



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

AGENDA
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #006
MONDAY, OCTOBER 22, 2012 – 10:30 AM
TN TOWER – 3RD FLOOR - NASHVILLE ROOM

- I. Call to Order and Approve Minutes from June 14, 2012 Meeting
- II. New Business
 - Draft “Comprehensive Rules and Regulations of the Central Procurement Office”
- III. Other Business
- IV. Adjournment

CENTRAL PROCUREMENT OFFICE

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MINUTES OF JUNE 14, 2012 MEETING



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

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ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #005
THURSDAY, JUNE 14, 2012
TN TOWER – 3RD FLOOR – DAVIDSON ROOM

Members in Attendance:

Jessica Robertson, Sondra Howe, Kelly Smith, Buddy Lea, Jason Mumpower, Mark Choate, Jay Garrison, Hugh Holt, Melissa Kmiecik, Matt Thompson

Members in Attendance via Conference Call:

Steve Hillis

Others in Attendance:

Shannon Howell, Jan Sylvis, Melinda Parton, Thad Watkins, Mike Perry, Paul Krivacka, Toni Stuart, Sherry Whitby (State of Tennessee), Kim Adkins (Avaya)

Call to Order: Jessica Robertson, Chief Procurement Officer and Advisory Council on State Procurement Chairman, officially called the meeting to order. She asked for a roll call of members and recognized that a quorum of members was present.

- I. **Minutes from April 9, 2012 Meeting:** Jessica stated that the minutes from the April 9, 2012 meeting had been sent to all Advisory Council on State Procurement (Advisory Council) members for their review and approval. A motion was made by Kelly Smith, Assistant Commissioner, Department of General Services to accept the minutes as submitted. The motion was seconded by Jason Mumpower, Executive Assistant to the Comptroller. All members voted in favor – none opposed.
- II. **Report of sub-committee on policy review:** Jessica presented the minutes from the Sub-committee meeting held on May 31, 2012 discussing all the proposed changes to the Negotiations Policy. The question was raised if a vote was needed on these minutes. Paul Krivacka, Category Management/Legal Team Director, Central Procurement Office, advised Jessica that a report from these minutes was all that was needed for this meeting. Both a marked-up version with all the proposed changes and a clean version of the Negotiations Policy were included for the Council's review. There was no additional discussion concerning these changes.

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III. New Business: Jessica asked that there be a slight change to the Agenda and that the Council discuss the changes to the Purchasing Manual first.

- a. **Proposed changes to DGS Purchasing Manual, Section 22.4 as requested by Division of Accounts, Finance and Administration:** Jessica introduced Jan Sylvis, Chief of Accounts, Department of Finance and Administration. The purpose of the proposed change is to align the outdated Purchasing Manual with the Accounts Manual and Policy, as well as Human Resources requirements.

There were no questions regarding the proposed change. Jason Mumpower made the motion to accept and Buddy Lea, Assistant Commissioner, Department of Finance and Administration, seconded the motion. Jessica asked for a vote and all members voted in favor – none opposed.

- b. **Proposed “Central Procurement Contracting Communications and Negotiations Policy & Procedures for Procurements and Amendments”:** Jessica presented the final version of the Policy and asked for discussion or questions. As there were none, she asked for a motion for acceptance.

Buddy Lea made a motion to accept the Policy as presented. The motion was seconded by Kelly Smith. All members voted in favor – none opposed.

IV. Other Business: Jessica asked for any other business that the Council needed to discuss. As there was none, she asked for a motion to adjourn the meeting.

Buddy Lea made the motion to adjourn. The motion was seconded by Sondra Howe, Department of Military. All members voted in favor to adjourn – none opposed.

Attachments

**DRAFT COMPREHENSIVE RULES AND
REGULATIONS OF THE CENTRAL
PROCUREMENT OFFICE**

CLEAN VERSION

- DRAFT -
COMPREHENSIVE RULES AND REGULATIONS
OF THE CENTRAL PROCUREMENT OFFICE

Rule 1: #####-#-#.01 APPLICABILITY.

These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as “agency”), with the following exceptions:

- (1) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of Tenn. Code Ann., §§ 54-5-101, *et seq.*
- (2) The University of Tennessee and the Tennessee Board of Regents college and university systems.
- (3) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of Tenn. Code Ann. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.
- (4) Interagency Agreements between two agencies of the State, where neither of State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.
- (5) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State’s contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.
- (6) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.
- (7) These Rules shall not apply to contracts requiring State Building Commission approval.
- (8) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.
- (9) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.
- (10) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (0690—2—1—.01, *et seq.*).

- (11) Notwithstanding anything in these Rules to the contrary, local government agencies are authorized to purchase through the Central Procurement Office pursuant to Central Procurement Office Policy. Requests may be made for one-time purchases or the establishment of agency term contracts. In addition, all items available on statewide contracts may be purchased by local government agencies and nonprofits.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-15-101, *et seq.*, §§ 4-56-101, *et seq.*, § 8-6-106, §§ 12-2-401, *et seq.*, § 12-4-109, § 12-4-110, §§ 54-5-101, *et seq.*, §§ 71-4-501, *et seq.*

Rule 2: #####-#-#.02 DEFINITIONS.

As used in these Rules, unless the context otherwise requires:

- (1) “Advisory Council” means the council created and empowered by Tenn. Code Ann. § 4-56-106.
- (2) “Agency” means each State board, commission, committee, department, officer, or any other unit of State government.
- (3) “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.
- (4) “Aggrieved Respondent” means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.
- (5) “Approval Process” means the process by which necessary State approvals are obtained.
- (6) “Award” means a State Agency’s notice to a proposer of the acceptance of a proposal.
- (7) “Base Contract” means the original contract prior to any amendments.
- (8) “Bid” means a response by a vendor to an invitation to bid.
- (9) “Bidding” means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.
- (10) “Bonus” means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.
- (11) “Calendar Day” means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.
- (12) “Central Procurement Office” means the State office established and empowered by Tenn. Code Ann. § 4-56-104.
- (13) “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.*
- (14) “Chief Procurement Officer” means the official as defined by Tenn. Code Ann. § 4-56-104.

- (15) “Competitive Sealed Proposal” means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.
- (16) “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.
- (17) “Contract Amendment” means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.
- (18) “Contract Approval” means the procedures a State Agency must follow to obtain final approval of a contract.
- (19) “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.
- (20) “Cost-reimbursement Grant” means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.
- (21) “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.
- (22) “Delegated Grant Authority” means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.
- (23) “Delegated Loan Authority” means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program.
- (24) “Delegated Purchase Authority” means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.
- (25) “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 for an individual program within specified limits and guidelines.
- (26) “Department of General Services” means the State department created and empowered by Tenn. Code Ann. §§ 4-3-1101, *et seq.*
- (27) “Emergency Purchases” means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- (28) “Endowment Grant” means a limited Grant Contract, that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

- (29) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic approval, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.
- (30) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:
1. Capacity of the donor to make the gift;
 2. Intention of the donor to make the gift;
 3. Completed delivery of the gift to or for the State, and
 4. Acceptance of the gift by the State.

Nothing in this Rule shall be construed to mean that the State must accept any gift.

- (31) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.
- (32) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.
- (33) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.
- (34) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.
- (35) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.
- (36) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.
- (37) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.
- (38) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.
- (39) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.
- (40) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.
- (41) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.
- (42) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.

- (43) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.
- (44) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.
- (45) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. 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.
- (46) "Procurement Commission" means the State entity created and empowered by Tenn. Code Ann. § 4-56-102.
- (47) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.
- (48) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.
- (49) "Proposal Bond" means a surety bond issued by an insurance company or bank to ensure that the winning proposer will enter into a contract.
- (50) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.
- (51) "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.
- (52) "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.
- (53) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.
- (54) "Protest Committee" means the committee created and empowered under Tenn. Code Ann. § 4-56-103.
- (55) "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.
- (56) "Request for Information" means 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.
- (57) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.
- (58) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.
- (59) "Responsible 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.

- (60) “Responsive Proposer” means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.
- (61) “Revenue Contract” means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.
- (62) “Review Process” means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.
- (63) “Rule Exception” means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.
- (64) “Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.
- (65) “Sealed Proposal” means a respondent’s proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office’s or a State Agency’s solicitation.
- (66) "Services" means all services and agreements procured by the State and formalized by contract.
- (67) “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.
- (68) “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.
- (69) “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.
- (70) "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.
- (71) “State Agency” means the departments, agencies, and entities of the State of Tennessee.
- (72) “State Architect” means the person, who oversees the Office of the State Architect.
- (73) “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.
- (74) “Subrecipient” is as defined in OMB A-133.
- (75) “Term Contract” means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.
- (76) “Vendor” means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Rule Authority: §§ 4-5-101, et seq., §§ 4-56-101, et seq., §§ 12-3-101 – 12-3-1202, §§ 12-4-101 –12-4-905.

Rule 3: #####-#-#.03 CENTRAL PROCUREMENT OFFICE.

The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.

The duties and responsibilities of the Central Procurement Office shall include:

- (1) Implementing these Rules;
- (2) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;
- (3) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;
- (4) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;
- (5) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;
- (6) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;
- (7) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;
- (8) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;
- (9) Resolving protests of Aggrieved Respondents;
- (10) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and
- (11) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Rule Authority: §§ 4-5-101, et seq., §§ 4-56-101, et seq., §§ 12-3-101, et seq., §§ 12-4-101, et seq.

Rule 4: #####-#-#.04 AUTHORITY DELEGATED TO STATE AGENCIES.

A Delegated Authority to procure goods or services, award grants, issue loans or enter into revenue or no cost contracts shall be effective upon the approval of the Chief Procurement Officer and the Comptroller of the Treasury. No grant, loan, purchase, or contract shall be initiated and no obligation shall be incurred on behalf of the State by a State Agency unless a Delegated Authority is granted by the Chief Procurement Officer and the Comptroller of the Treasury. The approval process requirements for a Delegated Authority shall be more particularly prescribed by Central Procurement Office Policy. The general requirements for each Delegated Authority are as follows:

- (1) Delegated Grant Authority:
 - (a) A Delegated Grant Authority may be approved where:
 1. The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants;
 2. The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

- (2) Delegated Loan Authority: A Delegated Loan Authority shall set forth the terms and conditions for making a loan and include all provisions required by Central Procurement Office Policy.
- (3) Delegated Purchase Authority:
 - (a) A Delegated Purchase Authority may be approved for procurement of goods or services, provided that such purchases and any resulting contracts from such purchases are subject to applicable provisions of these Rules and Central Procurement Office Policy.
 - (b) A Delegated Purchase Authority for the procurement of goods or services shall set forth all criteria, provisions and limitations consistent with Central Procurement Office Policy.
- (4) General Requirements of Delegated Authorities:
 - (a) Each State Agency receiving a Delegated Authority shall file such documentation with the Chief Procurement Officer, in a form prescribed by Central Procurement Office Policy, which details the request for a Delegated Authority and the authorized signatories for the State Agency.
 - (b) All Delegated Authorities shall set forth all requirements prescribed by Central Procurement Office Policy.
 - (c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.
 - (d) Records of the approval of the delegated authority shall be maintained by the Central Procurement Office

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-210, § 12-3-806, § 12-4-109.

Rule 5: #####-#-#.05 PROCUREMENT METHODS.

- (1) **Procurement Methods - Generally.** A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:
 - (a) All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State’s best interests.
 - (b) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State’s best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.
 - (c) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.
 - (d) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.
- (2) **Request for Proposals (“RFP”).** An RFP shall comply with the following requirements:

- (a) The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the response or cancellation of the RFP and rejection of all responses.
- (b) An RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.
- (c) The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of an RFP and safeguard against any perceived or actual conflicts of interest.
- (d) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, an RFP or its revisions shall be approved by the Central Procurement Office based on the following:
 - 1. Application of the requirements of these Rules and Central Procurement Office Policy;
 - 2. Adequacy of the scope description; and
 - 3. Adequacy of the RFP's assurance of:
 - (i) Fairness to respondents;
 - (ii) Clear, fair and open competition;
 - (iii) Achievement of procurement objectives; and
 - (iv) Protection of the State's interests.
- (e) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.
- (f) After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.
- (g) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.
 - 1. Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.
 - 2. Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each

member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.

3. Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.
 4. The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.
 5. Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file, maintained by the Central Procurement Office
- (3) **Invitation to Bid.** The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.
- (4) **Informal Written, Verbal or Telephone Quotations.** Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.
- (5) **Emergency Purchases.** 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 utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:
- (a) The circumstances leading to the emergency procurement;
 - (b) Procurement-related actions taken in response to the emergency, including procurement methods used; and
 - (c) A complete list of goods or services procured, including prices paid and total purchase amount.
- (6) **Sole Source Procurement.** Whenever practicable, procurements should be competitive. 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. Whenever practicable, competitive procurement methods, including competitive negotiation, should be used. 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:

- (a) Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;
 - (b) Whether the product or service is unique and available from only one source;
 - (c) Whether the program requirements can be modified so that competitively procured goods or services may be used;
 - (d) Whether items must be interchangeable or compatible with in-place items;
 - (e) Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or
 - (f) 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.
- (7) **Proprietary Procurement.** Proprietary procurements may be made for 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 in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. 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.
- (8) **Competitive Negotiation.** A contract may be procured by competitive negotiation. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer prior and the Comptroller of the Treasury prior to entering into a contract.
- (9) **Direct Negotiation - General Services Administration.** When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor.
- (10) **Utility Contracts.** The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, §§ 12-3-201, *et seq.*, § 12-3-107, § 12-3-207, § 12-3-208.

Rule 6: #####-#-#.06 PROCUREMENT PROCESS – ELEMENTS OF SOLICITATION DOCUMENT & PROCESS PRIOR TO AWARD.

- (1) **Solicitations - Elements.** Each written solicitation shall contain the following elements at a minimum:
- (a) The description of the technical requirements for the goods or scope of services to be procured;
 - (b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;
 - (c) Clear and definitive technical requirements and scope that allow for open competition where practicable;
 - (d) The solicitation shall contain directions regarding the submittal of proposals
 - (e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;
 - (f) Any requirements for bid, performance or payment bonds;
 - (g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;
 - (h) A declaration of whether the contract award is subject to successful contract negotiation;
 - (i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and
 - (j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.
- (2) **Inspection of Solicitation File.** Each solicitation shall contain a schedule indicating the dates and times for solicitation opening, the timeline for evaluation and the anticipated Award date. Once the state issues the Notice of Intent to Award, the Open File Period begins. The solicitation file shall be open for public inspection for seven (7) calendar days upon request. The Central Procurement Office or a Delegated State Agency shall give the requestor a reasonable opportunity to inspect the solicitation file. If there is no protest of the Notice of Intent to Award, the State will proceed with the contract award.
- (3) **Cancellation of Solicitation or Rejection of Responses.**
- (a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.
 - (b) The Chief Procurement Officer shall have the discretion to reject any and all responses.
 - 1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.
 - 2. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.
 - 3. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:
 - (i) Unreasonably high prices or failure of all responses to meet technical specifications;
 - (ii) Error or defect in the solicitation;
 - (iii) Cessation of need;

- (iv) Unavailability of funds;
 - (v) Lack of adequate competition; or
 - (vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State;
- (c) Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.
- (d) A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 10-7-504, § 10-7-506, § 12-3-107, § 12-3-203, § 12-3-213, § 12-3-502, § 12-4-109.

Rule 7: #####-#-#-.07 PROCUREMENT PROCESS – PROPOSAL AND PERFORMANCE BONDS.

- (1) **Proposal Bond.** The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.
- (2) **Performance Bond.** The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Rule Authority: §§ 4-5-101, *et. seq.*, §§ 4-56-101, *et. seq.*, § 12-3-203, §§ 12-4-201, *et. seq.*

Rule 8: #####-##-.08 PROCUREMENT PROCESS - COMMUNICATION AND NEGOTIATION.

To ensure a transparent, consistent and equitable process in accordance with Central Procurement Office Policy, the Chief Procurement Officer may conduct communications as he or she determines to be in the best interests of the State, provided that any communication, clarification, or negotiation that may take place regarding any procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more respondents an unfair advantage or unfairly enable one or more respondents to improve their responses as a result and documented in the procurement file to support the final determination based on the information requested.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-207, § 12-3-208

Rule 9: #####-##-.09 PROCUREMENT PROCESS – DETERMINING NON-RESPONSIVENESS.

If the Central Procurement Office determines that a respondent has provided, for consideration in a contractor selection process or in negotiations, information that does not meet the technical requirements of the solicitation, where the respondent knew or should have known the submitted information was materially defective due to the omission of information or the submission of incorrect information, the subject response may be determined nonresponsive and rejected as prescribed in Central Procurement Policy.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107.

Rule 10: #####-##-.10 PROCUREMENT PROCESS – AMENDMENT OR WITHDRAWAL OF RESPONSES.

A respondent may withdraw or amend a response in writing prior to its opening. After responses are opened, a respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the respondent or as prescribed in Central Procurement Office Policy. Any decision to allow withdrawal or amendment of a response shall be documented in the solicitation file.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-203.

Rule 11: #####-##-.11 AWARD.

Each contract shall be awarded by the Chief Procurement Officer on behalf of the Central Procurement Office or by a Delegated State Agency where authority has been delegated in accordance with these Rules and Central Procurement Office Policy. Notice of Intent to Award shall be communicated in writing or electronic transmission to all respondents. The Chief Procurement Officer is authorized to award a contract if doing so is in the best interests of the State.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-203, § 12-4-109.

Rule 12: #####-##-.12 PROTEST PROCEDURES.

- (1) **Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.** The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities

involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

- (2) **Protest After Notice of Intent to Award.** Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.
- (a) On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.
 - (b) A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.
 - (c) The Chief Procurement Officer may consider the following grounds for protest and no others:
 - 1. The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.
 - 2. The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.
 - 3. The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.
 - 4. The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
 - 5. The contract award was the result of a technical or mathematical mistake or error during the evaluation process.
 - (d) The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.
 - (e) All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.
 - (f) A written protest that is filed with the Protest Committee shall:
 - 1. Meet the requirements of Tenn. Code Ann., § 4-56-103;
 - 2. Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,
 - 3. Raise only grounds that were raised before the Chief Procurement Officer.
 - (g) All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with Tenn. Code Ann. §§ 10-7-101, *et seq.*

- (h) A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.
 - (i) The final determination letter of a protest before the Chief Procurement Officer shall be reported to the Protest Committee and the Comptroller of the Treasury
 - (ii) The final determination letter of a protest before the Protest Committee shall be reported to the Comptroller of the Treasury.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, §§ 10-7-101, *et seq.*, § 12-3-107.

Rule 13: #####-#-#.13 CONTRACT FINALIZATION AND NEGOTIATION.

In accordance with Central Procurement Office Policy, communication and negotiation shall be conducted in a manner that is in the best interests of the State, provided that any communication, clarification, or negotiation so conducted does not undermine the procurement process as set forth in the solicitation, these Rules or Central Procurement Office Policy.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-207, § 12-3-208.

Rule 14: #####-#-#.14 CONTRACT TYPE.

(1) Term Contracts -

- (a) Agency Term Contract - State Agencies may establish term contracts for specific goods or services. The resulting contract shall contain a maximum liability dollar amount that represents the estimated dollar volume as prescribed in the solicitation.
- (b) Statewide Term Contract - The Central Procurement Office may establish statewide term contracts that all State Agencies must utilize and that may be used by local governments and higher education.

(2) Term Contract - General

- (a) A term contract for more than a period of twelve (12) months may provide that the State has the right to cancel at any time for convenience by providing written notice to the Contracting Party.
- (b) All term contracts shall contain a provision that provides for the termination of the contract at the end of any fiscal year in the event funds are not available.
- (c) The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these Rules and shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State. The justification for the contract term exceeding sixty (60) months shall be maintained in the records of the Central Procurement Office. A report of all contracts awarded for a period longer than sixty (60) months in such format and at such interval determined requested shall be provided to the Comptroller of the Treasury.
- (d) There shall be no pricing agreement other than in a contract between the State and a Contracting Party.

- (3) **No Cost Contracts** - A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with

procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval. If a No Cost Contract request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

- (4) **Revenue Contracts** – A “Revenue Contract” is a written contract where a State Agency provides specific deliverable services for monetary compensation. Prior to proceeding with any Revenue Contract negotiation, the State Agency must obtain the prior approval of the Chief Procurement Officer. If the request to enter into a Revenue Contract is approved, the State Agency shall proceed to procure the Revenue Contract in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, §12-3-107, § 12-3-201, *et seq.*

Rule 15: #####-#-#.15 GRANTS.

- (1) **Grant Contract.** A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
- (a) A Grant shall represent one of the following:
1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
 2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or
 3. A contract affecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.
- (b) A Grant Contract shall meet the following requirements by contract type:
1. Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.
 2. A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.
 - (i) A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

- (ii) A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.
- (2) **Grant Budget.** The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.
- (3) **Grantee Selection Process.** 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.
- (4) **Cost Reimbursement Grant.** A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.
- (5) **Endowment Grant.** An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.
 - (a) An Endowment Grant Contract shall meet the following requirements:
 - 1. The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;
 - 2. The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;
 - 3. The State has made a written offer of an endowment award to the Grantee;
 - 4. The Grantee has accepted the grant award in writing; and
 - 5. The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.
 - (b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.
 - (c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.
 - (d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.
 - (e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.
 - (f) An Endowment Grant Contract shall cite the State's authority to make the grant.

- (g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.
 - (h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.
- (6) All programs funded by a Grant Contract are subject to audit. It is not intended, however, that the existence of more than one Grant Contract or source of funds for a single Grantee require more than one audit in a single audit period.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107.

Rule 16: #####-##-16 GENERAL REQUIREMENTS OF CONTRACTS.

The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:

- (1) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.
- (2) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.
- (3) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.
- (4) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.
- (5) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.
- (6) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.
- (7) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses

incurred within the State of Tennessee at “in-State rates” and for the reimbursement of travel expenses incurred outside the State of Tennessee at “out-of-State rates.”

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-201, *et seq.*

Rule 17: #####-#-#.17 NECESSARY OR PROHIBITED CONTRACT CLAUSES AND RULE EXCEPTIONS.

The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.

(1) Necessary Contract Clauses For All Contract Types.

- (a) Term.** All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.
- (b) Maximum Liability for Goods or Services.** All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party’s direct or indirect costs. All statewide contracts shall include an estimated liability for goods and services purchased under the contract.
- (c) Payment for Goods or Services.**
 - 1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State’s obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.
 - 2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State’s payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advanced payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.
 - 3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor’s performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff’s written approval of each invoice submitted for payment.

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.
- (d) **Non- Discrimination.** All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.
 - (e) **Immigration.** All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.
 - (f) **Necessary Signatories.** All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.
 - (g) **Contract Documents.** All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.
 - (h) **Entire Agreement, Amendments, Modifications, Renewals or Extensions.** All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.
 - (i) **Choice of Law and Venue.** All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.
 - (j) **Retention of Records and Audit.** A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:

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 any 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 7-1-13 shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasurer.

- (k) **Independent Contractor.** All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.
- (l) **Force Majeure.** All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a *force majeure*, which includes, by way of example, acts of God, war, or civil unrest.
- (m) **Conflicting Terms and Conditions.** All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.
- (n) **Notice.** All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.
- (o) **Termination.** All contracts subject to these Rules shall contain provisions whereby the contract can be terminated for breach or convenience. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any. Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.
- (p) **Printing Contracts.** All printing contracts subject to these Rules shall comply with Tenn. Code Ann. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.
- (q) **Annual Report and Audit.** All grant contracts subject to these Rules shall contain a provision pertaining to an annual report and audit of the grantee. The Comptroller of the Treasury shall prescribe the wording of the provision to be used
- (r) **Monitoring.** All contracts subject to these Rules shall contain a provision that states that the contractor's activities conducted and records maintained pursuant to the subject contract shall be subject to monitoring and evaluation by the Comptroller of the Treasury. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.
- (s) **Debarment and Suspension.** All contracts subject to these Rules shall contain a provision concerning the circumstances under which a contracting party may be considered debarred or suspended from doing business with the State. This contract provisions shall act as a certification that the contracting party:
 - 1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - 2. has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or

state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

3. is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and
4. has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

- (2) **Prohibited Contract Clauses.** The following terms shall not be included in a contract:
- (a) **Indemnification and Hold Harmless.** Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.
 - (b) **Limitation of Liability.**
 1. All limitations of liability must comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 and Central Procurement Office Policy. Limitations of Liability that do not comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 or Central Procurement Office Policy are prohibited.
 2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.
 3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.
 - (c) **Bonus Payments.** Bonus payment provisions are prohibited for all contracts subject to these Rules.
- (3) **Rule Exception Procedure.** The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:
- (a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.
 - (b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.
 1. The request for modification of a necessary contract clause shall contain justification that addresses the following:
 - (i) The text of the new clause sought to be used;

- (ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;
 - (iii) The conditions in the market place that justify modification of the necessary contract clause; and
 - (iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.
- (c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 4-21-401, § 12-3-106, § 12-3-107, § 12-3-314, § 12-4-119, § 12-4-408, § 12-7-103.

Rule 18: #####-#-#.18 APPROVAL PROCESS OF CONTRACTS AND AMENDMENTS.

All contracts and amendments shall be in writing and approved in accordance with these Rules and Central Procurement Office Policy.

The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.

- (1) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:
 - (a) Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and
 - (b) Manage the review process to secure approval by other officials required by these Rules.
- (2) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:
 - (a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.
 - (b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.
 - (c) The Comptroller of the Treasury shall approve a contract that includes:
 1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;
 2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;
 3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or
 4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.
 - (d) The Commissioner of the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
 2. Provisions permitting the procurement of services from an individual.
- (e) Other officials may be required as detailed in Central Procurement Office Policy.

Rule Authority: §§ 4-5-101, *et seq.*, § 4-8-303, § 4-15-102, § 4-23-204, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-109, § 12-4-110.

Rule 19: #####-##-.19 GENERAL REQUIREMENTS OF CONTRACT AMENDMENTS.

A contract amendment is a written contract document that modifies or supplements one or more terms or conditions of a contract and meets the following:

- (1) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.
- (2) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.
- (3) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing. The amendment and justification is subject to the approval of the Chief Procurement Officer.
- (4) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107.

Rule 20: #####-##-.20 STATE AGENCY CERTIFICATION.

The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:

- (1) The goods or services are in fact needed;
- (2) The goods or services cannot be satisfactorily or efficiently provided by the State;
- (3) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and
- (4) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-212.

Rule 21: #####-##-.21 CONTRACTOR REGISTRATION.

In order to be awarded a contract for goods or services, a vendor must submit appropriate paperwork to Finance and Administration, Division of Accounts, to receive payment.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-701, *et seq.*

Rule 22: #####-#-#.22 INSTRUCTIONS FOR SOLICITATIONS AND CONTRACTS – DELIVERY AND COMMENCEMENT OF WORK.

Each solicitation and each contract shall clearly state instructions for authorizing services or delivery of goods.

- (1) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.
- (2) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.
- (3) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.
- (4) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107.

Rule 23: #####-#-#.23 GENERAL REQUIREMENTS OF PAYMENTS.

Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

- (1) All contracts, in which the State is to make one or more payments to a Contracting Party, shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.
- (2) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.
- (3) All procuring State Agencies shall maintain adequate documentation to support all payments.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-212.

Rule 24: #####-##-.24 STATEWIDE CONTRACT MANAGEMENT.

The Central Procurement Office shall be responsible for the management of all Statewide Contracts. The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts procured by the Central Procurement Office on behalf of the State Agency or within their delegated authority.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-109.

Rule 25: #####-##-.25 CONTRACT TERMINATION.

If a State Agency determines it to be in the best interests of the State to terminate a contract before the contract end date, either for cause or convenience, the head of the State Agency shall request and obtain the approval of the Chief Procurement Officer prior to any notice of contract termination.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-109.

Rule 26: #####-##-.26 EXCEPTIONS TO RULES.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-109.

Rule 27: #####-##-.27 AGENCY TERM CONTRACT MANAGEMENT AND SUBRECIPIENT MONITORING.

- (1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.
- (2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:
 - (a) Allocating adequate staff and resources to contract management;

- (b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;
 - (c) Communicating with Contracting Parties to ensure maximum performance and intended results;
 - (d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;
 - (e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
 - (f) Evaluating contract results in terms of the achievement of organizational objectives.
- (3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.
- (a) A contract management plan should include:
 1. Information about the specific staff positions and resources that will be assigned to contract management;
 2. A description of the organization of identified staff and resources for the contract management responsibility; and
 3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.
 - (b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.
- (4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:
- (a) Definition of needs;
 - (b) Procurement law, Rules, and Central Procurement Office Policy;
 - (c) Basic record keeping;
 - (d) Program specific goals, objectives, purpose, and responsibilities;
 - (e) Interpersonal communication;
 - (f) Project management skills and tools; and
 - (g) Evaluation techniques, skills, and tools.
- (5) Each State Agency shall implement such management practices as necessary to ensure:
- (a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).
 - (b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.
- (6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:
- (a) The procuring State Agency's program area having responsibility for each contract;
 - (b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;

- (c) The procuring State Agency's executives; and
 - (d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).
- (7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.
- (a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.
 - (b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, §§ 8-4-101, *et seq.*, §§ 9-18-101, *et seq.*, § 12-3-107, § 12-3-133, § 12-4-109.

Rule 28: #####-#-#-.28 CONTRACT WITH CURRENT OR FORMER STATE EMPLOYEE

- (1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.
- (a) For the purposes of applying this Rule,
 1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.
 - 2. A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-3-2, and not the Rules of this chapter.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-4-103, § 12-4-109.

**DRAFT COMPREHENSIVE RULES AND
REGULATIONS OF THE CENTRAL
PROCUREMENT OFFICE**

**COMPARISON: SUBCOMMITTEE
UPDATES TO 9/13/12 VERSION**

- DRAFT -
COMPREHENSIVE RULES AND REGULATIONS
OF THE CENTRAL PROCUREMENT OFFICE

Rule 1: #####-#-#.01 APPLICABILITY.

These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as “agency”), with the following exceptions:

- (1) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of Tenn. Code Ann., §§ 54-5-101, *et seq.*
- (2) The University of Tennessee and the Tennessee Board of Regents college and university systems.
- (3) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of Tenn. Code Ann. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.
- (4) ~~Contracts or memorandums of understanding~~ Interagency Agreements between two agencies of the State, where neither of ~~whom~~ State Agency has the independent capacity to contract or sue ~~and/or~~ be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue ~~and/or~~ be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.
- (5) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State’s contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.
- (6) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.

~~(1) For purposes of this Rule, a gift to the State shall be defined as a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:~~

- ~~1. Capacity of the donor to make the gift;~~
- ~~2. Intention of the donor to make the gift;~~
- ~~3. Completed delivery of the gift to or for the State, and~~
- ~~4. Acceptance of the gift by the State.~~

~~Nothing in this Rule shall be construed to mean that the State must accept any gift.~~

- (7) These Rules shall not apply to contracts requiring State Building Commission approval.

- (8) These Rules shall not apply to the purchase, ~~management~~, lease, or disposal of any real estate owned by or acquired by the State.
- (9) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.
- (10) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (0690—2—1—.01, et seq.).

(11) Notwithstanding anything in these Rules to the contrary, local government agencies are authorized to purchase through the Central Procurement Office pursuant to Central Procurement Office Policy. Requests may be made for one-time purchases or the establishment of agency term contracts. In addition, all items available on statewide contracts may be purchased by local government agencies and nonprofits.

Rule Authority: §§ 4-5-101, et seq., §§ 4-15-101, et seq., §§ 4-56-101, et seq., § 8-6-106, §§ 12-2-401, et seq., § 12-4-109, § 12-4-110, §§ 54-5-101, et seq., §§ 71-4-501, et seq.

Rule 2: #####-#-#.02 DEFINITIONS.

As used in these Rules, unless the context otherwise requires:

- (2) “Advisory Council” means the council created and empowered by Tenn. Code Ann. § 4-56-106;
- (3) “Agency” means each State board, commission, committee, department, officer, or any other unit of State government.
- (4) “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.
- (5) “Aggrieved Respondent” means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.
- (6) “Approval Process” means the process by which necessary State approvals are obtained.
- (7) “Award” means a State Agency’s notice to a proposer of the acceptance of a proposal.
- (8) “Base Contract” means the original contract prior to any amendments.
- (9) “Bid” means a response by a vendor to an invitation to bid.
- (10) “Bidding” means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.
- (11) “Bonus” means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

- (12) “Calendar Day” means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where ~~state~~State offices are closed, the next business day becomes the final calendar day.
- (13) “Central Procurement Office” means the State office established and empowered by Tenn. Code Ann. § 4-56-104.
- (14) “Central Procurement Office Policy” means a documented set of ~~broad~~ 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.*
- (15) “Chief Procurement Officer” means the official as defined by Tenn. Code Ann. § 4-56-104.
- (16) “Competitive Sealed Proposal” means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.
- ~~(17) “Comptroller” means the Comptroller of the Treasury, or his or her designee.~~
- ~~(18)~~(17) “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.
- ~~(19)~~(18) “Contract Amendment” means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.
- ~~(20)~~(19) “Contract Approval” means the procedures a State Agency must follow to obtain final approval of a contract.
- ~~(21)~~(20) “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.
- ~~(22)~~(21) “Cost-reimbursement Grant” means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.
- ~~(23)~~(22) “Delegated Authority” means a written document ~~where the Chief, approved in accordance with Central Procurement Office~~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.
- ~~(24)~~(23) “Delegated Grant Authority” means approval given ~~by the Chief~~in accordance with Central Procurement Office to a State Agency to issue grants for an individual program within specified limits and guidelines.
- ~~(25)~~(24) “Delegated Loan Authority” means approval given ~~by the Chief~~in accordance with Central Procurement Office to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program.
- ~~(26)~~(25) “Delegated Purchase Authority” means the approval given ~~by the Chief~~in accordance with Central Procurement Office to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

- (27)(26) “Delegated State Agency” means a State Agency that ~~has received approval from the Chief, in accordance with Central Procurement Officer Office Policy, has authority~~ to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.
- (28)(27) “Department of General Services” means the State department created and empowered by Tenn. Code Ann. §§ 4-3-1101, *et seq.*
- (29)(28) “Emergency Purchases” means a State Agency purchase, ~~authorized by the Chief Procurement Officer, made~~ during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- (30)(29) “Endowment Grant” means a limited Grant Contract, that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.
- (31)(30) “Fully Executed” means a signed contract that has been duly approved as evidenced by the affixation-, or electronic approval, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.
- (32)(31) “Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:
1. Capacity of the donor to make the gift;
 2. Intention of the donor to make the gift;
 3. Completed delivery of the gift to or for the State, and
 4. Acceptance of the gift by the State.
- Nothing in this Rule shall be construed to mean that the State must accept any gift.
- (33)(32) “Goods” means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term “Goods” does not include leases, acquisitions, or disposals of an interest in real property.
- (34)(33) “Grant” means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term “Grant” does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.
- (35)(34) “Grant Budget” means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.
- (36)(35) “Grantee” or “Grant Recipient” means the person or entity awarded a grant.
- (37)(36) “Grantor State Agency” means a State Agency that awards a grant to a person or entity.
- (38)(37) “Incentive” means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party’s performance at a specified level beyond that which is minimally required.
- (38) “Interagency Agreement” means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties

of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

- (39) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders ~~in accordance with the terms of the solicitation.~~
- (40) "Mandatory Necessary Contract Provision" means a specific clause that must be included, ~~absent an approved~~ in a contract, except as otherwise allowed by a rule exception, in a contract granted pursuant to applicable law.
- (41) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.
- (42) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.
- (43) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.
- (44) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.
- (45) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.
- (46) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. 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.
- (47) "Procurement Commission" means the State entity created and empowered by Tenn. Code Ann. § 4-56-102.
- (48) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee ~~whowhich~~ make requisitions for or procure goods or services.
- (49) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.
- (50) "Proposal Bond" means a surety bond issued by an insurance company or bank to ensure that the winning proposer will enter into a contract.
- (51) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.
- (52) "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.
- (53) "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.
- (54) "Protest" means a written complaint ~~submitted to the Chief Procurement Officer~~ filed by an aggrieved ~~respondent~~ party in connection with a solicitation or award of a contract by the Central Procurement Office.
- (55) "Protest Committee" means the committee created and empowered under Tenn. Code Ann. § 4-56-103.

- (56) “Purchase Order” means a document issued by the Central Procurement Office or a ~~Delegated~~ 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.
- (57) “Request for Information” means 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.
- ~~(57)~~(58) “Request for Proposals” means a written solicitation for written proposals to provide goods or services to the State.
- (59) “Request for Qualifications” means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.
- ~~(58)~~(60) “Responsible 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.
- ~~(59)~~(61) “Responsive Proposer” means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.
- ~~(60)~~(62) “Revenue Contract” means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.
- ~~(61)~~(63) “Review Process” means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.
- ~~(62)~~(64) “Rule Exception” means a request ~~by a State Agency~~ to relax the strict application of certain requirements of these Rules or applicable ~~statutes~~statute as allowed by applicable law.
- ~~(63)~~(65) “Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.
- ~~(64)~~(66) “Sealed Proposal” means a respondent’s proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office’s or a State Agency’s solicitation.
- ~~(65)~~(67) “Services” means all services and agreements procured by the State and formalized by contract.
- ~~(66)~~(68) “Sole Source Procurement” means a procurement for which ~~there is only one~~ practicably 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.
- ~~(67)~~(69) “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.
- ~~(68)~~(70) “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.

~~(69)~~(71) "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

~~(70)~~(72) "State Agency" means the departments, agencies, and entities of the State of Tennessee.

~~(71)~~(73) "State Architect" means the person, who oversees the Office of the State Architect.

~~(72)~~(74) "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.

~~(73) "Subrecipient" means a non-federal Contracting Party that expends State or federal funds received from the State to implement a State or federal program.~~

~~(75) "Subrecipient" is as defined in OMB A-133.~~

~~(74)~~(76) "Term Contract" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.

~~(75)~~(77) "Vendor" means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Rule Authority: §§ 4-5-101, et seq., §§ 4-56-101, et seq., §§ 12-3-101 – 12-3-1202, §§ 12-4-101 – 12-4-905.

Rule 3: #####-#-#.03 CENTRAL PROCUREMENT OFFICE.

The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.

The duties and responsibilities of the Central Procurement Office shall include:

- (1) -Implementing these Rules;
- ~~(2)~~ Providing necessary guidance, determinations and interpretations as required by these ~~(3)~~(2) Rules or applicable law;
- ~~(4)~~(3) -Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;
- ~~(5)~~ Providing procedural direction governing procurements and contracts for goods and ~~(6)~~(4) services in accordance with these Rules or applicable law;
- ~~(7)~~ Providing guidelines for drafting procurement and contract documents in accordance ~~(8)~~(5) with these Rules or applicable law;
- ~~(9)~~ Providing technical assistance to State Agencies regarding procurements and writing ~~(10)~~(6) contracts governed by these Rules or applicable law;
- ~~(11)~~(7) -Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;
- ~~(12)~~(8) -Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;
- ~~(13)~~(9) Resolving protests of Aggrieved Respondents;
- ~~(14)~~(10) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and

(15)(11) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, §§ 12-3-101, *et seq.*, §§ 12-4-101, *et seq.*

Rule 4: #####-#-#.04 AUTHORITY DELEGATED TO STATE AGENCIES.

A Delegated Authority to procure goods or services, ~~or~~ award grants, issue loans or enter into revenue or no cost contracts shall be effective upon the approval of the Chief Procurement Officer and the Comptroller of the Treasury. No grant, loan, purchase, or contract shall be initiated and no obligation shall be incurred on behalf of the State by a State Agency unless a Delegated Authority is granted by the Chief Procurement Officer ~~and the Comptroller of the Treasury~~. The approval process requirements for a Delegated Authority shall be more particularly prescribed by Central Procurement Office Policy. The general requirements for each Delegated Authority are as follows:

(1) Delegated Grant Authority—:

(a) A Delegated Grant Authority may be approved where:

1. The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants;
2. The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review ~~by the Central Procurement Office;~~
3. ~~Such other grants where the facts and circumstances indicate that individual review by the Central Procurement Office is unnecessary.~~

(2) Delegated Loan Authority—: A Delegated Loan Authority shall set forth the terms and conditions for making a loan and include all provisions required by Central Procurement Office Policy.

(3) Delegated Purchase Authority—:

(a) A Delegated Purchase Authority may be approved for procurement of goods or services, provided that such purchases and any resulting contracts from such purchases are subject to applicable provisions of these Rules and Central Procurement Office Policy.

(b) A Delegated Purchase Authority for the procurement of goods or services shall set forth all criteria, provisions and limitations consistent with Central Procurement Office Policy.

(4) General Requirements of Delegated Authorities:

(a) Each State Agency receiving a Delegated Authority ~~from~~ shall file such documentation with the Chief Procurement Officer ~~shall file such documentation,~~ in a form prescribed by ~~the Chief~~ Central Procurement Officer ~~Office Policy,~~ which details the request for a Delegated Authority and the authorized signatories for the State Agency.

(b) All Delegated Authorities shall set forth all requirements prescribed by Central Procurement Office Policy.

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities ~~approved by the Chief Procurement~~

~~Officer and the State Agency requesting the amendment requiring the same approval as the initial request.~~

(d) Records of the approval of the delegated authority shall be maintained by the Central Procurement Office

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-210, § 12-3-806, § 12-4-109.

Rule 5: #####-#-#.05 PROCUREMENT METHODS.

- (1) **Procurement Methods - Generally.** A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:
 - (a) All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State’s best interests.
 - (b) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State’s best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.
 - (c) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, ~~the~~including any negotiations upon which each contract is based, ~~and documentation of contract award,~~ as prescribed by ~~the Chief~~Central Procurement ~~Officer~~Office Policy.
 - (d) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.
- (2) **Request for Proposals (“RFP”).** An RFP shall comply with the following requirements:
 - (a) The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the response or cancellation of the RFP and rejection of all responses.
 - (b) An RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.
 - ~~(b)~~(c) The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of an RFP and safeguard against any perceived or actual conflicts of interest.
 - ~~(e)~~(d) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their

public release. ~~An~~Except as otherwise delegated, an RFP or its revisions shall be approved by the Central Procurement Office based on the following:

1. Application of the requirements of these Rules and Central Procurement Office Policy;
2. Adequacy of the scope description; and
3. Adequacy of the RFP's assurance of:
 - (i) Fairness to respondents;
 - (ii) Clear, fair and open competition;
 - (iii) Achievement of procurement objectives; and
 - (iv) Protection of the State's interests.

~~(d)~~(e) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely ~~as~~ a courtesy to the public and do not constitute official notice of a solicitation.

~~(e)~~(f) ~~The cost proposal may be submitted or evaluated separately from the technical proposal.~~ After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. – The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.

~~(f)~~(g) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.

1. Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.
2. Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.
3. Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.
4. The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.
5. Contract awards to a respondent other than the respondent receiving the highest evaluated score ~~shall require the written approval of the Chief~~may only be awarded pursuant to Central Procurement Officer-Office Policy. Justification for the contract award and approvals shall be documented in the procurement file. maintained by the Central Procurement Office

(3) **Invitation to Bid.** The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an

invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

- (4) **Informal Written, Verbal or Telephone Quotations.** Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation ~~by the Chief Procurement Officer.~~ All informal procurements shall comply in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.
- (5) **Emergency Procurement Purchases.** 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 utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:
 - (a) The circumstances leading to the emergency procurement;
 - (b) Procurement-related actions taken in response to the emergency, including procurement methods used; and
 - (c) A complete list of goods or services procured, including prices paid and total purchase amount.
- (6) **Sole Source Procurement.** Whenever practicable, procurements should be competitive. Sole source procurements may be made when an item or service possesses specific characteristics that can only be ~~practicably~~ filled by a single source; or where exclusive rights exist. Sole source procurements shall require the State Agency to provide ~~advanced~~ advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. Whenever practicable, competitive procurement methods, including competitive negotiation, should be used. 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:
 - (a) Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;
 - (b) Whether the product or service is unique and available from only one source;
 - (c) Whether the program requirements can be modified so that competitive ~~competitively~~ procured goods or services may be used;
 - (d) Whether items must be interchangeable or compatible with in-place items;
 - (e) Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or
 - (f) 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.

- (7) **Proprietary Procurement.** Proprietary procurements may be made for 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. in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. 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.
- (8) **Competitive Negotiation.** A contract may be procured by competitive negotiation. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer prior and the Comptroller of the Treasury prior to entering into a contract.
- (9) **Direct Negotiation - General Services Administration.** When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor.
- (10) **Utility Contracts.** The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, §§ 12-3-201, *et seq.*, § 12-3-107, § 12-3-207, § 12-3-208.

Rule 6: #####-##-.06 PROCUREMENT PROCESS – ELEMENTS OF SOLICITATION DOCUMENT & PROCESS PRIOR TO AWARD.

- (1) **Solicitations - Elements.** Each written solicitation shall contain the following elements at a minimum:
 - (a) The description of the technical requirements for the goods or scope of services to be procured;
 - (b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;
 - (c) Clear and definitive technical requirements and scope that allow for open competition where practicable;
 - (d) The solicitation shall contain directions regarding the submittal of proposals
 - (e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;
 - (f) Any requirements for bid, performance or payment bonds;

- (g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;
- (h) A declaration of whether the contract award is subject to successful contract negotiation;
- (i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and
- (j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

~~(2) **Specifications.** The State shall use technical requirements and scope that are non-restrictive. All suggestions, comments or concerns regarding a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.~~

~~(3)~~(2) **Inspection of Solicitation File.** Each solicitation shall contain a schedule indicating the dates and times for solicitation opening, the timeline for evaluation and the anticipated Award date. Once the state issues the Notice of Intent to Award, the Open File Period begins. The solicitation file shall be open for public inspection for seven (7) calendar days upon request. The Central Procurement Office or a Delegated State Agency shall give the requestor a reasonable opportunity to inspect the solicitation file. If there is no protest of the Notice of Intent to Award, the State will proceed with the contract award.

~~(4)~~(3) **Cancellation of Solicitation or Rejection of Responses.**

- (a) The Chief Procurement Officer shall have the ~~sole~~ discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.
- (b) The Chief Procurement Officer shall have the ~~absolute~~ discretion to reject any and all responses.
 1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.
 2. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.
 3. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:
 - (i) Unreasonably high prices or failure of all responses to meet technical specifications;
 - (ii) Error or defect in the solicitation;
 - (iii) Cessation of need;
 - (iv) Unavailability of funds;
 - (v) Lack of adequate competition; or
 - (vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that

proceeding with the procurement would be detrimental to the best interests of the State;

(c) Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.

(d) A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 10-7-504, § 10-7-506, § 12-3-107, § 12-3-203, § 12-3-213, § 12-3-502, § 12-4-109.

Rule 7: #####-#-#.07 PROCUREMENT PROCESS – PROPOSAL AND PERFORMANCE BONDS.

- (1) **Proposal Bond.** The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.
- (2) **Performance Bond.** The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Rule Authority: §§ 4-5-101, *et. seq.*, §§ 4-56-101, *et. seq.*, § 12-3-203, §§ 12-4-201, *et. seq.*

Rule 8: #####-#-#.08 PROCUREMENT PROCESS - COMMUNICATION AND NEGOTIATION.

To ensure a transparent, consistent and equitable process in accordance with Central Procurement Office Policy, the Chief Procurement Officer may conduct communications as he

or she determines to be in the best interests of the State, provided that any communication, clarification, or negotiation that may take place regarding any procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more respondents an unfair advantage or unfairly enable one or more respondents to improve their responses as a result and documented in the procurement file to support the final determination based on the information requested.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-207, § 12-3-208

Rule 9: #####-##-.09 PROCUREMENT PROCESS – DETERMINING NON-RESPONSIVENESS.

If the Central Procurement Office determines that a respondent has provided, for consideration in a contractor selection process or in negotiations, information that does not meet the technical requirements of the solicitation, where the respondent knew or should have known the submitted information was materially defective due to the omission of information or the submission of incorrect information, the subject response may be determined nonresponsive and rejected as prescribed in Central Procurement Policy.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107.

Rule 10: #####-##-.10 PROCUREMENT PROCESS – AMENDMENT OR WITHDRAWAL OF RESPONSES.

A respondent may withdraw or amend a response in writing prior to its opening. After responses are opened, a respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the respondent or the resulting contract would not be in the best interests of the State as prescribed in Central Procurement Office Policy. Any decision to allow withdrawal or amendment of a response shall be documented in the solicitation file.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-203.

Rule 11: #####-##-.11 AWARD ~~TO SUCCESSFUL RESPONDENT.~~

Each contract shall be awarded by the Chief Procurement Officer on behalf of the Central Procurement Office or by a Delegated State Agency where authority has been delegated in accordance with these Rules and Central Procurement Office Policy. Notice of Intent to Award shall be communicated in writing or electronic transmission to all respondents. The Chief Procurement Officer is authorized to award a contract if doing so is in the best interests of the State.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-203, § 12-4-109.

Rule 12: #####-##-.12 PROTEST PROCEDURES.

- (1) **Objection of Technical Requirements ~~or~~, Scope of Services or Specifications Prior to Evaluation of Responses.** ~~Any prospective respondent may file a written objection of~~ The State shall use technical requirements ~~or scope and scopes~~ of services ~~included in that are non-restrictive.~~ Concerns regarding any defects or ambiguities involving a solicitation within shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days ~~from the public release of~~ after the

solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

- (2) **Protest After Notice of Intent to Award.** Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.
- (a) On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.
 - (b) A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.
 - (c) The Chief Procurement Officer may consider the following grounds for protest and no others:
 - 1. The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.
 - 2. The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.
 - 3. The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.
 - 4. The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
 - 5. The contract award was the result of a technical or mathematical mistake or error during the evaluation process.
 - (d) The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.
 - (e) All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.
 - (f) A written protest that is filed with the Protest Committee shall:
 - 1. Meet the requirements of Tenn. Code Ann., § 4-56-103;
 - 2. Be delivered to ~~both the Procuring Agency head and~~ the Chief Procurement Officer and the Comptroller of the Treasury; and,
 - 3. Raise only grounds that were raised before the Chief Procurement Officer.
 - (g) All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with Tenn. Code Ann. §§ 10-7-101, *et seq.*
 - (h) A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the

Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

(i) The final determination letter of a protest before the Chief Procurement Officer shall be reported to the Protest Committee and the Comptroller of the Treasury

(ii) The final determination letter of a protest before the Protest Committee shall be reported to the Comptroller of the Treasury.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, §§ 10-7-101, *et seq.*, § 12-3-107.

Rule 13: #####-#-#.13 CONTRACT FINALIZATION AND NEGOTIATION.

In accordance with Central Procurement Office Policy, communication and negotiation shall be conducted in a manner ~~determined to be~~that is in the best interests of the State, provided that any communication, clarification, or negotiation so conducted does not undermine the procurement process as set forth in the solicitation, these Rules or Central Procurement Office Policy.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-207, § 12-3-208.

Rule 14: #####-#-#.14 CONTRACT TYPE.

(1) Term Contracts -

(a) Agency Term Contract - State Agencies may establish term contracts for specific goods or services. The resulting contract shall contain a maximum liability dollar amount that represents the estimated dollar volume ~~on~~ as prescribed in the contractsolicitation.

(b) Statewide Term Contract - The Central Procurement Office may establish statewide term contracts that all State Agencies must utilize and that may be used by local governments and higher education.

(2) Term Contract - General

(a) A term contract for more than a period of twelve (12) months may provide that the State has the right to cancel at any time for convenience by providing written notice to the Contracting Party.

(b) All term contracts shall contain a provision that provides for the termination of the contract at the end of any fiscal year in the event funds are not available.

(c) The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these Rules and shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State. The justification for the contract term exceeding sixty (60) months shall be maintained in the records of the Central Procurement Office. A report of all contracts awarded for a period longer than sixty (60) months in such format and at such interval determined requested shall be provided to the Comptroller of the Treasury.

(d) There shall be no pricing agreement other than in a contract between the State and a Contracting Party.

(3) No Cost Contracts - A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval. If a No Cost Contract request is approved, the State Agency shall

proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

- (4) **Revenue Contracts** — A “Revenue Contract” is a written contract where a State Agency provides specific deliverable services for monetary compensation. Prior to proceeding with any Revenue Contract negotiation, the State Agency must obtain the prior approval of the Chief Procurement Officer. If the request to enter into a Revenue Contract is approved, the State Agency shall proceed to procure the Revenue Contract in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

Rule Authority: §§ 4-5-101, et seq., §§ 4-56-101, et seq., §12-3-107, § 12-3-201, et seq.

Rule 15: #####-#-#.15 GRANTS.

- (1) **Grant Contract.** A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee ~~that benefits.~~ A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
- (a) A Grant shall represent one of the following:
1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
 2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or
 3. A contract ~~effecting~~affecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-~~service~~ type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.
- (b) A Grant Contract shall meet the following requirements by contract type:
1. Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.
 2. A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.
 - (i) A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.
 - (ii) A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

- (2) **Grant Budget.** The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.
- (3) **Grantee Selection Process.** 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.
- (4) **Cost Reimbursement Grant.** A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.
- (5) **Endowment Grant.** An Endowment Grant is a limited Grant Contract ~~is a contract that originates from a specific appropriation,~~ effecting an award and conveyance of funds or property to a Grantee for a particular purpose ~~that will~~to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.
- (a) An Endowment Grant Contract shall meet the following requirements:
1. The State has documented authority to make ~~the~~an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;
 2. The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;
 3. The State has made a written offer of an endowment award to the Grantee;
 4. The Grantee has accepted the grant award in writing; and
 5. The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.
- (b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.
- (c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.
- (d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.
- (e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.
- (f) An Endowment Grant Contract shall cite the State's authority to make the grant.
- (g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.
- (h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

- (6) All programs funded by a Grant Contract are subject to audit. It is not intended, however, that the existence of more than one Grant Contract or source of funds for a single Grantee require more than one audit in a single audit period.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107.

Rule 16: #####-##-16 GENERAL REQUIREMENTS OF CONTRACTS.

The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:

- (1) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.
- (2) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability ~~or estimated value~~, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.
- (3) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.
- (4) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide ~~that~~ a copy of its corporate charter or certificate of authority ~~be submitted~~ prior to contract approval.
- (5) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.
- (6) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.
- (7) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-201, *et seq.*

Rule 17: #####-##-17 MANDATORYNECESSARY OR PROHIBITED CONTRACT CLAUSES AND RULE EXCEPTIONS.

The purpose of this Rule is to prescribe the mandatorynecessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.

(1) MandatoryNecessary Contract Clauses For All Contract Types.

- (a) Term.** All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract: via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate stateState official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.
- (b) Maximum Liability for Goods or Services.** All multi-year contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs. All statewide contracts shall include an estimated liability for goods and services purchased under the contract.
- (c) Payment for Goods or Services.**

 - 1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.
 - 2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advanced payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State: and in accordance with applicable law.
 - 3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized stateState official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.
 - 4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.
- (d) Non- Discrimination.** All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or

disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

- (e) **Immigration.** All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.
- (f) **Necessary Signatories.** All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy— or may be established by statute.
- (g) **Contract Documents.** All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.
- (h) **Entire Agreement, Amendments, Modifications, Renewals or Extensions.** All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.
- (i) **Choice of Law and Venue.** All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.
- (j) **Retention of Records and Audit.** A contract for the purchase of materials, supplies, equipment or services shall include athe following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract—~~and shall specify the length of time the books and records shall be maintained and subject to inspection. In addition, the clause relating to retention of records or audit shall state such records and documents may be subject to audit at any reasonable time, with reasonable notice by the State.;~~

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 any 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 7-1-13 shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasurer.

- (k) **Independent Contractor.** All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.
- (l) **Force Majeure.** All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a *force majeure*, which includes, by way of example, acts of God, war, or civil unrest.
- (m) **Conflicting Terms and Conditions.** All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.
- (n) **Notice.** All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.
- (o) **Termination.** All contracts subject to these Rules shall contain provisions whereby the contract can be terminated for breach or convenience. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any. Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.
- (p) **Printing Contracts.** All printing contracts subject to these Rules shall comply with Tenn. Code Ann. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.

(q) **Annual Report and Audit.** All grant contracts subject to these Rules shall contain a provision pertaining to an annual report and audit of the grantee. The Comptroller of the Treasury shall prescribe the wording of the provision to be used

(r) **Monitoring.** All contracts subject to these Rules shall contain a provision that states that the contractor's activities conducted and records maintained pursuant to the subject contract shall be subject to monitoring and evaluation by the Comptroller of the Treasury. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(s) **Debarment and Suspension.** All contracts subject to these Rules shall contain a provision concerning the circumstances under which a contracting party may be considered debarred or suspended from doing business with the State. This contract provisions shall act as a certification that the contracting party:

1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
2. has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or

local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

3. is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and
4. has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

- (2) **Prohibited Contract Clauses.** The following terms shall not be included in a contract:
 - (a) **Indemnification and Hold Harmless.** Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.
 - (b) **Limitation of Liability.**
 1. All limitations of liability must comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 and Central Procurement Office Policy. Limitations of Liability that do not comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 or Central Procurement Office Policy are prohibited.
 2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.
 3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.
 - (c) **Bonus Payments.** Bonus payment provisions are prohibited for all contracts subject to these Rules.
- (3) **Rule Exception Procedure.** The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:
 - (a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.
 - (b) If the Procuring Agency considers it necessary to modify a mandatorynecessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a mandatorynecessary contract clause.
 1. The request for modification of a mandatorynecessary contract clause shall contain justification that addresses the following:
 - (i) The text of the new clause sought to be used;

- (ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;
 - (iii) The conditions in the market place that justify modification of the ~~mandatory~~necessary contract clause; and
 - (iv) The anticipated impact on the State's procurement if modification to the ~~mandatory~~necessary contract clause is not allowed.
- (c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 4-21-401, § 12-3-106, § 12-3-107, § 12-3-314, § 12-4-119, § 12-4-408, § 12-7-103.

Rule 18: #####-#-#.18 APPROVAL PROCESS OF CONTRACTS AND AMENDMENTS.

All contracts and amendments shall be in writing and approved in accordance with these Rules and Central Procurement Office Policy.

The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.

- (1) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:
 - (a) Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and
 - (b) Manage the review process to secure approval by other officials required by these Rules.
- (2) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:
 - (a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.
 - (b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.
 - (c) The Comptroller of the Treasury shall approve a contract that includes:
 1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;
 2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;
 3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or
 4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.
 - (d) The Commissioner of the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
 2. Provisions permitting the procurement of services from an individual.
- (e) Other officials may be required as detailed in Central Procurement Office Policy.

Rule Authority: §§ 4-5-101, *et seq.*, § 4-8-303, § 4-15-102, § 4-23-204, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-109, § 12-4-110.

Rule 19: #####-##-.19 GENERAL REQUIREMENTS OF CONTRACT AMENDMENTS.

A contract amendment is a written contract document that modifies or supplements one or more terms or conditions of a contract and meets the following:

- (1) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.
- (2) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.
- (3) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing. The amendment and justification is subject to the approval of the Chief Procurement Officer.
- (4) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107.

Rule 20: #####-##-.20 STATE AGENCY CERTIFICATION.

The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:

- (1) The goods or services are in fact needed;
- (2) The goods or services cannot be satisfactorily or efficiently provided by the State;
- (3) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and
- (4) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-212.

Rule 21: #####-##-.21 CONTRACTOR REGISTRATION.

In order to be awarded a contract for goods or services, a vendor must submit appropriate paperwork to Finance and Administration, Division of Accounts, to receive payment.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-701, *et seq.*

Rule 22: #####-#-#.22 INSTRUCTIONS FOR SOLICITATIONS AND CONTRACTS – DELIVERY AND COMMENCEMENT OF WORK.

Each solicitation and each contract shall clearly state instructions for authorizing services or delivery of goods.

- (1) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.
- (2) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.
- (3) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods ~~have~~ been consumed.
- (4) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107.

Rule 23: #####-#-#.23- GENERAL REQUIREMENTS OF PAYMENTS.

Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

- (1) All contracts, in which the State is to make one or more payments to a Contracting Party, shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.
- (2) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.
- (3) All procuring State Agencies shall maintain adequate documentation to support all payments.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-3-212.

Rule 24: #####-##-.24 STATEWIDE CONTRACT MANAGEMENT.

The Central Procurement Office shall be responsible for the management of all Statewide Contracts. The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts procured by the Central Procurement Office on behalf of the State Agency or within their delegated authority.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-109.

Rule 25: #####-##-.25 CONTRACT TERMINATION.

If a State Agency determines it to be in the best interests of the State to terminate a contract before the contract end date, either for cause or convenience, the head of the State Agency shall request and obtain the approval of the Chief Procurement Officer prior to any notice of contract termination.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-109.

Rule 26: #####-##-.26 EXCEPTIONS TO RULES.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, § 12-3-107, § 12-4-109.

Rule 27: #####-##-.23-27 AGENCY TERM CONTRACT MANAGEMENT AND SUBRECIPIENT MONITORING.

- (1) ~~The Central Procurement Office shall be responsible for the management of Statewide Contracts.~~ The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.
- (2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-

effectiveness, and provider accountability and results. Contract management may include, but is not limited to:

- (a) Allocating adequate staff and resources to contract management;
 - (b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;
 - (c) Communicating with Contracting Parties to ensure maximum performance and intended results;
 - (d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;
 - (e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
 - (f) Evaluating contract results in terms of the achievement of organizational objectives.
- (3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.
- (a) A contract management plan should include:
 - 1. Information about the specific staff positions and resources that will be assigned to contract management;
 - 2. A description of the organization of identified staff and resources for the contract management responsibility; and
 - 3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.
 - (b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.
- (4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff ~~have~~has adequate training. Such training may include:
- (a) Definition of needs;
 - (b) Procurement law, Rules, and Central Procurement Office Policy;
 - (c) Basic record keeping;
 - (d) Program specific goals, objectives, purpose, and responsibilities;
 - (e) Interpersonal communication;
 - (f) Project management skills and tools; and
 - (g) Evaluation techniques, skills, and tools.
- (5) Each State Agency shall implement such management practices as necessary to ensure:
- (a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).
 - (b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.
- (6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

- (a) The procuring State Agency's program area having responsibility for each contract;
 - (b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;
 - (c) The procuring State Agency's executives; and
 - (d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).
- (7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.
- (a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.
 - (b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Rule Authority: §§ 4-5-101, *et seq.*, §§ 4-56-101, *et seq.*, §§ 8-4-101, *et seq.*, §§ 9-18-101, *et seq.*, § 12-3-107, § 12-3-133, § 12-4-109.

Rule 28: #####-#-#-.28 CONTRACT WITH CURRENT OR FORMER STATE EMPLOYEE

- (1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.
 - (a) For the purposes of applying this Rule,
 - 1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - 2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 - 3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.
 - 2. A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college).

Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-3-2, and not the Rules of this chapter.

Rule Authority: §§ 4-5-101, et seq., §§ 4-56-101, et seq., § 12-4-103, § 12-4-109.