

Policy Number 2013-002
Central Procurement Office
Procurement Methods Policy and Procedures

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

1. Purpose.

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

2. Scope.

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

3. Definitions.

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

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

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

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

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

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

“Collaborative Value Development” or “CVD” means an interactive technique between the State and Qualified Respondents within the Competitive Range, as defined in the RFQ. The purpose of the CVD is to utilize the expertise and knowledge of the Qualified Respondents to develop a Solicitation that will award a contract to the Qualified Respondent that receives the highest score.

“Competitive Negotiation” means a competitive procurement method that involves

direct contract negotiation with one or more respondents who have been pre-qualified or pre-selected by the Central Procurement Office through a competitive process.

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

“Competitive Range” means those proposals that have a reasonable chance for contract award based on criteria set forth in the written solicitation document. Only proposals within the Competitive Range shall be considered for additional discussions and negotiation.

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

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

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

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

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

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

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

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

administration.

“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.

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

“Qualified Respondents” mean the Respondents that are selected to be within the Competitive Range.

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

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

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

“Reverse Auction” shall have the meaning set forth in Tenn. Code Ann. § 12-3-513.

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

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

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

“Specification” means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item.

“Specification” includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

“State” means the State of Tennessee and its Agencies, boards and commissions as the

context requires.

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

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

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

4. Procurements -Generally.

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

- Informal Solicitations
- Invitation to Bid (ITB)
- Request for Proposals (RFP)
- Emergency Purchases
- Competitive Negotiation
- Sole Source
- Proprietary
- Reverse Auction
- Request for Information
- Request for Qualifications (RFQ)

5. Waiver of Immaterial Defects in a Response.

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

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

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

- Application of the requirements of Central Procurement Office Policy and the Rules;

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

7. Pre-Proposal Conference.

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

8. Oral Presentation.

A solicitation may require oral presentations in a manner set forth in the solicitation. Oral presentations shall be conducted after the solicitation is released. Oral presentations should be scheduled and evaluated by the Central Procurement Office or procuring State Agency in accordance with the solicitation.

9. General Requirements of Solicitations and Response Evaluation.

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

9.1. Technical Response.

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

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

- programs, etc.); and
- Used products or equipment.

9.2. *Cost Proposal.*

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

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

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

10. **Rejection of Responses.**

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

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

- The response is untimely;
- The response is incomplete;
- The response is inconsistent with the specifications as set forth in the solicitation; or
- The response restricts the rights of the State or otherwise qualifies the

respondent's proposal as set forth in his or her response.

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

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

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

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

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

11. Verification of Ability to Perform.

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

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

12. Amendment or Withdrawal of Responses.

A respondent may withdraw or amend a response prior to its opening. After response opening, and prior to award, a respondent may withdraw a response or a portion thereof only upon a

written determination by the Chief Procurement Officer that there is an obvious response error supported by appropriate industry, market or vendor cost information and where enforcement of the response would impose an unconscionable hardship on the respondent.

13. Notice of Intent to Award.

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

14. Contract Award.

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

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

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

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

15. Single Response to Solicitation.

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

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

16. Cancellation or Reissuance of Solicitation.

Cancellation or reissuance of a solicitation requires a written notice of cancellation or reissuance from the Central Procurement Office for contracts procured by the Central Procurement Office or written notice of cancellation or reissuance from the procuring Agency if it is an Agency procured contract. Any notice of cancellation or reissuance of a solicitation by an Agency shall also be provided to the Central Procurement Office. All decisions to cancel or reissue a solicitation shall be documented and become part of the procurement file.

17. Tie Responses.

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

- First preference shall be given to a “Tennessee Respondent.” Pursuant to Tenn. Code Ann. § 12-3-1113(c)(2), a “Tennessee Respondent” means a business that is:
 - o Incorporated in this State;
 - o Has its principal place of business in this State; or
 - o Has an established physical presence in this State.
- Second preference shall be given to the respondent who was the low cost respondent on other items being procured for the same solicitation.
- Third preference shall be given to the respondent who offers the best delivery.
- Fourth preference shall be given to further negotiations to break the tie.
- If a tie remains, it shall be broken by lot or coin toss.

18. Protests.

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

19. Procurement and Information Gathering Methods and Techniques.

19.1. *Informal Solicitations.*

Informal solicitations may be used for one time purchases or for contracts with a total value not to exceed one hundred thousand dollars (\$100,000.00) or such amount approved by the Procurement Commission. Three quotes should be obtained, when practicable. The person soliciting quotes shall document the quotes received in accordance with Central Procurement Office Policy, which shall become part of the procurement file. Purchase orders or contracts may not be artificially divided by a Delegated State Agency in order to make the purchase amount fall below limitations established in Central Procurement Office Policy or the Rules.

19.2. *Invitation to Bid ("ITB")*.

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

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

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

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

19.3. *Request for Proposals ("RFP")*.

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

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

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

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

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

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

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

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

19.3.1. *Evaluation of Responses.*

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

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

Officer. Justification for the contract award shall be documented in the procurement file.

19.4. *Emergency Purchases.*

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

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

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

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

19.4.1. *Conditions of Use for Emergency Purchase.*

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

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

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

- The circumstances leading to the Emergency Purchase;
- The procurement-related actions taken in response to the emergency, including procurement methods used;

- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

19.5. *Competitive Negotiation.*

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

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

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

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

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

- A log of the date and time of each meeting with a respondent, including the identity of the respondent and its representative;
- A description of the nature or reason for all material communications with each respondent; and

- A copy of all written and electronic communications between the Central Procurement Office or State Agency and each respondent.

19.6. *Sole Source Procurements.*

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

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

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

19.7. *Proprietary.*

A Proprietary procurement is a procurement of goods or services manufactured and marketed by a person or persons having the exclusive right to sell the goods or provide the services. Proprietary procurements are distinguishable from sole source procurements due to the potential for limited competition among the resellers of the goods or services. All proprietary procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

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

19.8. *Reverse Auction.*

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

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

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

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

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

A “Request for Qualifications” or “RFQ” may only be utilized by the Central Procurement Office. A RFQ is a written solicitation, requiring written responses from potential respondents, containing a list of qualifications that must be met before a respondent may respond to a Request for Proposals or, through an approved Rule Exception Request, another approved procurement method such as a Competitive Negotiation. A RFQ, through an approved Rule Exception Request, may also be used to select professional services providers based on recognized competence and integrity in accordance with Tenn. Code Ann. §§ 12-3-103 and 12-4-107. In such instances, cost shall not be considered in evaluating respondents. A RFQ may be used to gather information from potential respondents regarding qualifications of providers of goods and services within the market place.

19.11. *Collaborative Value Development (“CVD”).*

“Collaborative Value Development” is an additional event in the procurement process after the issuance of a RFQ, between the State and Qualified Respondents within the Competitive Range, prior to issuing a Solicitation for contract award.

CVD is an opportunity for Qualified Respondents and the State to hold one or more collaborative events to engage in an in-depth discussion concerning the needs of the State with regard to the scope or specifications of a contract to be awarded by the State through

a subsequent Solicitation. This technique may be used where, by example, the State lacks specific knowledge of a given industry or unique services or technologies are involved. The goal of CVD is to develop innovative solutions that will ultimately reduce costs and improve Contractor performance.

If the Chief Procurement Officer determines that a CVD event is beneficial for a particular procurement, then the RFQ must clearly state that a CVD event will occur, how the Competitive Range of Qualified Respondents will be determined, and the scope of CVD in which the State and each Qualified Respondent will participate. A CVD may only be used by the Central Procurement Office and should be reserved for complex procurements that involve an elevated risk, high potential spend, unique industries, complex goods or services, emerging or developing technologies, or other factors that warrant the additional time investment by both the State and the vendor community.

Each Qualified Respondent will have an equal opportunity to provide representatives to participate in the CVD event. Participation in the CVD will be a mandatory prerequisite for submitting a Solicitation Response. Any mandatory requirements must be clearly stated in the RFQ. The goals and objectives of the CVD should also be clearly communicated to all Qualified Respondents who are selected to attend the CVD event. At the conclusion of the CVD event, the Solicitation Coordinator will then independently draft a Solicitation. The Solicitation will be released to Qualified Respondents in the Competitive Range selected pursuant to the RFQ.

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.*