

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

October 30, 2014

Opinion No. 14-98

Procurement Requirements for Tennessee Health-Related Regulatory Boards

QUESTIONS

1. When providing grants and entering into agreements to assist impaired professionals pursuant to Tenn. Code Ann. § 63-1-136, is a Tennessee health-related regulatory board exempt from the procurement requirements in Title 12, Chapters 3 and 5, and §§ 4-56-101, -107, and -108 of the Tennessee Code and the rules of the Central Procurement Office, Tenn. R. & Regs. 0690-03-01-.01 to -.28?

2. Do the procurement requirements in Title 12, Chapters 3 and 5, and § 4-56-107 of the Tennessee Code and the rules of the Central Procurement Office, Tenn. Comp R. & Regs. 0690-03-01-.01 to -.28, apply to grant contracts for peer assistance issued by health-related regulatory boards under Tenn. Code Ann. § 63-1-136?

OPINIONS

1. No.
2. Yes.

ANALYSIS

Regulatory boards, commissions, and agencies attached to the Division of Health-Related Boards in the Tennessee Department of Health, in addition to other powers and duties, “have as their purpose assistance in the rehabilitation of impaired health practitioners” whom the respective boards, commissions, and agencies license, certify, or register. Tenn. Code Ann. § 63-1-136(a). Under subsection (b) of § 63-1-136, such regulatory boards, commission, and agencies “*have the power to enter into agreements, provide grants and make other arrangements* with statewide nonprofit professional associations or their affiliated foundations to identify and assist impaired professionals who are licensed, registered or certified by the respective regulatory boards, commissions and agencies” (emphasis added).

Tenn. Code Ann. § 63-1-136 was enacted in 1992 and amended once, in 2003.¹ Since 2011, however, the General Assembly has enacted new statutes and revised existing statutes dealing with state procurement matters.² This legislation has revamped the procurement process and provides for general oversight and management of state procurement. Tenn. Code Ann. §§ 4-56-101 to -106 created a procurement commission, a state protest committee, a central procurement office, the position of chief procurement officer, and an advisory council.³ These statutes now govern how procurement contracts and grants are to be made. The powers and duties of the chief procurement officer in § 4-56-105 include the authority to develop rules and regulations, policies, standards, and procedures, consistent with Chapter 56 of Title 4 and with Chapters 3 and 4 of Title 12 (dealing with public purchases and public contracts), to be approved by the procurement commission. Tenn. Code Ann. § 4-56-105(4). Such rules, polices, and standards shall establish, among other things, a “central contract management process” and a “central grant management process.” *Id.* § 4-56-105(4)(B), (C).

The rules of the Central Procurement Office address grants and make specific provision for competitive and noncompetitive grants:

Grantee Selection Process.

- (a) The Grantor State Agency shall document the Grantee selection process specifying *whether it was competitive or non-competitive and detailing reasons for noncompetitive selections*. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement office shall maintain a record of the selection process.

Tenn. Comp. R. & Regs. 0690-03-01-.15(4) (emphasis added); *see also id.* 0690-03-01-.15(5)(e) (making similar provision for endowment grants).

Tenn. Code Ann. § 12-3-101 provides that “all goods and services . . . 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.” Tenn. Code Ann. § 12-3-102 sets forth

¹ 2003 Tenn. Pub. Acts, ch. 388, §§ 1, 3.

² *See* 2013 Tenn. Pub. Acts, ch. 403; 2012 Tenn. Pub. Acts, ch. 673, § 2; 2011 Tenn. Pub. Acts, ch. 295.

³ Tenn. Code Ann. § 4-56-107 provides for review of requests by procuring agencies for noncompetitive contracts, and § 4-56-108 provides for review and approval of procurement contracts, grants, and other documents.

the branches of government and types of contracts that are exempt from this requirement. The executive branch is not exempt, and neither is any contract entered into by a health-related regulatory board. Therefore, a health-related regulatory board is not exempt from the procurement requirements of these statutes or the rules of the Central Procurement Office.

A well-established principle of statutory construction provides that when the General Assembly enacts a statute, it is presumed to be aware of other statutes relating to the same subject matter, and unless the new statute expressly repeals or amends the older statute, the new provision is presumed to be in accord with the policy embodied in the prior statute. *See Shorts v. Bartholomew*, 278 S.W.3d 268, 277 (Tenn. 2009). A related principle is that statutes relating to the same subject should be interpreted *in pari materia*, i.e., construed together and in such a way that they are in harmony rather than in conflict. *See Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995); *Wilson v. Johnson Cnty.*, 879 S.W.2d 807, 809 (Tenn. 1994). The more recent legislation that revises the statutory scheme for procurement must therefore be read in conjunction with the existing provisions of Tenn. Code Ann. § 63-1-136, which merely authorize health-related regulatory boards to enter into agreements and provide grants for peer assistance. The new legislation reflects the legislature's intent to establish a central management system for how procurement contracts and grants are to be created. Applying these principles of statutory construction leads to the conclusion, therefore, that the statutes and rules of the Central Procurement Office apply to grant contracts for peer assistance awarded by health-related regulatory boards.

HERBERT H. SLATERY III
Attorney General and Reporter

JOSEPH F. WHALEN
Acting Solicitor General

JANIE C. PORTER
Senior Counsel

Requested by:

The Honorable John Dreyzehner
Commissioner, Tennessee Department of Health
5th Floor, Andrew Johnson Tower
Nashville, Tennessee 37243