interest in an entity that is a party to the contract;

(B) Derives any income or commission directly from the contract; or

(C) Acquires property under the contract.

(f) A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.

(g) A violation of this section is a Class A misdemeanor.

SECTION 75. Tennessee Code Annotated, Section 12-4-106, is amended by deleting the section in its entirety and by substituting instead the following:

12-4-106.

(a) No officer or employee of the central procurement office, nor any member of the procurement commission, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with the responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of goods or services for the state may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation.

(b)(1) It is a conflict of interest for any person or any company with whom such person is an officer, a director, or an equity owner having an ownership interest greater than one percent (1%) to bid on any public contract for goods or services for a governmental entity if such person or the immediate family member of such person is a member of a board or commission having responsibility for letting or approving such contract.

(2) As used in this subsection (b):

(A) "Governmental entity" means any state agency, authority, board, commission, department, or office within the executive, legislative or judicial branch of state government or any autonomous state agency, authority, board, commission, department, office, or institution of higher education; and

(B) "Immediate family" means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

SECTION 76. Tennessee Code Annotated, Section 12-4-107, is amended by deleting the section in its entirety and by substituting instead the following:

12-4-107.

(a) All contracts for architectural, engineering and construction services procured by any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall meet the following requirements:

(1) In the procurement of architectural and engineering services, the selection committee or procurement official may seek qualifications and experience data from any firm or firms licensed in this state and interview such firm or firms. The selection committee or procurement official shall evaluate statements of qualifications and experience data regarding the procurement of architectural and engineering services, and shall conduct discussions with such firm or firms regarding the furnishing of required services and then shall select the firm deemed to be qualified to provide the services required.

(2) The selection committee or procurement official shall negotiate a contract with the qualified firm for architectural and engineering services at compensation which the selection committee or procurement official determines to be fair and reasonable to the government. In making such determination, the selection committee or procurement official shall take into account the estimated value of the services to be rendered, the scope of work, complexity and professional nature thereof.

(3) Should the selection committee or procurement official be unable to negotiate a satisfactory contract with the firm considered to be qualified, at a price determined to be fair and reasonable, negotiations will continue with other qualified firms until an agreement is reached.

(4) A city, county or utility district having a satisfactory existing working relationship for architectural or engineering services may expand the scope of the services; provided, that they are within the technical competency of the existing firm, without exercising this section.

(b) Construction of correctional facility projects of the state, a county, city, metropolitan government or town shall meet the following requirements:

(1) For construction of local correctional facility projects or additions to existing correctional facility buildings, the state, a county, city, metropolitan government or town may contract for construction management agent or advisor services. Construction management services that are provided for a fee and that involve preconstruction and construction administration and management services shall be deemed as professional services and may be performed by a qualified person licensed under the Contractors Licensing Act of 1994, compiled in title 62, chapter 6. Construction management services are to be procured for each project through a written request for proposals process through advertisement. The procurement and advertisement shall be in accordance with laws, regulations, and ordinances of the county, city, metropolitan government or town. The written request for proposals process shall invite prospective proposers to participate and shall indicate the service requirements and the factors used for evaluating the proposals. These factors shall include the construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees and costs or any additional factors deemed relevant by the procuring entity for procurement of the service. Cost shall not be the sole criterion for evaluation. The contract for such services shall be awarded to the best qualified and responsive responder. A construction manager is prohibited from undertaking actual construction work on a project over which the construction manager coordinates or oversees the planning, bid or construction phases of the project, except in instances when bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager may perform the construction work at

a price agreed upon by the construction manager, the architect and the owner of the project. A governing body, at its own discretion, may perform work on the project with its own employees and may include the coordination and oversight of this work as part of the services of the construction manager. Sealed bids for actual construction work shall be opened at the bid opening and the names of the contractors and their bid amounts shall be announced.

(2) Construction management agent or advisor services for the construction of local correctional facility projects or additions to existing correctional facility buildings in accordance with subdivision (b)(2)(A) may be performed by:

(A) A general contractor licensed in this state pursuant to the Contractors Licensing Act of 1994, compiled in title 62, chapter 6; provided, that none of such services performed by a general contractor involve any of the services exempt from the requirements of title 62, chapter 6 as "normal architectural and engineering services" under § 62-6-102(4)(B) or (C), unless, with regard to the performance of any services defined as normal architectural and engineering services, the general contractor is also licensed as an architect or engineer under title 62, chapter 2; or

(B) An architect or an engineer licensed pursuant to title 62, chapter 2; provided, that none of such services performed by an architect or engineer involve any of the services required to be performed by a contractor within the definition of "contractor" under § 62-6-102, unless with regard to the performance of any services included within the definition of contractor, the architect or engineer is also licensed as a contractor under the Contractors Licensing Act of 1994, compiled in title 62, chapter 6.

(3) Construction work that is under the coordination and oversight of a construction manager shall be procured through competitive bids.

SECTION 77. Tennessee Code Annotated, Section 12-4-109, is amended by deleting the section in its entirety and by substituting instead the following:

12-4-109.

There is hereby established an account to be known as the capital preplanning account, which shall be the funding source for the preplanning of all capital projects undertaken by the departments and agencies of the state. The account shall be reimbursed for the preplanning cost of a capital investment project from the appropriations allocated to that project. Any funds remaining in the account at the end of any fiscal year shall be carried over to the succeeding fiscal year and expended only for the purpose specified in this section.

SECTION 78. Tennessee Code Annotated, Section 12-4-110, is amended by deleting the section in its entirety and by substituting instead the following:

12-4-110.

Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of this state for energy-related services that include both engineering services and equipment, and have as their purpose the reduction of energy costs in public facilities, shall be awarded on the same basis as contracts for professional services.

SECTION 79. Tennessee Code Annotated, Section 12-4-111, is amended by deleting the section in its entirety and by substituting instead the following:

12-4-111.

(a) For purposes of this part, "state standard prototype," means a design on which a state correctional facility is based so that the design can be used by the state to construct similar buildings at different sites at a future time. The state building commission may designate state standard prototypes from design documents which were originally prepared for the exclusive use of the state. The state architect shall place the appropriate designation on a document which is determined to be a state standard prototype.

(b) Prior to the re-use of documents for a project in which the original architect or engineer is not also involved, the state shall remove and obliterate from all documents the identification of the original architect or engineer, including name, address, professional seal or stamp, and signature. The architect or engineer who is involved in a state standard prototypical re-use project shall affix such architect's or engineer's seal or stamp to such design, and shall be solely responsible for all documents on which such architect's or engineer's seal or stamp is placed, and shall hold the original architect or engineer harmless from suits by third parties.

(c) The original architect or engineer shall not be liable for injury or damage resulting from re-use of plans, designs, details, specifications or construction documents of a state standard prototype by the state or third parties, if the original architect or engineer is not also involved in the re-use project. It is the intent of this section that the architect or engineer who seals or stamps a prototype is legally responsible only for that set of documents on which such architect's or engineer's seal or stamp is placed.

SECTION 80. Tennessee Code Annotated, Section 12-4-112, is amended by deleting the section in its entirety and by substituting instead the following:

12-4-112.

(a) As used in this section, "governmental entity" means any county, municipality, metropolitan government, town, utility district, or other municipal or public corporation of this state.

(b) Notwithstanding any other provision of law or private act to the contrary, a governmental entity may enter into multi-year contracts for painting and other maintenance of water storage tanks and appurtenant facilities procured through a request for proposals process. The request for proposals process shall invite prospective proposers to participate and shall indicate the service requirements and the categories used for evaluating the proposals, together with the relative weight of each category. Such categories shall include such factors as qualifications, experience on similar projects, availability of workers, technical approach, minority participation, cost, and any additional factor or factors deemed relevant by the procuring governmental entity. Cost shall not be the sole criterion for evaluation. Proposers shall be given at least thirty (30) days from public advertisement of the request for proposals to consider the evaluation factors set forth in the solicitation documents before submitting proposals. The contract shall be awarded to the best proposer who meets the minimum required qualifications, using the evaluation criteria set forth in this subsection (b).

(c) Any governmental entity may, at its option, require such multi-year contracts to be competitively bid.

SECTION 81. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by deleting § 12-4-113 through § 12-4-125 in their entireties and by transferring the existing § 12-4-126 to be § 12-4-113.

SECTION 82. Tennessee Code Annotated, title 12, chapter 4, is amended by adding the following language as a new part:

12-4-1001.

The state treasurer shall investigate alternative methods, including competitive bidding, for purchasing insurance for the use and benefit of the state and its agencies, departments or divisions. The state treasurer shall prepare a plan for purchasing insurance, and shall submit the plan to the board of claims prior to its implementation.

12-4-1002.

The state treasurer shall establish accepted practices and procedures to be followed in purchasing insurance under the plan developed under § 12-4-1001. Such practices and procedures shall be subject to the approval of the board of claims.

12-4-1003.

All officers, officials, agents or employees of the state and its divisions, departments and agencies are prohibited from bidding, selling or contracting to sell any policy of insurance to the state or its divisions, departments and agencies.

12-4-1004.

All buildings and building contents owned by the state shall be insured for not less than their actual cash value subject to an aggregate deductible of not less than one million five hundred thousand dollars ($1,500,000) and to such individual claim deductible as may be commercially reasonable.

12-4-1005.

The repair or replacement of damaged or destroyed buildings and building contents shall include engineering and other services necessary for such an insurance program to be paid from the risk management fund created pursuant to § 9-8-109.

12-4-1006.

The state treasurer shall establish appropriate policies and procedures governing the administration of the insurance program provided herein, including the allocation of premium and other costs and the payment of losses from the risk management fund created pursuant to § 9-8-109. Such policies and procedures shall be subject to the approval of the board of claims.

12-4-1007.

(a)(1) The policy or policies of insurance provided in this part shall be obtained by the state treasurer subject to the approval of the board of claims. Notwithstanding the Surplus Lines Insurance Act, compiled in title 56, chapter 14, part 1, or any other law to the contrary, the state treasurer, with the approval of the board of claims, shall consider proposals from admitted carriers and nonadmitted surplus lines carriers. In order for nonadmitted carriers to be eligible for consideration under this section, at least two (2) admitted carriers must have declined to submit a proposal, and the nonadmitted carriers shall:

(A) Have a minimum A.M. Best financial strength rating of "A-" and an A.M. Best financial size category of no less than "VI", or such other A.M. Best rating as may be established by the board of claims provided that the financial strength rating shall not be less than "A-" and the A.M. Best financial size category shall not be less than "VI"; and

(B) Be a member of an insurance holding company system, as defined in § 56-11-101(b), that has at least one (1) affiliate carrier admitted in this state as a property or casualty insurer.

(2) Should A.M. Best change or amend its rating methodology, then the board of claims shall adopt a minimum rating requirement that is equivalent to the rating as stated in subdivision (a)(1)(A). The state treasurer shall place the insurance directly with the companies without policies being countersigned notwithstanding § 56-2-409.

(b) The state treasurer shall make periodic reports to the fiscal review committee of the general assembly and to the state building commission concerning the operations of the insurance program.

SECTION 83. This act shall take effect upon July 1, 2013, the public welfare requiring it, and shall apply to contracts entered into or renewed on and after such date.

SENATE BILL NO. 170

PASSED: April 16, 2013

RON RAMSEY
SPEAKER OF THE SENATE

BETH HARWELL, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 14th **day of** May **2013**

BILL HASLAM, *GOVERNOR*