

Policy Number 2013-003
Central Procurement Office
Non-Competitive Procurement Policy and Procedures

Effective: May 28, 2013

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

1. Purpose.

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

2. Scope.

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

3. Definitions.

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

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

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

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

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

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

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

“Sole Source Procurement” means a procurement for which only one vendor possesses the unique and singularly available capability to meet requirement of the solicitation, such as technical

qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

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

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

4. Authorization for Non-Competitive Solicitations.

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

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

4.1 Emergency Purchases.

4.1.1. Description of Emergency Purchases.

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

4.1.2. Conditions of Use for Emergency Purchases.

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

4.1.3. Emergency Purchase Approval Process & Written Documentation.

The Chief Procurement Officer may delegate Emergency Purchase authority to a State Agency to meet emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated

work volume, acts of God or systems failures. Such delegations must not conflict with an activated Tennessee Emergency Management Agency (TEMA) declared emergency.

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

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

4.2. *Proprietary Procurements.*

4.2.1. *Description of Proprietary Procurements.*

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

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

4.2.2. *Conditions of Use for Proprietary Procurement.*

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

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

4.2.3. *Proprietary Procurement Approval Process.*

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

4.3. *Sole Source Procurements.*

4.3.1. *Description of Sole Source Procurements.*

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

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

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

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

4.3.3. *Sole Source Procurement Approval Process.*

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

4.4. *Small Purchases.*

4.4.1. *Description of Small Purchase.*

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

4.4.2. *Conditions of Use for Small Purchase.*

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

4.4.3. *Small Purchase Approval Process.*

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

Related Statutes, Rules and Policies.

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

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

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