



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

REVISED AGENDA WITH ATTACHMENTS

**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #009
MONDAY, JULY 29, 2013 – 10:30 AM
TN TOWER – 3rd FLOOR
CONFERENCE ROOM 3.105 C – CONFERENCE CENTER NORTH**

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- I. Call to Order and Approve Minutes from May 1, 2013 Meeting
(see attached documentation)
- II. New Business
- Proposed changes to:
 - Section 6.2 of Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures*
 - Section 8 of Policy Number 2013-006, *Central Procurement Office Authority Delegation Policy and Procedures*
 - Section 5.15.3.1 of the *Procurement Procedures Manual of the Central Procurement Office* (see attached documentation)
 - Proposed changes to:
 - Section 7 of Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures*
 - Section 5.15.3.2 of the *Procurement Procedures Manual of the Central Procurement Office* (see attached documentation)
 - Proposed changes to:
 - Section 6.4 of the *Procurement Procedures Manual of the Central Procurement Office* (see attached documentation)
 - Proposed modification of a template in the *Procurement Procedures Manual of the Central Procurement Office – Standard Terms and Conditions*, No. 32.
(see attached documentation)
- III. Other Business
- IV. Adjournment

CENTRAL PROCUREMENT OFFICE

312 ROSA L. PARKS AVENUE, 3RD FLOOR • NASHVILLE, TENNESSEE 37243
(615) 741-1035 • FAX: (615) 741-0684 • WWW.TN.GOV/GENERALSERV/

MINUTES OF MAY 1, 2013 MEETING



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #008
WEDNESDAY, MAY 1, 2013 – 10:30 A.M.
TN TOWER – 3RD FLOOR – CANNON ROOM

Members in Attendance:

Jessica Robertson, Sondra Howe, Kelly Smith, Buddy Lea, Mary Anne Queen (representing Jason Mumpower), Mark Choate, Melissa Kmiecik, Jim Thompson

Members in Attendance via Conference Call:

Hugh Holt, Jay Garrison

Others in Attendance:

Reen Baskin, Bryan Chriske, Mike Perry, Paul Krivacka, Toni Stuart, Jenny Young, Cindy Heatherly, Shay Oliphant, Charles Key, Matt Brimm, Charlotte McKinney (State of Tennessee), Lou Alsabrooks, Smith Harris & Carr; Nate Gorman, Butler Snow; Kim Adkins, Capitol Strategy Group; Bill Hubbard, CMRA; Robin Atwood, CMRA.

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

I. Minutes from January 3, 2013 Meeting: A motion was made by Kelly Smith, Assistant Commissioner, Department of General Services, to accept the minutes as submitted. The motion was seconded by Buddy Lea, Assistant Commissioner, Department of Finance and Administration. All members voted in favor – none opposed.

II. New Business:

Draft Procurement Procedures Manual of the Central Procurement Office: Chief Procurement Officer Robertson stated the draft Procurement Procedures Manual of the Central Procurement Office (“Procedures Manual”) was first distributed to all members on April 3, 2013 and a revised version was distributed on April 26, 2013 showing the changes and edits recommended by the Policy Review Subcommittee. Chief Procurement Officer Robertson stated that the Procedures Manual was drafted to bring together the RFP and ITB worlds and is in line with the new Administrative Rules and legislation that is effective July 1, 2013. She then opened the floor for discussion.

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Mary Anne Queen, Legislative Sourcing Oversight Manager, Office of Comptroller of the Treasury, stated that she could tell that a great deal of work had been done to prepare the Procedures Manual as presented. However, she expressed that the Comptroller's Office is concerned that the Procedures Manual does not contain the templates, models, and forms for special requests that were included in the Department of General Services (DGS) Purchasing Manual and the Office of Contracts Review (OCR) Professional Contracting Manual. She suggested that the Procedures Manual be modified to include the templates, models, and forms for special requests and they be considered part of the Procedures Manual. Chief Procurement Officer Robertson asked if incorporating a link to the templates, models, and forms for special requests would satisfy the concerns of the Comptroller's Office. Ms. Queen stated that would partially address their concerns. She stated that the Comptroller's Office would like to ensure that the templates, models, and forms for special requests are officially incorporated into the Procedures Manual and, as such, any changes to them would be subject to review and recommendation by the Advisory Council and approval by the Procurement Commission. At this point, Ms. Queen made a motion that the Advisory Council postpone voting on the Procedures Manual until such time as the templates, models, and forms for special requests could be incorporated into the Procedures Manual. The motion was seconded by Buddy Lea. Mr. Lea stated that the Department of Finance and Administration (F&A) agrees that the templates, models, and forms for special requests are an integral part of the Procedures Manual and that they should be identified by reference or be included in the Procedures Manual document.

Paul Krivacka, Director of Category Management/Legal Team, Central Procurement Office, stated that it is the intention of the Central Procurement Office (CPO) to bring the templates, models, and forms for special requests to the Policy Review Subcommittee for review and updating after the Procedures Manual has been presented to the Procurement Commission for approval. Mike Perry, Deputy Chief Procurement Officer, stated that, in his opinion, the CPO is at greater risk by operating under the old DGS Purchasing Manual and the OCR manual. He further stated that with the resignation of Mark Emkes, Commissioner of Finance and Administration, it is important that the Procedures Manual be presented to the Procurement Commission at its meeting scheduled for May 16, 2013.

A lengthy discussion was then held by the Advisory Council and it was finally agreed that a conditional recommendation by the Advisory Council would be the best way to proceed. After this discussion, Ms. Queen officially withdrew her motion for postponement of voting on the Procedures Manual.

A motion was then made by Buddy Lea for the Advisory Council to make a recommendation for approval to the Procurement Commission contingent upon inclusion of the templates, models, and forms for special requests and subject to review and approval of Procurement Commission staff prior to presentation to the Procurement Commission. His motion was made with the understanding that the templates, models, and forms for special requests are considered a part of the Procedures Manual and future

changes to them would require presentation to the Advisory Council and Procurement Commission for recommendation and approval. The motion was seconded by Kelly Smith. All members voted in favor – none opposed.

III. Other Business: Chief Procurement Officer Robertson asked for any other business that the Council needed to discuss. Seeing none, the meeting was adjourned.

REVISED: July 22, 2013

PROPOSED CHANGES TO:

- **SECTION 6.2 OF POLICY NUMBER 2013-004,
“CENTRAL PROCUREMENT OFFICE CONTRACT
MANAGEMENT POLICY AND PROCEDURES”**
- **SECTION 8 OF POLICY NUMBER 2013-006,
“CENTRAL PROCUREMENT OFFICE AUTHORITY
DELEGATION POLICY AND PROCEDURES”**
- **SECTION 5.15.3.1 OF THE “PROCUREMENT
PROCEDURES MANUAL OF THE CENTRAL
PROCUREMENT OFFICE”**

COMPARISON VERSION

REQUEST: The matrixes in Section 6.2 of Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures*; Section 8 of Policy Number 2013-006, *Central Procurement Office Authority Delegation Policy and Procedures*; and § 5.15.3.1 of the *Procurement Procedures Manual of the Central Procurement Office* are deleted and replaced with the following:

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • Information technology 	OIR Endorsement
<ul style="list-style-type: none"> • Medical/mental health-related professional, pharmaceutical, laboratory, or imaging 	F&A eHealth Initiative Endorsement
<ul style="list-style-type: none"> • Contract between State Agencies that includes provisions for cooperative programs; • Provision for State legal consultation services 	Governor
<ul style="list-style-type: none"> • Provision for State legal consultation services 	Attorney General
<ul style="list-style-type: none"> • Contract with an individual; • Contract that involves training State employees (except training pursuant to an information technology system procurement); • Services relating to the employment of current or prospective State employees 	Human Resources Commissioner
<ul style="list-style-type: none"> • Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has an interest 	State Architect
<ul style="list-style-type: none"> • Delegation of procurement or contract authority by the CPO; • Procurements for goods and services where authority exists under both the SBC and CPO to procure and contract; • Auditing services; • Cooperative agreements as provided in § 12-3-512; 	Comptroller of the Treasury ¹

¹ Pursuant to Tenn. Code Ann. § 4-56-108(b), without limitation of the audit authority of the comptroller of the treasury, the comptroller is authorized to examine any procurement contract, grant or other documents.

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Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • Fee-For-Service procurements or contracts with a maximum liability > \$5,000,000; • Grant contracts with a maximum liability > \$5,000,000; • Fee-For-Service procurements or contracts for new or replacement information systems and technical infrastructure projects for goods and services > \$500,000; • Procurements or contracts utilizing competitive or non-competitive negotiations with a maximum liability > \$250,000; • Revenue procurements/contracts; • No-Cost procurements/contracts; • Procurements/contracts with a term > 60 months (5 years); • Procurements/contracts that propose to limit liability to < 2 times the maximum liability; • Procurements/contracts that propose to change the Records, Annual Report, Audit, or Monitoring clauses; • Procurements/contracts that allow for the negotiation of a necessary, mandatory, or standard contract clause; • Procurements allowing a cost proposal to be evaluated contemporaneously with or prior to the technical proposal evaluation; • Agency contracts with any organizations agreeing to provide services to third parties; • Procurements/contracts containing an automatic price escalator; and • Such other procurements/contracts or other items as may be directed by the Commissioner of Finance and Administration or by the Commission. 	

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • <u>All requests to procure goods or services by negotiation with a single service provider (a noncompetitive contract);</u> • <u>Contracts and contract amendments with a term of more than one (1) year or which contain term extension language authorizing a term of greater than one (1) year AND which have a cumulative value of \$250,000 or more;</u> • <u>Any contract amendment meeting the above term and dollar threshold requirements where the amendment 1) increases or decreases the maximum liability, 2) extends or shortens the contract term, 3) changes the entity or name of the entity with which the State is contracting, or 4) otherwise changes an original contract or amended contract in a substantive manner.</u> 	<u>Fiscal Review Committee²</u>

² Pursuant to Tenn. Code Ann. § 4-56-107(b)(4), the Fiscal Review Committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other State contract or contract amendment regardless of whether the contract or contract amendment meets these requirements.

REVISED: July 22, 2013

PROPOSED CHANGES TO:

- **SECTION 6.2 OF POLICY NUMBER 2013-004,
“CENTRAL PROCUREMENT OFFICE CONTRACT
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- **SECTION 8 OF POLICY NUMBER 2013-006,
“CENTRAL PROCUREMENT OFFICE AUTHORITY
DELEGATION POLICY AND PROCEDURES”**

- **SECTION 5.15.3.1 OF THE “PROCUREMENT
PROCEDURES MANUAL OF THE CENTRAL
PROCUREMENT OFFICE”**

CLEAN VERSION

REQUEST: The matrixes in Section 6.2 of Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures*; Section 8 of Policy Number 2013-006, *Central Procurement Office Authority Delegation Policy and Procedures*; and § 5.15.3.1 of the *Procurement Procedures Manual of the Central Procurement Office* are deleted and replaced with the following:

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • Information technology 	OIR Endorsement
<ul style="list-style-type: none"> • Medical/mental health-related professional, pharmaceutical, laboratory, or imaging 	F&A eHealth Initiative Endorsement
<ul style="list-style-type: none"> • Contract between State Agencies that includes provisions for cooperative programs; • Provision for State legal consultation services 	Governor
<ul style="list-style-type: none"> • Provision for State legal consultation services 	Attorney General
<ul style="list-style-type: none"> • Contract with an individual; • Contract that involves training State employees (except training pursuant to an information technology system procurement); • Services relating to the employment of current or prospective State employees 	Human Resources Commissioner
<ul style="list-style-type: none"> • Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has an interest 	State Architect
<ul style="list-style-type: none"> • Delegation of procurement or contract authority by the CPO; • Procurements for goods and services where authority exists under both the SBC and CPO to procure and contract; • Auditing services; • Cooperative agreements as provided in § 12-3-512; 	Comptroller of the Treasury ¹

¹ Pursuant to [Tenn. Code Ann. § 4-56-108\(b\)](#), without limitation of the audit authority of the comptroller of the treasury, the comptroller is authorized to examine any procurement contract, grant or other documents.

Contract Subject Matter	Required Approval or Endorsement
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Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • All requests to procure goods or services by negotiation with a single service provider (a noncompetitive contract); • Contracts and contract amendments with a term of more than one (1) year or which contain term extension language authorizing a term of greater than one (1) year AND which have a cumulative value of \$250,000 or more; • Any contract amendment meeting the above term and dollar threshold requirements where the amendment 1) increases or decreases the maximum liability, 2) extends or shortens the contract term, 3) changes the entity or name of the entity with which the State is contracting, or 4) otherwise changes an original contract or amended contract in a substantive manner. 	Fiscal Review Committee ²

² Pursuant to Tenn. Code Ann. § 4-56-107(b)(4), the Fiscal Review Committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other State contract or contract amendment regardless of whether the contract or contract amendment meets these requirements.

REVISED: July 22, 2013

PROPOSED CHANGES TO:

- **SECTION 7 OF POLICY NUMBER 2013-004,
“CENTRAL PROCUREMENT OFFICE CONTRACT
MANAGEMENT POLICY AND PROCEDURES**
- **SECTION 5.15.3.2 OF THE “PROCUREMENT
PROCEDURES MANUAL OF THE CENTRAL
PROCUREMENT OFFICE”**

COMPARISON VERSION

REQUEST: Section 7 of Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures* and Section 5.15.3.2 of the *Procurement Procedures Manual of the Central Procurement Office* is deleted in its entirety and replaced with the following:

5.15.3.2. Fiscal Review.

Certain contracts or amendments to certain contracts shall be contemporaneously filed with the Central Procurement Office, Office of the Comptroller for approval and with the Fiscal Review Committee of the General Assembly for review. This includes, but is not limited to, the following:

- All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of \$250,000 or more;
- ~~Any amendment to a contract described above; and~~
- Any amendment to a contract described above, whether originally procured competitively or noncompetitively which:
 - Increases or decreases funding;
 - Extends or shortens the contract term;
 - Changes the entity or name of the entity with which the State is contracting; or
 - Otherwise changes an original or amended contract in a substantive manner.

REVISED: July 22, 2013

PROPOSED CHANGES TO:

- **SECTION 7 OF POLICY NUMBER 2013-004,
“CENTRAL PROCUREMENT OFFICE CONTRACT
MANAGEMENT POLICY AND PROCEDURES**

- **SECTION 5.15.3.2 OF THE “PROCUREMENT
PROCEDURES MANUAL OF THE CENTRAL
PROCUREMENT OFFICE”**

CLEAN VERSION

REQUEST: Section 7 of Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures* and Section 5.15.3.2 of the *Procurement Procedures Manual of the Central Procurement Office* is deleted in its entirety and replaced with the following:

5.15.3.2. Fiscal Review.

Certain contracts or amendments to certain contracts shall be contemporaneously filed with the Central Procurement Office, Office of the Comptroller for approval and with the Fiscal Review Committee of the General Assembly for review. This includes, but is not limited to, the following:

- All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of \$250,000 or more;
- Any amendment to a contract described above, whether originally procured competitively or noncompetitively which:
 - Increases or decreases funding;
 - Extends or shortens the contract term;
 - Changes the entity or name of the entity with which the State is contracting; or
 - Otherwise changes an original or amended contract in a substantive manner.

REVISED: July 22, 2013

PROPOSED CHANGES TO:

- **SECTION 6.4 OF THE “*PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE*”**

COMPARISON VERSION

REQUEST: Section 6.4. of the *Procurement Procedures Manual of the Central Procurement Office* is deleted in its entirety and replaced with the following:

6.4. *Local Purchases.*

There are two types of Local Purchase authority: (1) Small Purchases; and (2) Informal Purchases. The [limitations](#), requirements and procedures for each are set forth below.

6.4.1. *Small Purchases.*

6.4.1.1. *Description of Small Purchase.*

State procurement professionals ~~are encouraged~~ are encouraged to use competitive methods whenever practicable. State Agencies may utilize a Small Purchase authority without soliciting quotes or proposals from multiple ~~supplier~~ vendors when the total value of a contract or a purchase will cost less than such amounts approved by the Procurement Commission. State procurement professionals shall also perform due diligence to ensure that the State is procuring goods and services on terms, conditions, and pricing that is in the State's best interests. All due diligence performed by a state procurement professional, such as benchmarking of pricing, shall be documented. State procurement professionals shall follow *Manual, Section 5.4.2.*, to identify prospective vendors of goods or services. Moreover, State procurement professionals shall consult Section 10.1 of the *Manual* and actively solicit goods or services from minority-owned, woman-owned, Tennessee service – disabled veteran owned, and small businesses when possible. The Chief Procurement Officer's approval is required for procuring goods or services where the goods or services to be procured are available from an existing Statewide Contract. In allowing a State Agency to purchase other than "off" of a Statewide Contract, the Chief Procurement Officer may consider, by way of example only, a Contracting Party's past performance, timeliness of performance (e.g., inability to supply the needed goods or services within the timeframe prescribed by the State Agency, etc.), the Contracting Party's ability to supply the goods or services (e.g., by having a source of supply of the requested goods or services), pricing, quality or compatibility concerns. ~~Small purchase authority may not be used, without the prior approval of the Chief Procurement Officer if the goods or services being procured exist on an existing Statewide Contract. See *Manual, Section 10.4. Purchases Made "Off" Statewide Contract. See also Policy Number 2013-004*—, *Central Procurement Office Contract Management Policy and Procedures, Section 4.2.3.*~~

6.4.1.2. *Conditions of Use for Small Purchase.*

Small purchase authority may be used for goods or services not exceeding such amounts approved by the Procurement Commission. It is important to note that no procurement shall be artificially divided or split in order to fall within such amounts approved by the Procurement Commission. Similarly, if purchases that fall within the small purchase authority are of a recurring nature and the aggregate total exceeds such amounts approved by the Procurement Commission, the contract is presumed to exceed the small purchase authority and a competitive procurement method must be used (e.g., RFP, ITB or informal quotes).

6.4.1.3. *Small Purchase Approval Process.*

Small Purchases must be approved by the contract manager, or such other person designated by the State Agency, of a State Agency prior to communication or issuance of a contract or purchase order to a supplier/vendor of goods or services.

6.4.2. *Informal Purchases.*

6.4.2.1. *Description of Informal Purchase.*

State procurement professionals ~~are encouraged~~shall to use competitive methods whenever practicable. State Agencies may utilize ~~a their~~ Informal Purchase authority by soliciting quotes or proposals from at least three (3) supplier/vendors when the total value of a contract or a purchase will cost less than such amounts approved by the Procurement Commission. A non-response from a vendor contacted by a State procurement professional shall not count as one of the three (3) required quotes for purposes of exercising informal purchase authority. State procurement professionals shall also perform due diligence to ensure that the State is procuring goods and services on terms, conditions, and pricing that is in the State's best interests. All due diligence performed by a state procurement professional shall be documented and made a part of the procurement file. State procurement professionals should follow Manual, Section 5.4.2., to identify prospective vendors of goods or services. State procurement professionals should also consult Section 10.1 of the Manual and actively solicit goods or services from minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses when possible. The Chief Procurement Officer's approval is required for procuring any goods or services where the goods or services to be procured are available from an existing Statewide Contract. In allowing a State Agency to purchase other than "off" of a Statewide Contract, the Chief Procurement Officer may consider, by way of example only, a Contracting Party's past

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performance, timeliness of performance, the Contracting Party's ability to supply the goods or services, pricing, quality or compatibility concerns. Informal Purchase authority may not be used, without the prior approval of the Chief Procurement Officer if the goods or services being procured exist on an existing Statewide Contract. See Manual, Section 10.4. Purchases Made "Off" Statewide Contract. See also Policy Number 2013-004, Central Procurement Office Contract Management Policy and Procedures, Section 4.2.3.

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6.4.1.2. Conditions of Use for Informal Purchase Authority.

Local purchase authority may be used for goods or services not exceeding such amounts approved by the Procurement Commission. It is important to note that no procurement shall be artificially divided or split in order to fall within such amounts approved by the Procurement Commission. Similarly, if purchases that fall within the informal purchase authority are of a recurring nature and the aggregate total exceeds such amounts approved by the Procurement Commission, the contract is presumed to exceed the informal purchase authority and a competitive procurement method must be used (e.g., RFP, ITB or informal quotes).

6.4.1.3. Informal Purchase Approval Process.

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

6.4.3. Small and Local Purchase Thresholds.

The Procurement Commission has approved the following small and informal purchase authorities as follows:

Requirement	Dollar Amount of Purchase
Small Purchase Rules Authorization -Approval of by all members of the procurement commission	\$.01 to \$10,000
Informal Solicitation Rules Authorization -Approval by all the members of the procurement commission.	\$10,000 .01 to \$50,000

REVISED: July 22, 2013

PROPOSED CHANGES TO:

- **SECTION 6.4 OF THE “*PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE*”**

CLEAN VERSION

REQUEST: Section 6.4. of the *Procurement Procedures Manual of the Central Procurement Office* is deleted in its entirety and replaced with the following:

6.4. *Local Purchases.*

There are two types of Local Purchase authority: (1) Small Purchases; and (2) Informal Purchases. The limitations, requirements and procedures for each are set forth below.

6.4.1. *Small Purchases.*

6.4.1.1. *Description of Small Purchase.*

State procurement professionals are encouraged to use competitive methods whenever practicable. State Agencies may utilize a Small Purchase authority without soliciting quotes or proposals from multiple vendors when the total value of a contract or a purchase will cost less than such amounts approved by the Procurement Commission. State procurement professionals shall also perform due diligence to ensure that the State is procuring goods and services on terms, conditions, and pricing that is in the State's best interests. All due diligence performed by a state procurement professional, such as benchmarking of pricing, shall be documented. State procurement professionals shall follow *Manual, Section 5.4.2.*, to identify prospective vendors of goods or services. Moreover, State procurement professionals shall consult Section 10.1 of the *Manual* and actively solicit goods or services from minority-owned, woman-owned, Tennessee service –disabled veteran owned, and small businesses when possible. The Chief Procurement Officer's approval is required for procuring goods or services where the goods or services to be procured are available from an existing Statewide Contract. In allowing a State Agency to purchase other than "off" of a Statewide Contract, the Chief Procurement Officer may consider, by way of example only, a Contracting Party's past performance, timeliness of performance (e.g., inability to supply the needed goods or services within the timeframe prescribed by the State Agency, etc.), the Contracting Party's ability to supply the goods or services (e.g., by having a source of supply of the requested goods or services), pricing, quality or compatibility concerns. See *Manual, Section 10.4. Purchases Made "Off" Statewide Contract*. See also Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures, Section 4.2.3*.

6.4.1.2. *Conditions of Use for Small Purchase.*

Small purchase authority may be used for goods or services not exceeding such amounts approved by the Procurement Commission. It is important to note that no procurement shall be artificially divided or split in order to fall within such amounts approved by the Procurement Commission.

Similarly, if purchases that fall within the small purchase authority are of a recurring nature and the aggregate total exceeds such amounts approved by the Procurement Commission, the contract is presumed to exceed the small purchase authority and a competitive procurement method must be used (e.g., RFP, ITB or informal quotes).

6.4.1.3. Small Purchase Approval Process.

Small Purchases must be approved by the contract manager, or such other person designated by the State Agency, of a State Agency prior to communication or issuance of a contract or purchase order to a vendor of goods or services.

6.4.2. Informal Purchases.

6.4.2.1. Description of Informal Purchase.

State procurement professionals shall use competitive methods whenever practicable. State Agencies may utilize their Informal Purchase authority by soliciting quotes or proposals from at least three (3) vendors when the total value of a contract or a purchase will cost less than such amounts approved by the Procurement Commission. A non-response from a vendor contacted by a State procurement professional shall not count as one of the three (3) required quotes for purposes of exercising informal purchase authority. State procurement professionals shall also perform due diligence to ensure that the State is procuring goods and services on terms, conditions, and pricing that is in the State's best interests. All due diligence performed by a state procurement professional shall be documented and made a part of the procurement file. State procurement professionals should follow *Manual, Section 5.4.2.*, to identify prospective vendors of goods or services. State procurement professionals should also consult *Section 10.1* of the *Manual* and actively solicit goods or services from minority-owned, woman-owned, Tennessee service –disabled veteran owned, and small businesses when possible. The Chief Procurement Officer's approval is required for procuring any goods or services where the goods or services to be procured are available from an existing Statewide Contract. In allowing a State Agency to purchase other than "off" of a Statewide Contract, the Chief Procurement Officer may consider, by way of example only, a Contracting Party's past performance, timeliness of performance, the Contracting Party's ability to supply the goods or services, pricing, quality or compatibility concerns. See *Manual, Section 10.4. Purchases Made "Off" Statewide Contract.* See also Policy

Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures, Section 4.2.3.*

6.4.1.2. Conditions of Use for Informal Purchase Authority.

Local purchase authority may be used for goods or services not exceeding such amounts approved by the Procurement Commission. It is important to note that no procurement shall be artificially divided or split in order to fall within such amounts approved by the Procurement Commission. Similarly, if purchases that fall within the informal purchase authority are of a recurring nature and the aggregate total exceeds such amounts approved by the Procurement Commission, the contract is presumed to exceed the informal purchase authority and a competitive procurement method must be used (e.g., RFP, ITB or informal quotes).

6.4.1.3. Informal Purchase Approval Process.

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

6.4.3. Small and Local Purchase Thresholds.

The Procurement Commission has approved the following small and informal purchase authorities as follows:

Requirement	Dollar Amount of Purchase
Small Purchase Authorization -Approval by all members of the procurement commission	\$0.01 to \$10,000
Informal Solicitation Authorization -Approval by all the members of the procurement commission.	\$10,000.01 to \$50,000

**MEMO FROM COMMISSIONER ROBERTS,
DEPARTMENT OF REVENUE, DATED MAY 8, 2013**

AND

**PROPOSED MODIFICATION OF A TEMPLATE IN THE
“*PROCUREMENT PROCEDURES MANUAL OF THE
CENTRAL PROCUREMENT OFFICE*” – STANDARD
TERMS AND CONDITIONS NO. 32**

received
5/14/13



BILL HASLAM
Governor

STATE OF TENNESSEE
DEPARTMENT OF REVENUE
ANDREW JACKSON STATE OFFICE BUILDING
NASHVILLE, TENNESSEE 37242

RICHARD H. ROBERTS
Commissioner

May 8, 2013

Mike Perry, Interim Chief Procurement Officer
Department of General Services
Tennessee Tower, 24th Floor
312 Rosa L. Parks Ave. N
Nashville, TN 37243

RE: Proposed Procedure for Compliance with TCA § 12-4-120(c)

Dear Mr. Perry:

In order to address certain findings of the Office of the Comptroller of the Treasury in connection with their ongoing "Sunset" review of the Tennessee Department of Revenue, I would like to propose the procedure detailed below.

Background

Tenn. Code Ann. § 12-4-120 was enacted in 2000 and generally prohibits the state from contracting to acquire goods or services unless the contractor is registered with the Department of Revenue (DOR) for sales tax collections. Tenn. Code Ann. § 12-4-120(c), as originally enacted in 2000, provided that the Commissioners of Revenue and Finance and Administration (F&A) "shall devise procedures to ensure compliance" with the contracting prohibition. In 2010, subsection (c) was amended to replace the Commissioner of F&A with the Chief Procurement Officer (CPO).

Proposed Procedure

It does not appear that a formal, written procedure was implemented following the enactment of Tenn. Code Ann. § 12-4-120. DOR therefore now presents the following proposed procedure:

1. The CPO will include in all model contracts and RFPs the requirement that any party contracting to provide goods or services shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The CPO will refuse to approve a contract unless the contractor provides proof of sales tax registration to the CPO.
2. Any need by the CPO to verify a particular contractor's information will be satisfied by DOR upon request. The CPO will make such request by either (1) contacting DOR Taxpayer Services Call Center at (615) 253-0600 or (2) utilizing DOR's Sales & Use Tax Certificate Verification portal located on the DOR website at <https://tdorbt.tn.gov/resaleaccountverification>.

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If you have any questions or would like to suggest modifications to this proposed procedure, please advise. We look forward to implementing this procedure as soon as possible.

Sincerely,

A handwritten signature in black ink that reads "Richard H. Roberts". The signature is written in a cursive, flowing style.

Richard H. Roberts
Commissioner

cc: Commissioner Steve Cates, Department of General Services
CFO Phillip Mize, Department of Revenue
Staff Auditor Valeria Stadelman, Comptroller of the Treasury

Instructions to Bidders:

1. Read the entire bid, including all terms and conditions and specifications.
2. If submitting the bid by mail: All bid prices must be typed or written in ink on the Line Details portion of the Invitation to Bid (ITB); any corrections, erasures or other forms of alteration to unit prices must be initialed by the bidder.
3. If submitting the bid by mail, the bid must be manually signed in ink; failure to do so will cause rejection of your bid. If submitting the bid on-line, your electronic signature constitutes having signed the bid.
4. Bid prices shall include delivery of all items F.O.B. destination or as otherwise specified.
5. Address all inquiries and correspondence to the Purchasing Agent indicated in the Invitation to Bid.
6. I (we) agree to strictly abide by all the statutes and terms contained in the rules of the Department of General Services, Central Procurement Office which are by reference made a part hereof, in addition to the Standard and Special Terms & Conditions, and Specifications embodied in this Invitation to Bid.
7. IMPORTANT: By submitting the bid, the Bidder certifies compliance with the above and further certifies that this bid is made without collusion or fraud.
8. State statutes require that all bidders be registered prior to the issuance of a contract or a purchase order. Vendors/Bidders can register online at the State of Tennessee Supplier Portal:
<https://supplier.edison.tennessee.gov>.
9. I (We) propose to furnish and deliver any and all of the supplies, services, and/or other commodities named in the Invitation to Bid, and for which I (we) have set prices in my (our) offering.
10. It is understood and agreed that this bid, when certified by authorized signature, shall constitute an offer, which when accepted in writing by the Department of General Services, Central Procurement Office, and subject to the terms and conditions of such acceptance, will constitute a valid binding contract between the State of Tennessee and the Vendor/Contractor (bidder) submitting such offering.
11. By my (our) written signature on this bid I (we) guarantee and certify that all items included in the bid meet or exceed any and all State specifications covering such items. I (We) further agree, if awarded a contract or purchase order as a result of this bid, to deliver such commodities, service or merchandise which meet or exceed the specifications.
12. It is understood and agreed that no contract may be assigned, sublet, or transferred without the written consent of the Central Procurement Office.
13. The inclusion in any bid of a limitation of remedies clause or a limitation of liabilities clause shall be cause for rejection except in bids for telecommunications and information technology goods and services. Pursuant to Tennessee Code Annotated 12-3-314(d), if a limitation of liability is included in the

bid for telecommunications and information technology goods and services it can be for not less than two (2) times the value of the contract and it shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. Provided, however, if the Chief Procurement Officer determines that it is necessary to protect the interests of the state, the Chief Procurement Officer may petition the Procurement Commission to approve contractor liability in excess of two (2) times the value of the contract. If the Commission agrees with the Chief Procurement Officer, it may approve such a higher liability amount.

14. All bidders have the right to inspect the bid file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested bidders should contact the Purchasing Agent following the bid opening date or once the file is open for the seven (7) day inspection period. A "File Open for Inspection" letter will be sent to all bidders detailing the bidder(s) recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the bid file will be provided to the bidder. If there is no request to inspect the bid file by the end of the seven (7) day inspection period, the Purchasing Agent will proceed with the award.

15. Protest by Vendor: Pursuant to Tenn. Code Ann. § 4-56-103, any actual proposer may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: www.tennessee.gov/generalserv/CPO

16. Bid Mailing Instructions: Each individual bid proposal must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the bid opening date. Bids should be mailed in a properly labeled sealed envelope to the following address:

Department of General Services, Central Procurement Office

Attn: Bidder Services

3rd Floor, William R Snodgrass, Tennessee Tower

312 Rosa L. Parks Avenue

Nashville, TN 37243-1102

17. Subject to paragraph 13, the Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106

18. Contracts are entered into solely for the convenience of the State of Tennessee. The vendor/contractor understands and agrees that the State of Tennessee, as a signatory party to a contract, is solely responsible for its performance, and that the officers and employees of the Department of General Services, Central Procurement Office, act exclusively as agents of the State for the award, consummation, and administration of contracts and are not personally liable for any performance or nonperformance by the State.

19. A bid must be received in the Central Procurement Office on or before the date and hour designated for the bid opening or the bid will be rejected.

20. The Central Procurement Office may reject any or all bids. Action to reject all bids shall be taken only for unreasonably high prices, errors in the Invitation to Bid (ITB), cessation of need, unavailability of funds, or any other reason approved by the Procurement Commission. The Procurement Commission has authorized rejection of all bids for failure to secure adequate competition. If an ITB is to be re-advertised, all prior bids shall remain closed to inspection until the evaluation of the re-advertisement is complete.

21. All present and former employees or officials of the State are referred to Tennessee Code Annotated 12-4-103.

22. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-bid conference or other scheduled function should contact the Central Procurement Office to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephonically, or otherwise, and should be made no less than ten (10) days prior to the scheduled event, to allow time for the Central Procurement Office to provide such aid or service.

23. No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State Constitutional and/or statutory law shall be excluded from participation in, or denied benefits of, or be otherwise subjected to discrimination in the performance of the Contract or in the employment practices of the vendor/contractor. The vendor/contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to employees and applicants, notices of non-discrimination.

24. TAXES: Purchases of goods by the State of Tennessee are exempt from Tennessee sales and use tax pursuant to Tenn. Code Ann. 67-6-329(a) (4), and the state is generally exempt from Federal excise tax. Contractors are subject to Tennessee sales and use tax on all materials and supplies used in the

performance of a contract, whether such materials and supplies are purchased by the contractor, produced by the contractor, or provided to the contractor by the State, pursuant to Tenn. Code Ann. 67-6-209. The contractor agrees to pay all taxes incurred in the performance of an awarded contract.

State agencies which procure products for the purpose of resale shall register with the Department of Revenue. Upon registration the agency will issue resale certificates to the successful contractor(s) for products procured for resale. The agency is responsible for the collection of the appropriate sales or use tax when the product is sold.

25. Exceptions to terms and conditions and/or those proposed by the bidder which may vary from the invitation to bid may render the bid unresponsive and subject the bid to rejection.

26. Unless otherwise stated, all goods called for by a purchase order must be tendered in a single delivery in compliance with the delivery time specified and payment is due only on such tender. Partial shipments and/or back orders will only be accepted with receiving agency's prior authorization.

27. All products, materials, supplies and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the bid opening, unless otherwise stated in this event.

28. Manufacturers of chemical products which are the subject of purchase contracts for the State of Tennessee shall list and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDS search repository or on the manufacturer's website so that such information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public. In lieu of posting a MSDS on MSDSSEARCH, a bidder shall include the manufacturer's universal resource locator (URL) for its MSDS in the event. For purposes of this MSDS requirement, the Department of General Services recognizes the following URL for national MSDS search repository:MSDS-SEARCH, which can be accessed on the internet at: <http://www.msdssearch.com>.

29. Conflict of Interest: The State may not consider a solicitation response from an individual who is, or within the past six (6) months has been, a state employee. For purposes of this solicitation, an individual shall be considered to be a "state employee" and prohibited from submitting a response to this solicitation for six (6) months after such time as all compensation for salary, termination pay, and annual leave has been paid to such state employee. A contract with or a solicitation response from a company, corporation, or any other contracting entity in which a controlling interest is held by a state employee shall be considered to be a contract with or a solicitation response from a state employee as though the state employee were submitting a response or entering a contract on his or her behalf. Notwithstanding the foregoing, a contract with or a solicitation response from a company, corporation, or any other contracting entity that employs an individual who does not own a controlling interest in such entity and who is, or within the past six months has been, a state employee shall not be considered a contract with or a solicitation response from a state employee and shall not constitute a prohibited conflict of interest.

30. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The contractor agrees that it will be subject to the exclusive jurisdiction of the courts of Tennessee in actions that may arise under this contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Section 9-8-101 through 9-8-407.

31. State and Federal Compliance: The contractor shall comply with all applicable state and federal laws and regulations in the performance of this contract.

32. Professional Licensure and Department of Revenue Registration: All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Proposer provides for consideration and evaluation by the State as a part of a proposal in response to this solicitation, shall be properly licensed to render such opinions. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer (and Proposer employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Proposer to submit evidence of proper licensure. **Before the Contract resulting from this solicitation is signed, the apparent successful Proposer must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Proposer provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation.**

33. Prohibition of Illegal Immigrants: The requirements of State of Tennessee's Public Acts, 2006, Chapter Number 878 and Executive Order 41 addressing the use of Illegal Immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be a material provision of this contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this contract.

As required by Public Acts, 2006, Chapter Number 878, no person may enter into a contract to supply goods or services to the State without first attesting in writing that the person will not knowingly utilize the services of Illegal Immigrants in the performance of this contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of Illegal Immigrants in the performance of this contract. For purposes of this contract, "Illegal Immigrant" shall be defined as any person who is not either a United States citizen, a lawful permanent resident, or a person whose physical presence in the United States is authorized or allowed by the department of homeland security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the contract. The contractor hereby attests, certifies, warrants, and assures that it shall comply with this term and condition for the entire contract period.

The contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or

services for a year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract. The contractor may appeal the imposition of the one-year prohibition by utilizing an appeals process established by the Commissioner of Finance and Administration.

As per Executive Order 41, the contractor shall be required to submit semi-annual Attestation Forms and obtain a signed Attestation Form from any subcontractor prior to the use of the subcontractor and semi-annually thereafter during the contract period. The records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State. Records shall include but are not limited to the following:

Documentation on contractors' employees and subcontractor personnel working on this contract showing that they are legal to work in the United States and payroll records.

Signed and dated Attestation Forms for your company that have been submitted to the Central Procurement Office and Attestation Forms obtained from subcontractor(s).

Note: The contractor shall be required to obtain prior approval to subcontract from the Deputy Commissioner of General Services, Central Procurement Office.

By authorized signature on this Invitation to Bid the contractor constitutes signing the Attestation Form for the initial six (6) months of the contract period. The contractor shall be required to submit signed Attestation Forms on a semi-annual basis from the start date of the contract period through to its completion date to the Central Procurement Office. Such attestations shall be maintained by the contractor in a permanent file on the vendor premises and made available to State officials upon request. The State of Tennessee provides an "approved Attestation Form" to support the reaffirmation process. The form can be accessed and printed from the internet at http://tn.gov/generalserv/purchasing/for_bidders.html.