

**AGENDA**  
**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #044**  
**MONDAY, FEBRUARY 10, 2020, 2:00 P.M.**  
**TN TOWER – 3<sup>RD</sup> FLOOR, NASHVILLE ROOM**

<b>AGENDA ITEM</b>	<b>PAGE #</b>
I. Call to Order	--
II. Introduction of New Advisory Council Member – Bob Vincent	
III. Approve Minutes from October 29, 2019 Meeting ..... (see attached documentation)	<b>3</b>
IV. New Business  Proposed revisions to the following Central Procurement Office documents (see attached documentation):  (1) E.#. Capital Asset (TDOT)..... (2) Conflict of Interest (RFQ and RFP Templates)..... (3) Solicitation Notice and NDA Model - NEW..... (4) A.#. MyTN Integration Language – NEW..... (5) GR and GG Cover Sheet..... (6) Policy Number 2013-007 ..... (7) Advisory Council Bylaws – NEW.....	      <b>12</b> <b>18</b> <b>22</b> <b>26</b> <b>28</b> <b>36</b> <b>65</b>
V. Other Business	--
VI. Adjournment	--

**MINUTES OF OCTOBER 29, 2019  
MEETING**

**MINUTES**  
**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #043**  
**TUESDAY, OCTOBER 29, 2019, 2:00 P.M.**  
**TN TOWER – 3<sup>RD</sup> FLOOR, NASHVILLE ROOM**

**Members in Attendance:**

Mike Perry, Jason Mumpower, Summer Carr, Ted Hayden, Brad Eskind, Jasmine Quattlebaum, Sean Newman, Buddy Lea

**Members Participating by Phone:**

Stu Shunk

**Others in Attendance:**

Paul Krivacka, Bryan Chriske, Jenny Young, Randy Dean, Debi Moss, Ellen Lipinski, Shannon Howell, Sean Newman, Davis Nwankwo, Price Hobby, Christy Allen, Robin Upchurch, Kevin Wieck, Chadwick Nottingham, Trey Norris, Nicholas Edwards, Jennifer Pfeiffer, Shirzad Tayyar

**Others Participating by Phone:**

Toni Stuart, Angela White

- I. **Call to Order:** Mr. Mike Perry, Chief Procurement Officer, called the meeting to order and recognized that a quorum of voting members was present.
- II. **Introduction of New Advisory Council Member:** Mr. Perry announced Ms. Jasmine Quattlebaum as a new non-voting member to the Advisory Council (“Council”). She was appointed by Governor Bill Lee’s office. He went on to say that Ms. Quattlebaum is the Director of Purchasing and Diversified Business Enterprise for the Convention Center for Nashville and Davidson County and that she is well versed in public policy and public sector procurement.
- III. **Minutes from the June 5, 2019 Meeting:** Mr. Perry asked if there were any corrections or additions to the minutes from the June 5, 2019 meeting. Seeing none, a motion was made by Mr. Ted Hayden, Executive Director of Compliance, State of Tennessee Real Estate Asset Management, to accept the minutes as presented. The motion was seconded by Mr. Jason Mumpower, Chief of Staff, Comptroller’s Office. All members voted in favor – none opposed.
- IV. **Announcements:** Mr. Mumpower asked Mr. Perry if he could make an announcement out of personal privilege that Jennifer Pfeiffer was in the audience and was new to her role as Deputy Chief of Staff for the Comptroller’s Office. She had been a regular attendee in the past in her past role. He stated that they are glad to have Mrs. Pfeiffer with the Comptroller’s Office and

that she and Bryan Chriske were available for assistance. Mr. Perry congratulated Ms. Pfeiffer on her new role and welcomed her back to the State.

**V. New Business:**

Mr. Perry asked Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the following New Business agenda items:

Mr. Perry asked if any items would be taken together. Mr. Krivacka stated that each of the items needs to be taken separately.

Mr. Krivacka proceeded to present agenda item (1):

- (1) Interagency Agreement ("IA") Model and Interagency Agreement – Grant Model instructions

Mr. Krivacka summarized the following points with regard to the Interagency Agreement ("IA") Model and Interagency Agreement – Grant Model instructions proposal:

- The instructions have been updated to reflect the current terminology used regarding the entities that can be parties to Interagency Agreements.
- Website links have been included to provide further instructions to procurement professionals.

Mr. Perry verified that this instrument would be used for an agreement between two State agencies or the State and an Institution of Higher Education. Mr. Krivacka confirmed.

Seeing no further discussion on agenda item (1), Jason Mumpower, made a motion to recommend the Interagency Agreement ("IA") Model and Interagency Agreement – Grant Model instructions proposal as presented to the Procurement Commission for approval. The motion was seconded Mr. Buddy Lea, Assistant Commissioner, Department of Finance and Administration. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (2):

- (2) Insurance Options instructions

Mr. Krivacka presented the following points with regard to the Insurance Options instructions proposal:

- This request is to modify the insurance options to provide greater clarity that a Rule Exception Request is required for any deviations from insurance requirements.
- Before, language such as "this option may only be used with the approval of the CPO Risk Manager" has led to some ambiguity as to the appropriate manner to document such approvals. Adoption of this proposal by the Procurement Commission will mean that the RER/Risk is the standard method to document approval of any requests to deviate from the insurance template language.

Mr. Perry stated that using the RER/Risk would also trigger the Comptroller's review and approval, in addition to the Central Procurement Office. Mr. Krivacka agreed and explained that because these are all eForms, selecting the correction option would then route it through the correct work flow for approval.

Seeing no further discussion on agenda item (2), Mr. Lea made a motion to recommend Insurance Options instructions proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Mumpower. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (3):

(3) No Cost ("NC") and Revenue ("RV") summary cover sheet

Mr. Krivacka presented the following points with regard to the No Cost ("NC") and Revenue ("RV") summary cover sheet proposal:

- This request revises the No Cost and Revenue Summary Cover Sheets, particularly at the "Selection Method & Process Summary" section.
- The Selection Method section contained options such as the alternative competitive method, which is no longer a recognized procurement method under the rules, policies and procedures.
- The Selection Method options proposed more closely reflect current business practices. Procurement professionals will have the option to either indicate that the contract is the result of a Competitive Award (and to include the Solicitation Number, if applicable for reference) or "Other" (e.g., Sole Source or Proprietary).

Mr. Lea asked if the No Cost Contract language change and the Revenue contract change were parallel in the changes for the very same reason and same effect. Mr. Krivacka responded that essentially, they were being changed for clarity reasons.

Seeing no further discussion on agenda item (3), Mr. Hayden made a motion to recommend No Cost ("NC") and Revenue ("RV") summary cover sheet proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Lea. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (4):

(4) Rule Exception Request – Advance Payments - NEW

Mr. Krivacka presented the following points with regard to the Rule Exception Request – Advance Payments - NEW proposal:

- In conversation with F&A budget, they have a role with respect to reviewing or dealing with situations where advance payments involving Federal Grants occur.
- This is a new Rule Exception Request form – solely for use with Advance Payments.
- The purpose of adding a new RER is to allow the Department of Finance & Administration to have oversight with respect to federally funded grants that require an advance payment.

- F&A is the department best suited to oversee compliance with cash management policies and will be the first approver on the new request eForm.

Mr. Krivacka noted a correction that the Comptroller's Office brought to the attention of the Central Procurement Office. There was a typo on the 3 check boxes of the form. The second box said Government Grant ("GR") but it should be ("GG"). The Comptroller's Office suggested that when there was a motion on item (4) that there should also be a motion to approve the correction.

Mr. Perry pointed out that this would apply to advance payments for any procurement not necessarily just a grant (e.g. software that needed to be paid for in advance). Mr. Krivacka clarified that the typical situation where payment is required in advance is for software maintenance and support as these vendors do not provide maintenance and support before payment.

Seeing no further discussion on agenda item (4), Mr. Mumpower made a motion to recommend Rule Exception Request – Advance Payments - NEW proposal as presented to the Procurement Commission for approval. And as part of that motion, he specified the approval includes the change, as indicated in item 4 on the form, that the words Governmental Grant ("GG") instead of ("GR"). The motion was seconded by Mr. Hayden. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (5):

- (5) Option: Advance Payment – Software Licenses or Maintenance and Support Agreements – NEW

Mr. Krivacka presented the Option: Advance Payment – Software Licenses or Maintenance and Support Agreements – NEW proposals:

- This request adds a new optional payment term for use when an advance payment is required as a result of software licenses or maintenance and support agreements.
- The standard C.3. Payment Methodology section requires compensation contingent upon the satisfactory provision of goods or services, which may not be applicable in an advance payment situation.

Mr. Perry asked if this too would trigger F&A's approval through workflow. Mr. Krivacka stated that this particular change would not, as it relates to an FA contract. It would be goods and services contract that would authorize an advance payment and it would workflow like any other the other contracts. He also mentioned that the advantage of adopting this optional term is that it will eliminate the need for an RER. Mr. Krivacka further explained that the previous item (4) dealt with the approval form, it's a specific prepayment RER form, and that it will trigger an F&A review because it will give them insight over pre-approval over a grant advance payment.

Mr. Perry asked if there were any questions or comments. Mr. Mumpower asked to confirm his understanding, that this option will only be included when the contract is exclusively for software licenses or maintenance and support agreements. He noted that is not for hardware but software licenses and maintenance of hardware support. Mr. Krivacka agreed that yes it would be for maintenance in support of hardware.

Mr. Lea had another point of clarification he wanted to make, the other example in item (4) that talked about advance payment on grants. He stated that he thinks the intent for F&A review and approval of that item as opposed to item (5) that deals with software maintenance is in fact making sure that extra layer of financial oversight in a grant that is typically a cost-reimbursement grant, that allows the advance payment as opposed to on the back end for cost reimbursement, for any number of reasons, it could be for a small not for profit entity that wouldn't necessarily have the cash flow to allow for a cost-reimbursement arrangement, particularly if it was a federal award. The additional oversight for an entity where their financial wherewithal needs an extra look, is that accurate? Mr. Krivacka agreed and further explained that there are also other things that he has learned after speaking with F&A that are triggered when making an advance payment. If the money is not spent within a certain time period, there may be financial obligations that the State owes to the federal government.

Seeing no further discussion on agenda items (5) Mr. Lea made a motion to recommend Option: Advance Payment – Software Licenses or Maintenance and Support Agreements – NEW proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Mumpower. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (6):

- (6) Section C. Payment Methodology Grant Contract (“GR”) and Governmental Grant (“GG”) instructions

Mr. Krivacka presented the following points with regard to the Section C. Payment Methodology Grant Contract (“GR”) and Governmental Grant (“GG”) instructions proposal:

- The instructions in the GR and GG contract templates have been slightly modified to clarify that procurement professionals should use the new RER for Advance Payments to justify a request for an advance payment.
- As mentioned, F&A will be built into the workflow for the new RER for Advance Payments. Also, there are questions directly related to advance payments, so using the correct RER eForm for Advance Payments will hopefully reduce additional questions and workflow issues once submitted for approval.

Mr. Perry mentioned that this proposal was a companion to make changes to the policy and procedures and Mr. Krivacka confirmed.

Seeing no further discussion on agenda item (6), Mr. Mumpower made a motion to recommend Section C. Payment Methodology Grant Contract (“GR”) and Governmental Grant (“GG”) instructions proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Hayden. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (7):

- (7) GU Model E.#. Annual Report and Audit

Mr. Krivacka presented the following points with regard to the GU Model E.#. Annual Report and

Audit proposal:

- This change to the Annual Report and Audit for use in the GU (for use with a government entity) changes the reference to F&A Accounts Policy 22 –to CPO Policy #2013-007 Grant Management and Subrecipient Monitoring Policy and Procedures.
- Also, the threshold dollar amount for the Annual Report for any subrecipient has been changed from \$500,000 to \$750,000.

Seeing no discussion on agenda item (7), Ms. Summer Carr, Assistant General Counsel, Department of Economic and Community Development made a motion to recommend GU Model E.#. Annual Report and Audit proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Lea. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (8):

(8) Grant Contract (“GR”) Template D.19. Audit Report

Mr. Krivacka presented the following points with regard to the Grant Contract (“GR”) Template D.19. Audit Report proposal:

- This request adds a requirement that the grantee submit a copy of the Notice of Audit Report, Parent Child Form, and Audit Report to the State Agency contact specified in the grant contract.
- The State Agency has the flexibility to provide the appropriate contact information.
- This will appear in red text in our template documents.

Mr. Perry mentioned that this proposal will add additional communication; in addition to those reports that currently go to the Comptroller’s Office. Mr. Krivacka agreed and further explained that this was an issue raised during the Sunset Audit and this change will address some of the issues that were raised during the audit.

Mr. Perry asked if there were any questions or comments. Mr. Mumpower mentioned that nothing makes him happier than something to fix an audit finding. And he added that they were already discussing some potential legislation, in the upcoming session of the General Assembly, which might help address this issue.

Seeing no discussion on agenda item (8), Mr. Mumpower made a motion to recommend the proposed Grant Contract (“GR”) Template D.19. Audit Report proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Lea. All members voted in favor – none opposed.

**VI. Other Business:** Mr. Perry presented the Council with the proposed Advisory Council on State Procurement Bylaws and Rules of Procedures for review and discussion. This, too, was recommended in the most recent audit and the CPO concurs. Mr. Perry, at the will of the Council, asked if there were any questions or comments and if the Council was ready to move for adoption of the proposed Advisory Council on State Procurement Bylaws and Rules of Procedures or does this need to be deferred to a future meeting.

Mr. Krivacka summarized the bylaws by stating that there was an audit finding relative to the lack of bylaws and a lack of conflict of interest disclosure for Advisory Council members. The adoption of these bylaws and a conflict of interest disclosure will address those audit findings and close that issue. It will also add another requirement that will address an audit finding, which is member attendance. Member attendance in the past has been somewhat problematic and adoption of this proposal will require that members miss no more than two consecutive meetings. Mr. Krivacka asked that the motion include a modification at section 2. The statutory citation should be §4-56-106 (b)(3). And then again at section 3, the statutory citation should be §4-56-106 (g).

Mr. Mumpower stated that he had a question and in addressing the question would use himself as an example. He stated that the Comptroller feels strongly about his sitting on this Council, however, duties, particularly during the legislative session, keep him from being able to attend every meeting. When those situations occur, the Comptroller takes care to appoint a designee in writing. Mr. Mumpower said that in discussing this, it is the belief that the seat that he sits in today is seated in the Office of the Comptroller and so long as the Comptroller has a duly appointed designee named for the meeting, the Comptroller's seat on the Council would be considered to be in attendance. Mr. Mumpower added that the same would hold true for each agency. He stated he believes what we are getting at is that in order to have a healthy Council, we need healthy attendance. Mr. Perry agreed and suggested adding some language to cover designees. Mr. Krivacka agreed to further clarifying.

Mr. Mumpower came prepared with some potential language. He stated that he is prepared to make a motion on the following language. "If a member misses more than two consecutive meetings without having a named alternate or designee by the appointing authority, the member may be considered ineligible for service during the remainder of their term". Mr. Perry asked if we needed to clarify further that it would apply to voting and non-voting members. Mr. Krivacka confirmed. Mr. Mumpower mentioned there would be a question there as well, that the statute really names the members, so to say, if a member misses more than two consecutive meetings without having a named or alternate designee by the appointing authority. Meaning that the Comptroller didn't name a designee in two meetings past then it says they may be considered ineligible. He stated that he did not know if that wouldn't be contrary to the statute and that the bylaws could exempt the Comptroller or any agency from being eligible. Mr. Perry stated that he thinks there needs to be some clarification to say that the appointee could appoint another designee and the seat cannot be eliminated. And there are other means of participating electronically. Mr. Krivacka mentioned the statute that deals with ability to participate telephonically versus being in person and basically requires that so long as there is a quorum present during the meeting, other members can participate telephonically. Mr. Perry stated that some of the non-voting members are domiciled out of town, so it might not be convenient for them to attend in person, so they frequently join by phone

Mr. Perry made a motion to take Mr. Mumpower's language and tweak it to provide for that instance, make the other two corrections, and recirculate the Advisory Council on State Procurement Bylaws and Rules of Procedures to the membership for final approval and defer it to the next meeting, or if the committee is comfortable we can adopt in writing by members. Mr. Mumpower stated that he thought it might be better to defer to the next meeting. Mr. Hayden agreed and made a motion. Mr. Mumpower also agreed and stated before this is closed out, in item number 4 where it says conflict of interest, it currently reads that "each member shall sign a

conflict of interest statement” and it currently reads “substantially similar to the one as attached”. He wanted to clarify that he is moved to strike the words “substantially similar to the one” and ask the committee to go ahead and adopt the one and instead of saying substantially similar to the one, just say “each member shall sign a conflict of interest statement as attached”. Then the form can be circulated and there will not be any questions about that. Mr. Mumpower also mentioned that on the form, as has been circulated, there’s an idea that has been discussed today, sometimes there will be designees different from meeting to meeting. He suggested that there may need to be a line seven added that says something like “to the extent that the council members appointing authority has named an alternate or designee, this conflict of interest statement shall also apply to the alternate or designee”. Mr. Perry agreed. Mr. Mumpower added to Mr. Hayden’s motion to roll it into one motion. Mr. Perry agreed and stated the Central Procurement Office would make all the corrections and suggestions that were made today, recirculate it to the members for further review and suggestions, and present a final version at the next meeting.

Mr. Lea added one clarifying question on Mr. Mumpower’s recommendation. He asked if there were another designee, who was not the original member, whether that signature by the member would be sufficient to bind the alternate or whether we would want the alternate’s signature as well. Mr. Mumpower agreed that was a valid question and asked to use another board as an example. He went on to explain that the Comptroller has a designee on the Certificate of Needs Board or whatever it is known as today, if the Comptroller names an alternate for that board, they have to sign a conflict of interest statement before serving, even if they are only doing it one time. He noted that it would be reasonable to say that if a named designee shows up and they have not served in the past, that prior to the meeting beginning, they should be presented with and asked to sign a conflict of interest statement, if they feel like they can. If they read it and feel like they can’t sign, perhaps they are not allowed to serve that day. Mr. Perry agreed and said that CPO may need to clarify that if someone serves more than once, if they’ve acknowledged that conflict of interest that initial time, that would cover that person for the rest of the year/term. Mr. Mumpower agreed and stated that the designee’s conflict of interest statement should last the remainder of the seat’s term. Mr. Lea asked if the intent was the length of applicability of the signature for the term of that member’s appointment. Mr. Mumpower suggested that, or it be done once a year. Mr. Perry suggested that we go back and look at the language that was in the Sunset Audit and see if it recommends annually or term because we want to make sure we conform to that particular suggestion.

Seeing no discussion, a motion was already made and seconded. All members voted in favor – none opposed

**Adjournment:** Seeing no other business, a motion for adjournment was made by Mr. Mumpower. All members voted in favor – none opposed; whereupon the October 29, 2019 Advisory Council meeting was adjourned.

**E.#. CAPITAL ASSET (TDOT)**  
**REDLINE**

**REQUEST: Revise the optional E.#. language for the Tennessee Department of Transportation provided in the Grant Contract (GR) and Governmental Grant (GG) Templates as follows:**

E.#. Capital Asset. The Grantee ~~agrees shall~~:

~~To use the~~

- (a) ~~Use one or more vehicles, equipment, or facilities~~ ("Capital Asset") acquired under this Grant Contract only for the purposes and the manner set forth in ~~their~~ the Grantee's application.
- (b) ~~At~~ Certify at the beginning of each calendar year, ~~the Grantee shall certify~~ that the ~~equipment received~~ Capital Asset acquired under this Grant Contract is still being used in accordance with the terms and provisions of this ~~agreement~~ Grant Contract.
- (c) ~~To pay~~ Pay all fees on the ~~equipment~~ Capital Asset acquired through this Grant Contract, including but not limited to, title and registration fees.
- (d) ~~To be~~ Be responsible for all costs and expenses related to the operation, maintenance, and repair of the ~~equipment~~ Capital Asset acquired through this Grant ~~Agreement~~ Contract.
- (e) ~~To provide~~ Provide licensed drivers, as required by the Tennessee Department of Safety and Homeland Security, for operation of all vehicles or equipment received under this Grant Contract.
- (f) ~~To provide~~ Carry insurance ~~of all vehicles acquired under this Grant for on Capital Assets sufficient to cover the State interest, and the Federal interest if applicable, in the Capital Asset.~~
  - 1. If the Grantee is governed by the Tennessee Governmental Tort Liability Act (Tenn. Code Ann. § 29-20-101 et seq.), then the following insurance coverage is required:
    - a) Bodily injury or death of any one person in any one accident, occurrence or act at a minimum amounts: of \$300,000.00 per person.
    - b) Bodily injury or death of all persons in any one accident, occurrence or act at a minimum of \$700,000.00 per accident.
    - c) Injury to or destruction of property of others in any one accident at a minimum of \$100,000.00.
  - 2. If the Grantee is not governed by the Tennessee Governmental Tort Liability Act, then the following insurance coverage is required:
    - a) Personal Injury Liability – minimum of \$300,000.00 per person and \$1,000,000.00 per incident.
    - b) Property Damage Liability – minimum of \$300,000.00 per incident.
    - c) Comprehensive – maximum deductible of \$500.00.
    - d) Collision – maximum deductible of \$500.00.
    - e) Uninsured Motorist – minimum of \$50,000.00 per person and \$100,000.00 per incident.
  - 3. \_\_\_\_\_ Additionally, if applicable, the Grantee shall comply with the provisions of Section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), with respect to any project activity involving construction or an acquisition having an insurable cost of \$10,000.00 or more.

This insurance shall be in effect at all times while the ~~vehicle~~Capital Asset is used for public transportation services or service vehicle purposes in operations. The Grantee shall furnish the State with evidence of such insurance at the time the ~~equipment~~Capital Asset is delivered to the Grantee and annually on the anniversary date of the delivery of the ~~equipment~~Capital Asset. Upon demand by the State, the Grantee shall provide proof of insurance at any time during the term of useful life of ~~equipment~~the Capital Asset.

~~(f)~~(g) ~~That~~Ensure that any vehicles received under this Grant Contract will comply with the Federal Motor Vehicle Safety Standards ("FMVSS") as established by the United States Department of Transportation.

~~(g)~~(h) ~~That~~Ensure that any ~~vehicles~~Capital Asset received under this Grant Contract shall be used for not less than the useful life-, except with the State's prior written approval. The useful life of all ~~vehicles~~Capital Assets purchased under the ~~grant~~Grant Contract is as listed in the grant document filed with the Federal Transit Administration (~~("FTA")~~). Upon reaching the expiration of the useful life of the ~~equipment~~Capital Asset, the ~~state~~State may ask the Grantee to provide written notice to the State.

**E.#. CAPTIAL ASSET (TDOT)**

**CLEAN**

**REQUEST: Revise the optional E.#. language for the Tennessee Department of Transportation provided in the Grant Contract (GR) and Governmental Grant (GG) Templates as follows:**

**E.#.** Capital Asset. The Grantee shall:

- (a) Use one or more vehicles, equipment, or facilities (“Capital Asset”) acquired under this Grant Contract only for the purposes and the manner set forth in the Grantee’s application.
- (b) Certify at the beginning of each calendar year, that the Capital Asset acquired under this Grant Contract is still being used in accordance with the terms and provisions of this Grant Contract.
- (c) Pay all fees on the Capital Asset acquired through this Grant Contract, including but not limited to title and registration fees.
- (d) Be responsible for all costs and expenses related to the operation, maintenance, and repair of the Capital Asset acquired through this Grant Contract.
- (e) Provide licensed drivers, as required by the Tennessee Department of Safety and Homeland Security, for operation of all vehicles or equipment received under this Grant Contract.
- (f) Carry insurance on Capital Assets sufficient to cover the State interest, and the Federal interest if applicable, in the Capital Asset.
  - 1. If the Grantee is governed by the Tennessee Governmental Tort Liability Act (Tenn. Code Ann. § 29-20-101 et seq.), then the following insurance coverage is required:
    - a) Bodily injury or death of any one person in any one accident, occurrence or act at a minimum of \$300,000.00 per person.
    - b) Bodily injury or death of all persons in any one accident, occurrence or act at a minimum of \$700,000.00 per accident.
    - c) Injury to or destruction of property of others in any one accident at a minimum of \$100,000.00.
  - 2. If the Grantee is not governed by the Tennessee Governmental Tort Liability Act, then the following insurance coverage is required:
    - a) Personal Injury Liability – minimum of \$300,000.00 per person and \$1,000,000.00 per incident.
    - b) Property Damage Liability – minimum of \$300,000.00 per incident.
    - c) Comprehensive – maximum deductible of \$500.00.
    - d) Collision – maximum deductible of \$500.00.
    - e) Uninsured Motorist – minimum of \$50,000.00 per person and \$100,000.00 per incident.
  - 3. Additionally, if applicable, the Grantee shall comply with the provisions of Section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), with respect to any project activity involving construction or an acquisition having an insurable cost of \$10,000.00 or more.

This insurance shall be in effect at all times while the Capital Asset is used for public transportation services or service vehicle purposes in operations. The Grantee shall furnish

the State with evidence of such insurance at the time the Capital Asset is delivered to the Grantee and annually on the anniversary date of the delivery of the Capital Asset. Upon demand by the State, the Grantee shall provide proof of insurance at any time during the term of useful life of the Capital Asset.

- (g) Ensure that any vehicles received under this Grant Contract will comply with the Federal Motor Vehicle Safety Standards ("FMVSS") as established by the United States Department of Transportation.
- (h) Ensure that any Capital Asset received under this Grant Contract shall be used for not less than the useful life, except with the State's prior written approval. The useful life of all Capital Assets purchased under the Grant Contract is as listed in the grant document filed with the Federal Transit Administration ("FTA"). Upon reaching the expiration of the useful life of the Capital Asset, the State may ask the Grantee to provide written notice to the State.

**CONFLICT OF INTEREST  
(RFQ AND RFP TEMPLATES)**

**REDLINE**

**REQUEST: Revise the Request for Qualifications (“RFQ”) Template and Request for Proposals (“RFP”) Template as follows:**

**RFQ Template:**

**4.3. Conflict of Interest**

4.3.1. The State may not consider a proposal from an individual who is, or within the past six (6) months has been, a State employee. For these purposes,

4.3.1.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

4.3.1.2. 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

4.3.1.3. 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 prohibited conflict of interest.

4.3.2. This RFQ is also subject to Tenn. Code Ann. § 12-4-101—~~105~~.

**RFP Template:**

3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:

3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

3.3.8.2. A contract with or a response 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

~~3.3.8.3.~~ A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

**CONFLICT OF INTEREST  
(RFQ AND RFP TEMPLATES)**

**CLEAN**

**REQUEST: Revise the Request for Qualifications (“RFQ”) Template and Request for Proposals (“RFP”) Template as follows:**

**RFQ Template:**

**4.3. Conflict of Interest**

- 4.3.1. The State may not consider a proposal from an individual who is, or within the past six (6) months has been, a State employee. For these purposes,
  - 4.3.1.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
  - 4.3.1.2. 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
  - 4.3.1.3. 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 prohibited conflict of interest.
- 4.3.2. This RFQ is also subject to Tenn. Code Ann. § 12-4-101—105.

**RFP Template:**

- 3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:
  - 3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
  - 3.3.8.2. A contract with or a response 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
  - 3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

**SOLICIATION NOTICE AND  
NDA MODEL**

**NEW**

## Agency Letterhead

**SOLICITATION NOTICE**

INSERT DATE

Service Providers:

The State of Tennessee is issuing a solicitation to provide **GOODS OR SERVICES CAPTION** to the State. Please note the following solicitation highlights:

<b>SOLICITATION ID #</b>	
<b>Scope of Goods or Service</b>	
<b>Procuring State Agency</b>	
<b>Response Deadline</b>	
<b>Solicitation Coordinator Contact Information</b>	

This solicitation is unique in that it has been identified by the Department of Finance and Administration, Strategic Technology Solutions as containing information that is confidential under Tenn. Code Ann. § 10-7-504(i). Therefore, a non-disclosure agreement must be signed before the solicitation details may be disclosed by the State.

If you are interested in responding to this solicitation, please complete the attached non-disclosure agreement and return it to the Solicitation Coordinator. The above solicitation includes a document on "[How to Register to do Business with the State of Tennessee](#)." Please note that it can take approximately 10-14 days to become registered. We appreciate your interest in doing business with the State of Tennessee and hope that you will consider responding to this solicitation.

**THE STATE OF TENNESSEE**  
**NONDISCLOSURE AGREEMENT**

This Nondisclosure Agreement for <INSERT SOLICITATION NUMBER> (hereinafter referred to as the "Agreement") is effective upon signature by the SUPPLIER LEGAL ENTITY NAME (Supplier having its principal place of business at SUPPLIER'S ADDRESS ("Supplier")). The Supplier agrees as follows:

1. Materials, records, notes, logs, diagrams, drawings and any other information or records, regardless of form, medium or method of communication, provided to the Supplier by the State or acquired by the Supplier on behalf of the State, as well as all information derived or resulting from merges, matches, or other uses of the information shall be regarded as Confidential State Data. Confidential State Data shall also include, but shall not be limited to:

- (i) electronic information processing systems, telecommunications systems, or other communications systems of the State (collectively, "Government Property");
- (ii) plans, security codes, passwords, combinations, or computer programs used to protect electronic information and Government Property;
- (iii) information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity;
- (iv) information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or Government Property; and
- (v) the identity of another Supplier providing goods and services to the State that are used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or information related any person or entity.

2. The Supplier shall safeguard and hold in strict confidence all Confidential State Data and shall not disclose the Confidential State Data to third parties without the written consent of the State. The Supplier shall further restrict disclosure of Confidential State Data to only those employees who have a need to know and who have executed a nondisclosure agreement to protect the Confidential State Data with terms equivalent to this Agreement.

3. Nothing in this Agreement shall permit the Supplier to disclose any Confidential State Data, regardless of whether it has been disclosed or made available to the Supplier due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential State Data shall not be disclosed except as required under state or federal law. To the fullest extent allowable under applicable law or regulation, the Supplier shall promptly notify and provide to the State a reasonable opportunity to oppose any disclosure required under state or federal law.

4. The Supplier acknowledges that Confidential State Data delivered by the State to the Supplier shall be for the purpose of exploration of business opportunities involving the State and the Supplier. No other use of the Confidential State Data is granted without the written consent of the State. In the event the State gives its approval for the Supplier to disclose Confidential State Data to a third party, the Supplier shall ensure that all such disclosures are marked with appropriate legends, the receiving third party enters into a non-

disclosure agreement to protect Confidential State Data with terms as least as protective as those contained this Agreement, and any other conditions reasonably required by the State in order to preserve the confidential nature of the information and the State's rights therein.

5. All obligations set forth under this Agreement shall survive any termination of this Agreement. Upon termination, the Supplier shall promptly destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology Special Publication 800-88.

6. This Agreement shall not be construed as a teaming, joint venture or other such arrangement; rather, the parties hereto expressly agree that this Agreement is for the purpose of protecting Confidential State Data only.

7. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Agreement shall not be affected and shall remain in full force and effect. The terms and conditions of this Agreement are severable.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Agreement. The Supplier acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.

9. Nothing in this Agreement shall be construed to convey to Supplier any right, title or interest or copyright in the Confidential State Data, or any license to use, sell, exploit, copy or further develop the Confidential State Data.

10. This Agreement is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Agreement may only be modified by a written amendment signed by the Supplier and approved by all applicable State officials.

**IN WITNESS WHEREOF**, this Agreement has been executed by the Supplier and is effective as of the date signed below:

**INSERT SUPPLIER LEGAL ENTITY NAME**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **A.#. MYTN INTEGRATION LANGUAGE**

**NEW**

**REQUEST: Add the following to the Edison document configurator and to the Fee for Goods or Services Contract Template (FA) instructions, considerations, and options as follows:**

**Option: MyTN.gov Integration**

If the Contract involves software: (1) add the following MyTN.gov Integration term to Section A. Scope; **and** (2) add the Additional Lines, Items, or Options contract term to Section E.#. Special Terms and Conditions

**A.#.** MyTN.gov Integration.

- a. The State may require the software developed or provided by the Contractor under this Contract to integrate with the State's customer-facing portal, MyTN.gov. Such integration may occur at any time during the Term of the Contract. If so, the Contractor may have to comply with one, or more, of the following integration requirements:
  - (1) All web applications must be Responsive. "Responsive" is an industry standard term that refers to a web design that makes web pages render well on a variety of devices and window or screen sizes.
  - (2) All web applications must have the capability to use a single-sign on server utilizing the following industry standard protocols: Security Assertion Markup Language ("SAML") or minimum of OAuth 2.0.
- b. Any of the obligations in Section A.#.a that were known and required prior to Contract Effective Date will be specified herein, including necessary compensation methods and amounts.
- c. For any of the obligations in Section A.#.a that were unknown or not required at Contract Effective Date, it will be necessary to add lines, items, or options to the Contract to accommodate one or more of the new integration requirements. The State shall add these lines, items, or options in accordance with the MOU process described in Section E.#, below. If the Contractor requires additional compensation for the integration tasks, such compensation shall be negotiated and specified through this same MOU process.

# **GR AND GG COVER SHEET**

**REDLINE**

**REQUEST: Revise the Grant Contract ("GR") and Governmental Grant Contract ("GG") Template coversheets as follows:**

 <h2 style="margin: 0;">GRANT CONTRACT</h2> <p style="margin: 0;">(cost reimbursement grant contract with an individual, business, non-profit, or governmental entity of another state or country)</p>					
Begin Date		End Date		Agency Tracking #	Edison ID
					-
Grantee Legal Entity Name					Edison Vendor ID
Subrecipient or <del>Contractor</del> <u>Recipient</u> <input type="checkbox"/> Subrecipient <input type="checkbox"/> <del>Contractor</del> <u>Recipient</u>			CFDA # _____  Grantee's fiscal year end _____		
Service Caption (one line only)					
<b>Funding —</b>					
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount
<b>TOTAL:</b>					
<b>Ownership/Control</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Service-Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Businesses (DSBE)					
<input type="checkbox"/> Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government		<input type="checkbox"/> Non-Minority/Disadvantaged		<input type="checkbox"/> Other:	
<b>Grantee Selection Process Summary</b>					

<input type="checkbox"/> Competitive Selection	Describe the competitive selection process used.
<input type="checkbox"/> Non-competitive Selection	Describe the reasons for a non-competitive grantee selection process.
<p><b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.</p>	<i>CPO USE - GR</i>
<b>Speed Chart</b> (optional)	<b>Account Code</b> (optional)



# GOVERNMENTAL GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)

<b>Begin Date</b>	<b>End Date</b>	<b>Agency Tracking #</b> -	<b>Edison ID</b>		
<b>Grantee Legal Entity Name</b>			<b>Edison Vendor ID</b>		
<b>Subrecipient or Contractor/Recipient</b> <input type="checkbox"/> Subrecipient <input type="checkbox"/> <del>Contractor/Recipient</del>		<b>CFDA #</b>			
		<b>Grantee's fiscal year end</b>			
<b>Service Caption</b> (one line only)					
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Grant Contract Amount</b>
<b>TOTAL:</b>					
<b>Grantee Selection Process Summary</b>					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used.			
<input type="checkbox"/> Non-competitive Selection		Describe the reasons for a non-competitive grantee selection process.			
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - GG</i>	
<b>Speed Chart</b> (optional)		<b>Account Code</b> (optional)			

# **GR AND GG COVER SHEET**

**CLEAN**

**REQUEST: Revise the Grant Contract (“GR”) and Governmental Grant Contract (“GG”) Template coversheets as follows:**

 <h2 style="margin: 0;">GRANT CONTRACT</h2> <p style="margin: 0;">(cost reimbursement grant contract with an individual, business, non-profit, or governmental entity of another state or country)</p>					
<b>Begin Date</b>		<b>End Date</b>		<b>Agency Tracking #</b>	<b>Edison ID</b>
					-
<b>Grantee Legal Entity Name</b>					<b>Edison Vendor ID</b>
<b>Subrecipient or Recipient</b> <input type="checkbox"/> Subrecipient <input type="checkbox"/> Recipient			<b>CFDA #</b>  <b>Grantee’s fiscal year end</b>		
<b>Service Caption</b> (one line only)					
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Grant Contract Amount</b>
<b>TOTAL:</b>					
<b>Ownership/Control</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Service-Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Businesses (DSBE)					
<input type="checkbox"/> Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government		<input type="checkbox"/> Non-Minority/Disadvantaged		<input type="checkbox"/> Other:	
<b>Grantee Selection Process Summary</b>					
<input type="checkbox"/> Competitive Selection			Describe the competitive selection process used.		

<input type="checkbox"/> Non-competitive Selection	Describe the reasons for a non-competitive grantee selection process.
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.	<i>CPO USE - GR</i>
Speed Chart (optional)	



## GOVERNMENTAL GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)

<b>Begin Date</b>	<b>End Date</b>	<b>Agency Tracking #</b> -	<b>Edison ID</b>		
<b>Grantee Legal Entity Name</b>			<b>Edison Vendor ID</b>		
<b>Subrecipient or Recipient</b> <input type="checkbox"/> Subrecipient <input type="checkbox"/> Recipient		<b>CFDA #</b>			
		<b>Grantee's fiscal year end</b>			
<b>Service Caption</b> (one line only)					
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Grant Contract Amount</b>
<b>TOTAL:</b>					
<hr/> <hr/>					
<b>Grantee Selection Process Summary</b>					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used.			
<input type="checkbox"/> Non-competitive Selection		Describe the reasons for a non-competitive grantee selection process.			
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - GG</i>	
<b>Speed Chart</b> (optional)		<b>Account Code</b> (optional)			

**POLICY NUMBER 2013-007**

**REDLINE**

**Policy**  
**Number 2013 Number**  
**2013-007**  
**Central Procurement Office**  
**Grant Management and Subrecipient Monitoring Policy and Procedures**

Style Definition: Footer

Effective: May 28, 2013  
Last Amended: February ~~15, 2018~~ 20, 2020  
Prepared by: The Central Procurement Office of the State of Tennessee

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**1. Purposes.**

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To provide guidance to assist State Agencies to determine a counter party's status as a Contractor, Recipient, or Subrecipient.

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To provide uniformity in the reporting of, and controls over, the expenditure of ~~awards~~ Grant funds in connection with the delivery of services by ~~subrecipients of federal~~ Recipients and state awards ~~Subrecipients~~.

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To establish guidelines for ~~subrecipient~~ Recipient and Subrecipient monitoring by Grantor State Agencies.

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**2. Scope.**

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This Policy applies to all State Agencies that award ~~state~~ Federal or ~~federal funds~~ State Grants to Recipients or ~~non-cash assistance to~~ Subrecipients. Direct Appropriation Grants are exempt from this Policy.

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**3. Definitions.**

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

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

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~~"Award" means any money, loans, non-cash assistance, granted to the State, or granted 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.~~

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

"Chief Procurement Officer" - means the official as defined by Tenn. Code Ann. § 4-56-104.

"Cognizant State Agency" - means the State Agency whose funds comprise the greatest

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Subrecipient.

“Grantor State Agency”-means a State Agency that provides ~~an Awarda Grant~~ to a person or entity.

“Policy” - means Policy Number 2013-007 of the Central Procurement Office.

“Recipient” - means a Grantee that is a recipient of a Grant. The term Recipient does not include a Subrecipient.

“State”- means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

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

“State Grant” - means a Grant that is funded exclusively through State funds.

“Subrecipient”- means ~~anona non~~-federal entity that receives ~~an Awarda Grant~~ from a pass-through entity to carry out part of a federal ~~or state~~ program; but ~~does not include an individual that is a~~excludes the beneficiary of such program. A Subrecipient may also be a recipient of other ~~federal awards~~Federal Grants directly from a federal awarding agency.

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**4. Determination of a Contractor, Recipient, or Subrecipient.**

A State Agency must make case-by-case determinations whether each Grant it makes for the disbursement of federal or State program funds casts the party receiving such funds in the role of a Contractor, Recipient or Subrecipient.

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When determining whether an agreement creates a Contractor, Recipient, or Subrecipient relationship, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed below may not be present in all cases, and the State Agency must use its judgment in classifying each agreement as creating either a Grantee Selection Processor Contractor relationship. The U.S. OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards provides guidance on how to distinguish between a Subrecipient and a Contractor in 2 C.F.R. § 200.330.

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4.1 Contractor – A contract for goods and services that creates a State-Contractor relationship is typically one for the purpose of obtaining goods or services for the State Agency’s own use and consumption.

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The characteristics that support the classification of an entity as a Contractor includes whether the entity:

- Provides the goods or services within its normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of a state or federal program; and

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- Is not subject to compliance requirements of the state or federal program as a result of the agreement~~Competition is encouraged with all Grantee selections. On the Grant Contract's cover sheet, at issue, though similar requirements may apply for other reasons.~~

If the non-federal entity is a Contractor, the State Agency must ensure that the procurement, receipt, and payment for goods and services complies with applicable state and federal laws, regulations, and policies that apply to the procurement of goods and services, following one of the approved methods for awarding a Contract (e.g., CPO Policy 2013-004-Contract Management Policy and Procedures).

If the Grantor State Agency shall identify whether the Grantee selection process was competitive or non-competitive, determines that a Contractor relationship exists, they would not use a Grant Contract model or template.

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4.2 Recipient – A Recipient receives a State Grant from the State for the purpose of carrying out a portion of a State Grant.

The characteristics that support the classification of an entity as a Recipient include whether the entity:

- Determines who is eligible to receive State assistance;
- Has its performance measured in relation to whether objectives of a State program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable State program requirements specified in the State Grant; and
- In accordance with the agreement at issue, uses the State financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.

~~For a non-competitive selection any entity determined to be a Recipient, the Grantor State Agency must comply with the monitoring requirements in Section 9 of this Policy.~~

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4.3 Subrecipient – A Subrecipient receives a Federal Grant from the State for the purpose of carrying out all or a portion of a Federal Grant creating a federal assistance relationship with the Subrecipient.

The characteristics that support the classification of an entity as a Subrecipient include whether the entity:

- Determines who is eligible to receive federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision making;
- ~~shall provide reasons for the non-competitive selection.~~ Is responsible for adherence to applicable federal program requirements specified in the Federal Grant; and

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- In accordance with the agreement at issue, uses the federal financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.

For any entity determined to be a Subrecipient, the Grantor State Agency must comply with the monitoring requirements in Section 9 of this Policy.

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5. a competitive selection, the Documentation of Grantee Selection Process.

The Grantor State Agency shall document the Grantee selection process. The Grantor State Agency shall provide a summary of the Grantee selection process to the Central Procurement Office.

For any contracts,

6. that include any federal grant funds, all non-Federal entities receiving such grant funds must comply with all requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.326 Alternative Payment Methodologies.

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Any Grantor State Agency seeking to use the partial, periodic, or total advance payment language contained in the Grant templates must submit a Rule Exception Request – Advance Payments, justifying why using that language would be in the best interests of the State. If a Grantor State Agency is advancing federal funds, the Grantor State Agency must ensure that the Grantee disburses those funds immediately in accordance with 2 C.F.R. § 200.305.

In accordance with 2 C.F.R. § 200.305, advance payments must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Grantee (i.e., the Grantee's disbursement of allowable costs incurred) in carrying out the purpose of the approved program or project.

7. —

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5. Advance Payments.

The State discourages advance payments. However, in extraordinary circumstances, advance payments may be authorized if doing so is in the best interests of the State. The Grantor State Agency must provide a Rule Exception Request to justify an advance payment.

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6. Cognizant State Agency Determination Process.

The Cognizant State Agency shall be responsible for approving the Recipient or Subrecipient's Cost Allocation Plan. Other State Agencies that grant funds to the Recipient or Subrecipient must abide by the Cost Allocation Plan approved by the Cognizant State Agency. The Cognizant State Agency is the State Agency whose funds comprise the greatest percentage of State grant funds received by the Recipient or Subrecipient. The Central Procurement Office determines the Cognizant State Agency for each Recipient or Subrecipient. To provide for continuity of the Cognizant State Agency determination, the determination of the predominant amount of funding must be determined every five years. Once assigned, the term of

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responsibility shall continue ~~indefinitely, although until redetermined.~~ A State Agency may submit to the Central Procurement Office a written request and justification for a Cognizant State Agency redetermination ~~at any time during the five-year period. For example, if the State Agency no longer provides the greatest percentage of funds received by the Recipient or Subrecipient, they could request a redetermination prior to the five-year redetermination.~~

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## **78. Cost Allocation Plans.**

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Cost Allocation Plans shall comply with the applicable accounting and financial standards, either Financial Accounting Standards Board ("FASB") standards or Governmental Accounting Standards Board ("GASB") standards. Recipients or Subrecipients shall submit any proposed Cost Allocation Plans to the Cognizant State Agency for approval. Methods used for allocating costs may differ between Recipients and Subrecipients. Once a Recipient or Subrecipient receives approval for its Cost Allocation Plan, all other Grantor State Agencies shall accept the approved Cost Allocation Plan. However, Grantor State Agencies are not required to fully fund the costs that are charged to a particular program under an approved Cost Allocation Plan if such costs are not allowable under the Grantor State Agency's agreement with the Recipient or Subrecipient or exceed the prescribed funding percentage or budgets.

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### **78.1 Types of Costs.**

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#### **78.1.1 Allowable Costs**

The total cost of an Award Grant is the sum of the allowable direct and allocable indirect costs less any applicable credits. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the award Grant or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect cost in order to avoid possible double-charging of awards Grants.

Allowable costs must be reasonable for the performance of the award Grant and allocable. Unallowable costs include:

- Alcoholic beverages
- Bad debts
- Contingencies
- Contributions and donations
- Entertainment
- Fines and penalties
- Fundraising and investment management
- Legal services related to claims against the federal government

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#### **78.1.2 Allocable Costs**

A cost is allocable to a particular Award Grant or other cost objective if the goods or services involved are chargeable or assignable to that award Grant or cost objective in accordance with relative benefits received. This standard is met if the cost:

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- (1) Is incurred specifically for the Award Grant;
- (2) Benefits both the Award Grant and other work of the Recipient or Subrecipient and can be distributed in proportions that may be approximated using reasonable methods; and
- (3) Is necessary to the overall operation of the Recipient or Subrecipient and is assignable in part to the Award Grant.

**78.1.3. Direct Costs**

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as an Award Grant, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Such costs include:

- Salaries of persons who provide direct services to program beneficiaries and work on only one program (e.g., aging director, transportation program director);
- Travel costs that can be specifically identified to benefit a particular program;
- Equipment purchased for use in only one program;
- Maintenance or insurance for purchased equipment;
- Supplies which are utilized in only one program;
- A contract for professional services which benefits a single program; and
- Printing which benefits a single program.

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**78.1.4. Allocable Direct Costs**

Allocable direct costs are those that benefit more than one program, but do not fall under the criteria of indirect costs. Such costs also include:

- Salaries and benefits of program employees whose work benefits more than one program (e.g., nurses, eligibility workers, etc.);
- Travel costs of employees whose work benefits more than one program;
- Occupancy costs of programs;
- Telephone costs of programs;
- Supplies utilized by more than one program;
- Rental and maintenance of equipment used by more than one program;
- Audit costs; and
- Contracted services that benefit more than one program.

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**78.1.5. Indirect Costs (facilities & administrative costs)**

Indirect costs are overhead or administrative costs incurred for joint purposes that cannot easily be allocated to a single use. Such costs include:

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- Executive director's salary and benefits (or the administrative portion thereof if the executive director spends time on program-related activities);
- Fiscal officer's salary and benefits;
- Secretarial support of administrative employees;
- Supplies of administrative employees;
- Travel of administrative employees;
- Occupancy costs (e.g., rent and utilities) of administrative employees; and
- Postage and telephone costs of administrative employees; and

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The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- (1) Administrative or clerical services are integral to a project or activity;
- (2) Individuals involved can be specifically identified with the project or activity;
- (3) Such costs are explicitly included in the budget or have the prior written approval of the federal awarding agency; and
- (4) The costs are not also recovered as indirect costs.

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## 78.2 Cost Allocation.

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### 78.2.1. Allocation Methods

Requirements for developing and submitting indirect cost rate proposals and Cost Allocation Plans are contained in Appendices III-VII of the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* as follows below. In the event that a federal requirement for cost rate proposals or Cost Allocation Plans conflicts with a state requirement, the federal requirement shall control.

- (1) Appendix III to Part 200—Indirect Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs); [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.iii](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iii)
- (2) Appendix IV to Part 200—Indirect Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations; [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.iv](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iv)
- (3) Appendix V to Part 200—State/Local Government and Indian Tribe Central

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Service Cost Allocation Plans; [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.v](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.v)

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans; ~~and~~ [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.vi](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.vi)

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals. [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.vii](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.vii)

The appendices can be found at the following web address: [http://www.ecfr.gov/cgi-bin/text-idx?SID=e6b2f053952359ba94470ad3a7e1a975&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=e6b2f053952359ba94470ad3a7e1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

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#### 8.2.2. Instructions for Cost Allocation Plans

Each **Recipient** and Subrecipient shall prepare a narrative describing in detail the methods used to allocate costs to the various programs. The plan should include an organizational chart and documents and schedules to support the allocation methods.

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The following guidelines should be used when preparing the Cost Allocation Plan:

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- The nature of the charges to be allocated will depend on the sophistication of the accounting system. The more sophisticated the system, the fewer the types of charges will be treated as allocable direct expense and included for distribution. For example, if each employee keeps a detailed time report, the payroll expenditures might be charged directly to each program, and cost allocation per se would not be involved.
- The Cost Allocation Plan must include plans for allocation of allocable direct costs as well as indirect costs. Allocable direct costs will be included with other direct costs of the program in reports to the Grantor State Agency. Allocations that are reported in separate line items on the grantor reports should involve the indirect cost pool only. An entity may wish to have more than one cost allocation pool so that certain types of costs are allocated on different bases.
- The Cognizant State Agency shall review proposed Cost Allocation Plans.
- Once the cost allocation plan has been approved by the Cognizant State Agency, all other funding state agencies must accept the approved plans. Where a contracting ~~state agency~~ **State Agency** has reason to believe that special factors affecting its awards necessitate special consideration,

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the contracting State Agency should communicate this to the Cognizant State Agency.

- If a dispute arises between the Cognizant State Agency and a Grantor State Agency, the dispute shall be resolved through an appeals process headed by the Commissioner of the Department of Finance and Administration or his or her designee.

## 8. How to Distinguish Between a Subrecipient and a Contractor.

~~The non-federal entity may concurrently receive federal awards as a recipient, Subrecipient, and a Contractor, depending on the substance of its agreement with federal awarding agencies and pass-through entities. Therefore, a State Agency must make case-by-case determinations whether each agreement it makes for the disbursement of federal or state program funds casts the party receiving funds in the role of a Subrecipient or Contractor.~~

~~If the agreement between the State and the non-federal entity creates a contractor relationship, the State Agency must ensure that the procurement, receipt, and payment for goods and services complies with applicable state and federal laws, regulations, and policies. If the agreement between the State and the non-federal entity creates a subrecipient relationship, the State Agency must comply with the subrecipient monitoring requirements in Section 10.~~

~~When determining whether an agreement creates a subrecipient or contractor relationship, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed below may not be present in all cases, and the State Agency must use judgment in classifying each agreement as creating a subrecipient or contractor relationship. The U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* provides guidance on how to distinguish between a Subrecipient and a Contractor in § 200.330:~~

~~8.1 Subrecipient. Characteristics which support the classification of an entity as a Subrecipient include when the entity:~~

- ~~Determines who is eligible to receive state or federal financial assistance;~~
- ~~Has its performance measured in relation to whether objectives of a state or federal program were met;~~
- ~~Has responsibility for programmatic decision making;~~
- ~~Is responsible for adherence to applicable state or federal program requirements specified in the Award; and~~
- ~~In accordance with the agreement, uses the state or federal financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.~~

~~8.2 Contractor. A contract is for the purpose of obtaining goods or services for the State Agency's own use and creates a procurement relationship with the Contractor. Characteristics which support the classification of the entity as a Contractor, when the entity receiving state or federal funds:~~

- ~~Provides the goods or services within normal business operations;~~
- ~~Provides similar goods or services to many different purchasers;~~

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- ~~Normally operates in a competitive environment;~~
- ~~Provides goods or services that are ancillary to the operation of a state or federal program; and~~
- ~~Is not subject to compliance requirements of the state or federal program as a result of the agreement, though similar requirements may apply for other reasons.~~

**9. Grantor State Subrecipient Agency Monitoring Requirements.**

9.1 General Requirements for all Subrecipient Grant Contracts

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~~All subrecipient contracts must be monitored by the Grantor State Agency at least once every three years. This does not mean that all subrecipient contracts for a term of one year must be monitored. To determine whether subrecipient contracts with a one year term will be monitored,~~

All Grantor State Agencies should consider must:

(a) Evaluate each Recipient or Subrecipient's risk of noncompliance with Federal and State statutes, regulations, and any applicable terms and conditions, for purposes of determining the appropriate monitoring described in paragraphs (b) and (c) of this section, which may include consideration of such factors, e.g., the program's complexity, the as:

(1) The Recipient or Subrecipient's prior experience with the same or similar programs, whether the Grants;

(2) The results of previous audits including whether or not the Recipient or Subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of the U.S. OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and the extent to which the same or similar Grant program has been audited as a major program;

(3) Whether the Recipient or Subrecipient has new personnel or new or substantially changed systems; and the

(4) The extent and results of any federal awarding agency monitoring—(e.g., if the Recipient or Subrecipient also receives Federal Grants directly from a Federal awarding agency).

(b) Monitor the activities of the Recipient or Subrecipient as necessary to ensure that the Grant is used for authorized purposes, in compliance with Federal and State statutes, regulations, and any applicable terms and conditions; and that Grant performance goals are achieved. Grantor State Agency monitoring of Recipients and Subrecipients must include:

(1) Receiving and reviewing financial and performance reports required by the Grantor State Agency.

(2) Following-up and ensuring that the Recipients or Subrecipients take timely and appropriate action on all deficiencies pertaining to the Grant provided to the Recipient or

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Subrecipient from the Grantor State Agency detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal Grant provided to the Subrecipient from the pass-through entity as required by 2 CFR § 200.521 Management decision.

(c) Depending upon the Grantor State Agency's assessment of risk posed by the Recipient or Subrecipient (as described in paragraph (a) of this section), the Grantor State Agency shall use these tools, when appropriate, to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing Recipients or Subrecipients with training and technical assistance on program-related matters;

(2) Performing on-site reviews of the Recipients or Subrecipients' program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in 2 CFR § 200.425 Audit services.

(d) Verify that every Subrecipient is audited as required by Subpart F—Audit Requirements of the U.S. OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards when it is expected that the Subrecipient's Federal Awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501 Audit requirements.

The Grantor State Agency shall perform more frequent monitoring for Recipients or Subrecipients determined to be high-risk or if previous monitoring cycles revealed serious deficiencies. If federal ~~subrecipient~~Subrecipient monitoring requirements on monitoring frequency are more stringent than those under this Policy, the Grantor State Agency shall comply with the federal requirements.

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The Grantor State Agency should assign risk to all Recipients or Subrecipients- (e.g., in accordance with 2 C.F.R. § 200.331). At minimum, the Grantor State Agency's risk assignment process shall include the considerations identified in Section 9.2.2 below.

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## 9.2 Annual ~~Subrecipient~~ Monitoring Plan

Each year, all State Agencies governed by this Policy shall develop and submit an annual monitoring plan for review and approval to the Central Procurement Office ~~by October~~by October 1.

### 9.2.1. *Monitoring Plan Components*

The monitoring plan is a summary of the ~~Grantor State Agency's~~Agency planned monitoring activities for the upcoming annual monitoring cycle and shall include:

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- ~~\_\_\_\_\_~~ The total ~~subrecipient contracts~~ Grant Contracts population;
- The State Agency's monitoring cycle, e.g., the state or federal fiscal year;
- ~~\_\_\_\_\_~~ All ~~subrecipient contracts~~ Grant Contracts the State Agency will monitor during its monitoring cycle;
- ~~\_\_\_\_\_~~ A description of each ~~state~~ State or ~~federal~~ Federal program to be monitored;
- Sample monitoring guides to be utilized for each monitored program;
- ~~\_\_\_\_\_~~ Full-time equivalents and personnel classifications for all staff dedicated to monitoring activities;
- ~~\_\_\_\_\_~~ A risk assessment for each Recipient or Subrecipient and its related contracts;
- ~~\_\_\_\_\_~~ An explanation of the criteria used to assign risk to Recipients or Subrecipients and their related contracts;
- ~~\_\_\_\_\_~~ An explanation of each finding from the previous monitoring cycle; and
- ~~\_\_\_\_\_~~ An explanation of the State Agency's corrective action process for each finding; and.
- The most current list of all Subrecipients that have completed a Federal Single Audit.

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### 9.2.2. Determining the Population to be Monitored

When selecting the population of ~~subrecipient contracts~~ Grant Contracts to be included in its annual monitoring plan, Grantor State Agencies shall consider:

- ~~\_\_\_\_\_~~ The ~~Subrecipient's~~ Recipients or Subrecipients' risk of noncompliance with federal and State statutes, regulations, and ~~the federal award's any applicable~~ terms;
- The level of programmatic or financial risk to the State; and,
- Whether the ~~subrecipient contract has been monitored in the past three years; and~~
- ~~Whether the subrecipient contract~~ Recipient or Subrecipient has had prior findings indicating serious deficiencies.

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### 9.2.3 Monitoring Activities

The Grantor State Agency's monitoring of the Recipients or Subrecipients identified in its annual monitoring plan shall include:

- Any program-specific monitoring requirements;
- ~~\_\_\_\_\_~~ All applicable requirements of Title VI of the *Civil Rights Act of 1964*;
- Reviewing any reports required by 2 C.F.R. §§ 200.328 – 200.329;
- Reviewing financial and programmatic reports required by the Grant Contract; and
- Ensuring that the Recipient or Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Award Grant that the Grantor State Agency detected and communicated to the Recipient or Subrecipient.

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To the extent possible, there should be a separation of duties between monitoring staff and program operations staff to allow for independence and objectivity. Possible conflicts of interest should be disclosed in ~~agency~~Grantor State Agency monitoring plans.

#### 9.2.4 Changes to Monitoring Plans

~~Agencies~~A Grantor State Agency shall submit any proposed changes to an approved monitoring plan and an explanation for each proposed change to the Central Procurement Office for review and approval. The Grantor State Agency shall document any approved changes to an existing plan.

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#### 9.2.5 Monitoring Reports and Corrective Action Plans

Grantor State Agencies shall issue reports summarizing any findings or observations identified during monitoring activities within thirty (30) business days of completing all field work. The Grantor State Agency shall retain a copy of the monitoring report and distribute copies to the ~~Subrecipient~~Grantee and the Comptroller of the Treasury, Division of State Audit.

Upon receipt of a monitoring report with findings, the Recipient or Subrecipient shall prepare a corrective action plan detailing the actions to be taken to correct such findings. The corrective action plan shall include:

- The name of the contact person responsible for the corrective action plan;
- The corrective actions to be taken; and
- The anticipated completion date.

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The corrective action plan shall be submitted to the Grantor State Agency for review and approval. The Grantor State Agency shall have thirty (30) business days to approve, reject, or request additional information about the ~~Subrecipient's~~Recipients or Subrecipients' plan. If a corrective action plan is not approved, the Grantor State Agency and the Recipient or Subrecipient shall work together to develop solutions for addressing the monitoring report's findings.

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### 10. Debarment and Suspension.

The State requires all contracts to contain a provision where a contracting party may be considered debarred or suspended from doing business with the State. The State hereby incorporates the Debarment and Suspension provision from Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)-(t) as mandatory language in all affected ~~grant contracts~~Grant Contracts.

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### 11. Compliance Reviews.

State Agency records obtained under this Policy are subject to evaluation by the Chief Procurement Officer, the Comptroller of the Treasury, or their duly appointed representatives.

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**Related Statutes, Rules and Policies**

Tenn. ~~Code Ann~~Code Ann. §§ 4-56-101, *et seq.* Tenn. ~~Code Ann~~Code Ann. §§ 12-3-101, *et seq.* Tenn. ~~Code Ann~~Code Ann. §§ 12-4-101, *et seq.*

Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t)

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**POLICY NUMBER 2013-007**

**CLEAN**

**Policy Number 2013-007**  
**Central Procurement Office**  
**Grant Management and Subrecipient Monitoring Policy and Procedures**

Effective: May 28, 2013  
Last Amended: February 20, 2020  
Prepared by: The Central Procurement Office of the State of Tennessee

**1. Purposes.**

To provide guidance to assist State Agencies to determine a counter party's status as a Contractor, Recipient, or Subrecipient.

To provide uniformity in the reporting of, and controls over, the expenditure of Grant funds in connection with the delivery of services by Recipients and Subrecipients.

To establish guidelines for Recipient and Subrecipient monitoring by Grantor State Agencies.

**2. Scope.**

This Policy applies to all State Agencies that award Federal or State Grants to Recipients or Subrecipients. Direct Appropriation Grants are exempt from this Policy.

**3. Definitions.**

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

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

“Chief Procurement Officer” - means the official as defined by Tenn. Code Ann. § 4-56-104.

“Cognizant State Agency” - means the State Agency whose funds comprise the greatest percentage of Grants received by a Grantee as determined by the Central Procurement Office.

“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. The term “Contract” shall also have the meaning ascribed to it in 2 CFR § 200.22.

“Contractor” – means an entity that receives a Contract as defined in this Policy and in the U.S. OMB’s *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

“Cost Allocation Plan”- means the method of distributing to various programs the costs

which benefit more than one program and are not directly assigned as approved by the Department of Finance and Administration.

“Direct Appropriation Grant” - means a grant listed on the Department of Finance and Administration Division of Budget’s annual direct appropriation list.

“Endowment Grant”- means a limited Grant Contract that originates from a specific appropriation, effecting a Grant 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.

“Federal Grant” -means a Grant that is funded in whole or in part through federal funds.

“Grant”- means any grant of money, loans, or non-cash assistance 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. A Grant cannot be used for the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such a Grant that should otherwise be provided on a competitive basis.

“Grant Budget”- means a budget itemizing one or more specific activities or purposes under the Grant and the maximum amounts a Grantee may be reimbursed.

“Grant Contract” – means the duly authorized and legally binding written agreement by and between the State of Tennessee and Recipient or Subrecipient that contains the terms and conditions governing the parties’ duties and responsibilities with respect to a Grant. A Grant Contract does not include a Contract for the purchase of goods or services for the State of Tennessee’s own use or consumption.

“Grantee”- means the person or entity receiving a Grant as a Recipient or Subrecipient.

“Grantor State Agency”-means a State Agency that provides a Grant to a person or entity.

“Policy” - means Policy Number 2013-007 of the Central Procurement Office.

“Recipient” - means a Grantee that is a recipient of a Grant. The term Recipient does not include a Subrecipient.

“State”- means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

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

“State Grant” - means a Grant that is funded exclusively through State funds.

“Subrecipient”- means a non-federal entity that receives a Grant from a pass-through entity to carry out part of a federal program, but excludes the beneficiary of such program. A Subrecipient may also be a recipient of other Federal Grants directly from a federal awarding agency.

#### 4. **Determination of a Contractor, Recipient, or Subrecipient.**

A State Agency must make case-by-case determinations whether each Grant it makes for the disbursement of federal or State program funds casts the party receiving such funds in the role of a Contractor, Recipient or Subrecipient.

When determining whether an agreement creates a Contractor, Recipient, or Subrecipient relationship, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed below may not be present in all cases, and the State Agency must use its judgment in classifying each agreement as creating either a Grantee or Contractor relationship. The U.S. OMB’s *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* provides guidance on how to distinguish between a Subrecipient and a Contractor in 2 C.F.R. § 200.330.

4.1 Contractor – A contract for goods and services that creates a State-Contractor relationship is typically one for the purpose of obtaining goods or services for the State Agency’s own use and consumption.

The characteristics that support the classification of an entity as a Contractor includes whether the entity:

- Provides the goods or services within its normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of a state or federal program; and
- Is not subject to compliance requirements of the state or federal program as a result of the agreement at issue, though similar requirements may apply for other reasons.

If the non-federal entity is a Contractor, the State Agency must ensure that the procurement, receipt, and payment for goods and services complies with applicable state and federal laws, regulations, and policies that apply to the procurement of goods and services, following one of the approved methods for awarding a Contract (e.g., *CPO Policy 2013-004-Contract Management Policy and Procedures*).

If the Grantor State Agency determines that a Contractor relationship exists, they would not use a Grant Contract model or template.

4.2 Recipient – A Recipient receives a State Grant from the State for the purpose of carrying out a portion of a State Grant.

The characteristics that support the classification of an entity as a Recipient include

whether the entity:

- Determines who is eligible to receive State assistance;
- Has its performance measured in relation to whether objectives of a State program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable State program requirements specified in the State Grant; and
- In accordance with the agreement at issue, uses the State financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.

For any entity determined to be a Recipient, the Grantor State Agency must comply with the monitoring requirements in Section 9 of this Policy.

4.3 Subrecipient – A Subrecipient receives a Federal Grant from the State for the purpose of carrying out all or a portion of a Federal Grant creating a federal assistance relationship with the Subrecipient.

The characteristics that support the classification of an entity as a Subrecipient include whether the entity:

- Determines who is eligible to receive federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable federal program requirements specified in the Federal Grant; and
- In accordance with the agreement at issue, uses the federal financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.

For any entity determined to be a Subrecipient, the Grantor State Agency must comply with the monitoring requirements in Section 9 of this Policy.

## **5. Documentation of Grantee Selection Process.**

The Grantor State Agency shall document the Grantee selection process. The Grantor State Agency shall provide a summary of the Grantee selection process to the Central Procurement Office.

## **6. Alternative Payment Methodologies.**

Any Grantor State Agency seeking to use the partial, periodic, or total advance payment language contained in the Grant templates must submit a Rule Exception Request – Advance Payments, justifying why using that language would be in the best interests of the State. If a Grantor State Agency is advancing federal funds, the Grantor State Agency must ensure that the Grantee disburses those funds immediately in accordance with 2 C.F.R. § 200.305.

In accordance with 2 C.F.R. § 200.305, advance payments must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash

requirements of the Grantee (i.e., the Grantee's disbursement of allowable costs incurred) in carrying out the purpose of the approved program or project.

## **7. Cognizant State Agency Determination Process.**

The Cognizant State Agency shall be responsible for approving the Recipient or Subrecipient's Cost Allocation Plan. Other State Agencies that grant funds to the Recipient or Subrecipient must abide by the Cost Allocation Plan approved by the Cognizant State Agency. The Cognizant State Agency is the State Agency whose funds comprise the greatest percentage of State Grant funds received by the Recipient or Subrecipient. The Central Procurement Office determines the Cognizant State Agency for each Recipient or Subrecipient. To provide for continuity of the Cognizant State Agency determination, the determination of the predominant amount of funding must be determined every five years. Once assigned, the term of responsibility shall continue until redetermined. A State Agency may submit to the Central Procurement Office a written request and justification for a Cognizant State Agency redetermination at any time during the five-year period. For example, if the State Agency no longer provides the greatest percentage of funds received by the Recipient or Subrecipient, they could request a redetermination prior to the five-year redetermination.

## **8. Cost Allocation Plans.**

Cost Allocation Plans shall comply with the applicable accounting and financial standards, either Financial Accounting Standards Board ("FASB") standards or Governmental Accounting Standards Board ("GASB") standards. Recipients or Subrecipients shall submit any proposed Cost Allocation Plans to the Cognizant State Agency for approval. Methods used for allocating costs may differ between Recipients and Subrecipients. Once a Recipient or Subrecipient receives approval for its Cost Allocation Plan, all other Grantor State Agencies shall accept the approved Cost Allocation Plan. However, Grantor State Agencies are not required to fully fund the costs that are charged to a particular program under an approved Cost Allocation Plan if such costs are not allowable under the Grantor State Agency's agreement with the Recipient or Subrecipient or exceed the prescribed funding percentage or budgets.

### **8.1 Types of Costs.**

#### **8.1.1 Allowable Costs**

The total cost of a Grant is the sum of the allowable direct and allocable indirect costs less any applicable credits. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Grant or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect cost in order to avoid possible double-charging of Grants.

Allowable costs must be reasonable for the performance of the Grant and allocable. Unallowable costs include:

- Alcoholic beverages

- Bad debts
- Contingencies
- Contributions and donations
- Entertainment
- Fines and penalties
- Fundraising and investment management
- Legal services related to claims against the federal government

#### 8.1.2 *Allocable Costs*

A cost is allocable to a particular Grant or other cost objective if the goods or services involved are chargeable or assignable to that Grant or cost objective in accordance with relative benefits received. This standard is met if the cost:

- (1) Is incurred specifically for the Grant;
- (2) Benefits both the Grant and other work of the Recipient or Subrecipient and can be distributed in proportions that may be approximated using reasonable methods; and
- (3) Is necessary to the overall operation of the Recipient or Subrecipient and is assignable in part to the Grant.

#### 8.1.3 *Direct Costs*

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Grant, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Such costs include:

- Salaries of persons who provide direct services to program beneficiaries and work on only one program (e.g., aging director, transportation program director);
- Travel costs that can be specifically identified to benefit a particular program;
- Equipment purchased for use in only one program;
- Maintenance or insurance for purchased equipment;
- Supplies which are utilized in only one program;
- A contract for professional services which benefits a single program; and
- Printing which benefits a single program.

#### 8.1.4 *Allocable Direct Costs*

Allocable direct costs are those that benefit more than one program, but do not fall under the criteria of indirect costs. Such costs also include:

- Salaries and benefits of program employees whose work benefits more than one program (e.g., nurses, eligibility workers, etc.);
- Travel costs of employees whose work benefits more than one program;
- Occupancy costs of programs;

- Telephone costs of programs;
- Supplies utilized by more than one program;
- Rental and maintenance of equipment used by more than one program;
- Audit costs; and
- Contracted services that benefit more than one program.

#### 8.1.5. *Indirect Costs (facilities & administrative costs)*

Indirect costs are overhead or administrative costs incurred for joint purposes that cannot easily be allocated to a single use. Such costs include:

- Executive director's salary and benefits (or the administrative portion thereof if the executive director spends time on program-related activities);
- Fiscal officer's salary and benefits;
- Secretarial support of administrative employees;
- Supplies of administrative employees;
- Travel of administrative employees;
- Occupancy costs (e.g., rent and utilities) of administrative employees; and
- Postage and telephone costs of administrative employees.

The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- (1) Administrative or clerical services are integral to a project or activity;
- (2) Individuals involved can be specifically identified with the project or activity;
- (3) Such costs are explicitly included in the budget or have the prior written approval of the federal awarding agency; and
- (4) The costs are not also recovered as indirect costs.

## 8.2 Cost Allocation.

### 8.2.1. *Allocation Methods*

Requirements for developing and submitting indirect cost rate proposals and Cost Allocation Plans are contained in Appendices III-VII of the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* as follows below. In the event that a federal requirement for cost rate proposals or Cost Allocation Plans conflicts with a state requirement, the federal requirement shall control.

- (1) Appendix III to Part 200—Indirect Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs): <https://www.ecfr.gov/cgi-bin/text->

[idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.iii](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iii)

(2) Appendix IV to Part 200—Indirect Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations; [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.iv](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iv)

(3) Appendix V to Part 200—State/Local Government and Indian Tribe Central Service Cost Allocation Plans; [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.v](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.v)

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans; [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.vi](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.vi)

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals. [https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.vii](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.vii)

### 8.2.2. *Instructions for Cost Allocation Plans*

Each Recipient and Subrecipient shall prepare a narrative describing in detail the methods used to allocate costs to the various programs. The plan should include an organizational chart and documents and schedules to support the allocation methods.

The following guidelines should be used when preparing the Cost Allocation Plan:

- The nature of the charges to be allocated will depend on the sophistication of the accounting system. The more sophisticated the system, the fewer the types of charges will be treated as allocable direct expense and included for distribution. For example, if each employee keeps a detailed time report, the payroll expenditures might be charged directly to each program, and cost allocation per se would not be involved.
- The Cost Allocation Plan must include plans for allocation of allocable direct costs as well as indirect costs. Allocable direct costs will be included with other direct costs of the program in reports to the Grantor State Agency. Allocations that are reported in separate line items on the grantor reports should involve the indirect cost pool only. An entity may wish to have more than one cost allocation pool so that certain types of costs are allocated on different bases.
- The Cognizant State Agency shall review proposed Cost Allocation Plans.

- Once the cost allocation plan has been approved by the Cognizant State Agency, all other funding state agencies must accept the approved plans. Where a contracting State Agency has reason to believe that special factors affecting its awards necessitate special consideration, the contracting State Agency should communicate this to the Cognizant State Agency.
- If a dispute arises between the Cognizant State Agency and a Grantor State Agency, the dispute shall be resolved through an appeals process headed by the Commissioner of the Department of Finance and Administration or his or her designee.

## **9. Grantor State Agency Monitoring Requirements.**

### 9.1 General Requirements for all Grant Contracts

All Grantor State Agencies must:

(a) Evaluate each Recipient or Subrecipient's risk of noncompliance with Federal and State statutes, regulations, and any applicable terms and conditions, for purposes of determining the appropriate monitoring described in paragraphs (b) and (c) of this section, which may include consideration of such factors as:

- (1) The Recipient or Subrecipient's prior experience with the same or similar Grants;
- (2) The results of previous audits including whether or not the Recipient or Subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of the U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, and the extent to which the same or similar Grant program has been audited as a major program;
- (3) Whether the Recipient or Subrecipient has new personnel or new or substantially changed systems; and
- (4) The extent and results of federal awarding agency monitoring (e.g., if the Recipient or Subrecipient also receives Federal Grants directly from a Federal awarding agency).

(b) Monitor the activities of the Recipient or Subrecipient as necessary to ensure that the Grant is used for authorized purposes, in compliance with Federal and State statutes, regulations, and any applicable terms and conditions; and that Grant performance goals are achieved. Grantor State Agency monitoring of Recipients and Subrecipients must include:

- (1) Receiving and reviewing financial and performance reports required by the Grantor State Agency.
- (2) Following-up and ensuring that the Recipients or Subrecipients take timely and appropriate action on all deficiencies pertaining to the Grant provided to the Recipient or Subrecipient from the Grantor State Agency detected through audits, on-site reviews, and

other means.

(3) Issuing a management decision for audit findings pertaining to the Federal Grant provided to the Subrecipient from the pass-through entity as required by 2 CFR § 200.521 Management decision.

(c) Depending upon the Grantor State Agency's assessment of risk posed by the Recipient or Subrecipient (as described in paragraph (a) of this section), the Grantor State Agency shall use these tools, when appropriate, to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing Recipients or Subrecipients with training and technical assistance on program-related matters;

(2) Performing on-site reviews of the Recipients or Subrecipients' program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in 2 CFR § 200.425 Audit services.

(d) Verify that every Subrecipient is audited as required by Subpart F—Audit Requirements of the U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* when it is expected that the Subrecipient's Federal Awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501 Audit requirements.

The Grantor State Agency shall perform more frequent monitoring for Recipients or Subrecipients determined to be high-risk or if previous monitoring cycles revealed serious deficiencies. If federal Subrecipient monitoring requirements on monitoring frequency are more stringent than those under this Policy, the Grantor State Agency shall comply with the federal requirements.

The Grantor State Agency should assign risk to all Recipients or Subrecipients (e.g., in accordance with 2 C.F.R. § 200.331). At minimum, the Grantor State Agency's risk assignment process shall include the considerations identified in Section 9.2.2 below.

## 9.2 Annual Monitoring Plan

Each year, all State Agencies governed by this Policy shall develop and submit an annual monitoring plan for review and approval to the Central Procurement Office by October 1.

### 9.2.1. *Monitoring Plan Components*

The monitoring plan is a summary of the Grantor State Agency planned monitoring activities for the upcoming annual monitoring cycle and shall include:

- The total Grant Contracts population;
- The State Agency's monitoring cycle, e.g., the state or federal fiscal year;

- All Grant Contracts the State Agency will monitor during its monitoring cycle;
- A description of each State or Federal program to be monitored;
- Sample monitoring guides to be utilized for each monitored program;
- Full-time equivalents and personnel classifications for all staff dedicated to monitoring activities;
- A risk assessment for each Recipient or Subrecipient and its related contracts;
- An explanation of the criteria used to assign risk to Recipients or Subrecipients and their related contracts;
- An explanation of each finding from the previous monitoring cycle;
- An explanation of the State Agency's corrective action process for each finding; and,
- The most current list of all Subrecipients that have completed a Federal Single Audit.

#### 9.2.2. *Determining the Population to be Monitored*

When selecting the population of Grant Contracts to be included in its annual monitoring plan, Grantor State Agencies shall consider:

- The Recipients or Subrecipients' risk of noncompliance with federal and State statutes, regulations, and any applicable terms;
- The level of programmatic or financial risk to the State; and,
- Whether the Recipient or Subrecipient has had prior findings indicating serious deficiencies.

#### 9.2.3 *Monitoring Activities*

The Grantor State Agency's monitoring of the Recipients or Subrecipients identified in its annual monitoring plan shall include:

- Any program-specific monitoring requirements;
- All applicable requirements of Title VI of the *Civil Rights Act of 1964*;
- Reviewing any reports required by 2 C.F.R. §§ 200.328 – 200.329;
- Reviewing financial and programmatic reports required by the Grant Contract; and
- Ensuring that the Recipient or Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Grant that the Grantor State Agency detected and communicated to the Recipient or Subrecipient.

To the extent possible, there should be a separation of duties between monitoring staff and program operations staff to allow for independence and objectivity. Possible conflicts of interest should be disclosed in Grantor State Agency monitoring plans.

#### 9.2.4 *Changes to Monitoring Plans*

A Grantor State Agency shall submit any proposed changes to an approved monitoring plan and an explanation for each proposed change to the Central Procurement Office for review and approval. The Grantor State Agency shall document any approved changes to an existing plan.

#### 9.2.5 *Monitoring Reports and Corrective Action Plans*

Grantor State Agencies shall issue reports summarizing any findings or observations identified during monitoring activities within thirty (30) business days of completing all field work. The Grantor State Agency shall retain a copy of the monitoring report and distribute copies to the Grantee and the Comptroller of the Treasury, Division of State Audit.

Upon receipt of a monitoring report with findings, the Recipient or Subrecipient shall prepare a corrective action plan detailing the actions to be taken to correct such findings. The corrective action plan shall include:

- The name of the contact person responsible for the corrective action plan;
- The corrective actions to be taken; and
- The anticipated completion date.

The corrective action plan shall be submitted to the Grantor State Agency for review and approval. The Grantor State Agency shall have thirty (30) business days to approve, reject, or request additional information about the Recipients or Subrecipients' plan. If a corrective action plan is not approved, the Grantor State Agency and the Recipient or Subrecipient shall work together to develop solutions for addressing the monitoring report's findings.

### **10. Debarment and Suspension.**

The State requires all contracts to contain a provision where a contracting party may be considered debarred or suspended from doing business with the State. The State hereby incorporates the Debarment and Suspension provision from Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t) as mandatory language in all affected Grant Contracts.

### **11. Compliance Reviews.**

State Agency records obtained under this Policy are subject to evaluation by the Chief Procurement Officer, the Comptroller of the Treasury, or their duly appointed representatives.

#### **Related Statutes, Rules and Policies**

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

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

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

Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t)

# **ADVISORY COUNCIL BYLAWS**

**NEW**

# ADVISORY COUNCIL ON STATE PROCUREMENT

## BYLAWS AND RULES OF PROCEDURE

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**2/10/2020**

**ARTICLE I  
NAME**

The name of this organization shall be referred to herein as the “Advisory Council on State Procurement” or the “Council.”

**ARTICLE II  
PURPOSE**

These Bylaws and Rules of Procedure, referred to herein as the “Bylaws,” shall govern all meetings, information items and matters for consideration or approval before the Council.

**ARTICLE III  
MEMBERS OF THE ADVISORY COUNCIL**

- A. The members of the Council shall consist of five (5) voting members and seven (7) nonvoting members, which are appointed as specified by Tenn. Code Ann. § 4-56-106.
- B. The Chief Procurement Officer, or staff of the Central Procurement Office as designated by the Chief Procurement Officer, shall inform an appointing authority when an appointment term is expected to expire. Recommended notification is approximately thirty days prior to an appointment vacancy; on the date of the vacancy; and then notification quarterly thereafter until the appointment is filled.

**ARTICLE IV  
MEETINGS, PUBLIC HEARINGS, QUORUMS, AND VOTING**

- A. The Council shall meet as frequently as required and at least twice each year for the discussion of problems and recommendations for improvement of the procurement process or any other matter relevant to procurement as determined by the chief procurement officer.
- B. All Council meetings shall be governed by Robert’s Rules of Order. All meeting minutes of the Council shall be in writing and presented for approval or correction by

- the Council at its next meeting subsequent to the meeting in which the action was taken.
- C. Meeting dates, agendas and minutes shall be posted on the Central Procurement Office website from a link on the home page of the Central Procurement Office internet site to promote transparency.
  - D. Technology will be used to the extent possible to increase Council member participation. Each Council member is expected to attend, either in person or telephonically, each Council meeting.
  - E. A majority of voting members, or three (3), shall constitute a quorum and shall be necessary to take official action at all Council meetings.
  - F. Proxy voting is prohibited by voting members of the Council. In instances where a voting member will be absent from a vote of the Council, the member's appointing authority is authorized to appoint an alternate or designee for the vote.

#### **ARTICLE V CONFLICT OF INTEREST**

On an annual basis, each member shall be provided with a copy of the Conflict of Interest Policy, attached to these Bylaws at Exhibit A, and shall be required to complete and sign.

#### **ARTICLE VI AMENDMENTS**

These Bylaws may be amended at any meeting of the Council by a unanimous vote of the voting members of the Council.

## CONFLICT OF INTEREST POLICY

**Purpose.** The Purpose of this Conflict of Interest Policy is to identify, evaluate and disclose any actual or potential conflicts of interest that a Council member may have in serving on the Advisory Council on State Procurement (“Council”), and to ensure that the activities of Council members do not have the appearance of conflicting with the provision of full and unbiased service to the public.

**Definition.** “Conflict of Interest” means a material interest that may affect or may appear likely to affect a Council member’s judgment or conduct while serving on the Council. A Conflict of Interest is material if an ordinary person would take it into account in making a decision.

### Policy.

1. Each Council member shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:
  - i. Using public office for private gain;
  - ii. Giving preferential treatment to any person;
  - iii. Impeding government efficiency or economy;
  - iv. Losing complete independence or impartiality;
  - v. Making a government decision outside of official channels; or
  - vi. Affecting adversely the confidence of the public in the integrity of the government.
2. Each Council member shall not directly or indirectly use, disclose or allow the use of official information which was obtained through or in connection with his or her appointment to the Council for the purpose of furthering the private, personal, professional, or financial interest of any person, including the Council member.
3. Each Council member shall not directly or indirectly engage in a financial transaction as a result of, or primarily relying upon information obtained through his or her Council appointment.
4. Each Council member shall not receive personal, professional or financial benefit as a result of or relying on information obtained through his or her Council appointment.
5. On an annual basis, each Council member shall be provided with a copy of this Policy and shall be required to complete and sign an acknowledgement of the Policy.

6. Along with the acknowledgement of the Policy, each Council member shall also disclose all actual and potential conflicts of interest on an annual basis and promptly thereafter whenever an actual or potential Conflict of Interest has been identified in connection with any matter to be brought before the Council.
7. Each Council member shall not vote on a matter or participate in discussion on a matter should there be an identified actual or potential Conflict of Interest.
8. While serving on the Council, the Council member will not participate in considerations or actions involving individuals in his or her immediate family; individuals employed by him or her, or his or her organization; services provided by him or her, or his or her organization; or any other matter in which his or her participation may create an appearance of bias or impropriety.
9. When a Council member is in doubt as to the proper interpretation of this Conflict of Interest Policy, he or she is expected to seek the advice of the Chief Procurement Officer or his or her designee.
10. To the extent that an appointing authority has named an alternate or designee for a member, this Policy shall also apply to the alternate or designee.

**Policy acknowledged by:**

**Signature:**

**Date:**

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**Name:** \_\_\_\_\_

**Appointed By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Annual Disclosure: Attach documentation disclosing any Conflict of Interests.**