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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Repealed (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

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0620-03-03-.02	Office of Contracts Review
0620-03-03-.03	Procurement Methods
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0620-03-07	Limitations of Liability in State Services
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0620-03-07-.01	Policy Statement and Scope of Rules
0620-03-07-.02	Approval For Limitation of Liability
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0690-03-01-.12	Resolution of Protests by the Commissioner
0690-03-01-.13	Amending or Repealing Rules and Regulations
Chapter Number	Chapter Title
0690-03-02	Purchase of Materials, Supplies, Equipment and Services Limitations of Liability
Rule Number	Rule Title
0690-03-02-.01	Policy Statement and Scope of Rules
0690-03-02-.02	Approval for Limitation of Liability

New Rules

Chapter Number	Chapter Title
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Rule Number	Rule Title
0690-03-01-.01	Applicability
0690-03-01-.02	Definitions
0690-03-01-.03	Central Procurement Office
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0690-03-01-.06	Procurement Process-Elements of Solicitation Document and Process Prior to Award
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0690-03-01-.10	Procurement Process-Amendment or Withdrawal of Responses
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Chapter 0620-03
Administrative Division
Repeal

Rule 0620-03-03 Personal, Professional and Consulting Service Contracts is repealed in its entirety.

Authority: T.C.A. § 4-56-104

Rule 0620-03-07 Limitations of Liability in State Services is repealed in its entirety.

Authority: T.C.A. § 4-56-104

Rule 0620-03-08 Contract Management and Subrecipient Monitoring is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Rule 0620-03-09 Appeals Process for Persons Barred from State Contracting for Use of Illegal Immigrants is repealed in its entirety.

Authority: T.C.A. § 4-56-104

Chapter 0690-03-02
Purchase of Materials, Supplies, Equipment and Services Limitations of Liability
Repeal

Rule 0690-03-02-.01 Policy Statement and Scope of Rules is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Rule 0690-03-02-.02 Approval for Limitation of Liability is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Chapter 0690-03
Comprehensive Rules and Regulations of the Central Procurement Office
Repeal /New
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Rule 0690-03-01-.01 through Rule 0690-03-01-.13 is repealed by deleting the rules in their entirety and by replacing the following language, so that, the New Rule 0690-03-01-.01 through 0690-03-01-.28 shall read as follows:

0690-03-01 Comprehensive Rules and Regulations of the Central Procurement Office

0690-03-01.01 Applicability.

- (1) These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:
 - (a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.
 - (b) The University of Tennessee and the Tennessee Board of Regents college and university systems.
 - (c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.
 - (d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.
 - (e) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.
 - (f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.
 - (g) These Rules shall not apply to contracts requiring State Building Commission approval.
 - (h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.
 - (i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.
 - (j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).
 - (k) Notwithstanding anything in these Rules to the contrary, local government agencies are authorized to purchase through the Central Procurement Office pursuant to Central Procurement Office Policy. Requests may be made for one-time purchases or the establishment of agency

term contracts. In addition, all items available on statewide contracts may be purchased by local government agencies and nonprofits.

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

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

- (a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.
- (b) "Agency" means each State board, commission, committee, department, officer, or any other unit of State government.
- (c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.
- (d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.
- (e) "Approval Process" means the process by which necessary State approvals are obtained.
- (f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.
- (g) "Base Contract" means the original written contract prior to any amendments.
- (h) "Bid" means a response by a vendor to an invitation to bid.
- (i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.
- (j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.
- (k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.
- (l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.
- (m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.
- (n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.
- (o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.
- (p) "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.

- (q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.
- (r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.
- (s) "Contracting Party" means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.
- (t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.
- (u) "Delegated Authority" means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.
- (v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.
- (w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.
- (x) "Delegated State Agency" means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.
- (y) "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.
- (z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- (aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.
- (bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.
- (cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:
 1. Capacity of the donor to make the gift;
 2. Intention of the donor to make the gift;
 3. Completed delivery of the gift to or for the State, and
 4. Acceptance of the gift by the State.

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

- (dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.
- (ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.
- (ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.
- (gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.
- (hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.
- (ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.
- (jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.
- (kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.
- (ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.
- (mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.
- (nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.
- (oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.
- (pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.
- (qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.
- (rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.
- (ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.

- (tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.
- (uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.
- (vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.
- (ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.
- (xx) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.
- (yy) "Proprietary Procurement" means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.
- (zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.
- (aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.
- (bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.
- (ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.
- (ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.
- (eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.
- (fff) "Response" means a written response to a solicitation for goods or services.
- (ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.
- (hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.
- (iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.
- (jjj) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.
- (kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.
- (III) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

- (mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.
- (nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.
- (ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.
- (ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.
- (qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (rrr) "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.
- (sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.
- (ttt) "State Architect" means the person, who oversees the Office of the State Architect.
- (uuu) "Statewide Contract" means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.
- (vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.
- (www) "Term Contract" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.
- (xxx) "Vendor" means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-03-01-.03 Central Procurement Office.

- (1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.
- (2) The duties and responsibilities of the Central Procurement Office shall include:
 - (a) Implementing these Rules;
 - (b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;
 - (c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;

- (d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;
- (e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;
- (f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;
- (g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;
- (h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;
- (i) Resolving protests of Aggrieved Respondents;
- (j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and
- (k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

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

- (a) Delegated Grant Authority:
 - 1. A Delegated Grant Authority may be approved where:
 - (i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.
 - (ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.
 - 2. Delegated Loan Authority: A Delegated Loan Authority shall set forth the terms and conditions for making a loan and include all provisions required by Central Procurement Office Policy.
 - 3. Delegated Purchase Authority:
 - (i) A Delegated Purchase Authority may be approved for procurement of goods or services, provided that such purchases and any resulting contracts from such

purchases are subject to applicable provisions of these Rules and Central Procurement Office Policy.

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

(2) General Requirements of Delegated Authorities:

- (a) Each State Agency receiving a Delegated Authority shall file such documentation with the Chief Procurement Officer, in a form prescribed by Central Procurement Office Policy, which details the request for a Delegated Authority and the authorized signatories for the State Agency.
- (b) All Delegated Authorities shall set forth all requirements prescribed by Central Procurement Office Policy.
- (c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.
- (d) Records of the approval of the delegated authority shall be maintained by the Central Procurement Office

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

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

(2) Request for Proposals ("RFP").

- (a) An RFP shall comply with the following requirements:
 - 1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

- (i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.
- (ii) The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.
- (iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:
 - (I) Application of the requirements of these Rules and Central Procurement Office Policy;
 - (II) Adequacy of the scope description; and
 - (III) Adequacy of the RFP's assurance of:
 - I. Fairness to respondents;
 - II. Clear, fair and open competition;
 - III. Achievement of procurement objectives; and
 - IV. Protection of the State's interests.
- (iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.
- (v) After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.
- (vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.
 - (I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.

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

(3) Invitation to Bid.

- (a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

- (a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

- (a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:
 - (b) The circumstances leading to the emergency procurement;
 - (c) Procurement-related actions taken in response to the emergency, including procurement methods used; and
 - (d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

- (a) Whenever practicable, procurements should be competitive. Sole source procurements may be made when an item or service possesses specific characteristics that can only be filled by a single source or where exclusive rights exist. Sole source procurements shall require the State Agency to provide advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. Whenever practicable, competitive procurement methods, including competitive negotiation, should be used. All sole source procurements, regardless of

the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of sole source procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy. The Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

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

(7) Proprietary Procurement.

- (a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

- (a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

- (a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

- (a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public

authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

- (a) The description of the technical requirements for the goods or scope of services to be procured;
- (b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;
- (c) Clear and definitive technical requirements and scope that allow for open competition where practicable;
- (d) The solicitation shall contain directions regarding the submittal of proposals;
- (e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;
- (f) Any requirements for proposal, performance or payment bonds;
- (g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;
- (h) A declaration of whether the contract award is subject to successful contract negotiation;
- (i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and
- (j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

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

(3) Cancellation of Solicitation or Rejection of Responses.

- (a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.
- (b) The Chief Procurement Officer shall have the discretion to reject any and all responses.
 - 1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.

2. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.
3. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:
 - (i) Unreasonably high prices or failure of all responses to meet technical specifications;
 - (ii) Error or defect in the solicitation;
 - (iii) Cessation of need;
 - (iv) Unavailability of funds;
 - (v) Lack of adequate competition; or
 - (vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.
4. Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.
5. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

- (a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

- (a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process–Determining Non-Responsiveness.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

- (1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.
 - (a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

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

7. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.
8. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.
 - (i) The final determination letter of a protest before the Chief Procurement Officer shall be reported to the Protest Committee and the Comptroller of the Treasury.
 - (ii) The final determination letter of a protest before the Protest Committee shall be reported to the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

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

(2) Term Contract-General

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

(3) No Cost Contracts

- (a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.
- (b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

- (a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
- (b) A Grant shall represent one of the following:
 1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
 2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or
 3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

- (a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.
 1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.
3. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

- (a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

- (a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

- (a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.
 1. An Endowment Grant Contract shall meet the following requirements:
 - (i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;
 - (ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;
 - (iii) The State has made a written offer of an endowment award to the Grantee;
 - (iv) The Grantee has accepted the grant award in writing; and
 - (v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.
- (b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.
- (c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.
- (d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

- (e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.
 - (f) An Endowment Grant Contract shall cite the State's authority to make the grant.
 - (g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.
 - (h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.
- (6) All programs funded by a Grant Contract are subject to audit. It is not intended, however, that the existence of more than one Grant Contract or source of funds for a single Grantee require more than one audit in a single audit period.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

- (1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:
- (a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.
 - (b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.
 - (c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.
 - (d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.
 - (e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.
 - (f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.

- (g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."
- (h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

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

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.
- (d) Non- Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.
- (e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.
- (f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.
- (g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.
- (h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.
- (i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.
- (j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:
1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.
 2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.
- (k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.
- (l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.
- (m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

- (n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.
- (o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.
- (p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.
- (q) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.
- (r) Annual Report and Audit. All grant contracts subject to these Rules shall contain a provision pertaining to an annual report and audit of the grantee. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.
- (s) Monitoring. All contracts subject to these Rules shall contain a provision that states that the contractor's activities conducted and records maintained pursuant to the subject contract shall be subject to monitoring and evaluation by the Comptroller of the Treasury. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.
- (t) Debarment and Suspension.
 1. All contracts subject to these Rules shall contain a provision concerning the circumstances under which a contracting party may be considered debarred or suspended from doing business with the State. This contract provision shall act as a certification that the contracting party:
 - (i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - (ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and
 - (iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.
 2. The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

- (a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.
 - (b) Limitation of Liability.
 - 1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.
 - 2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.
 - 3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.
 - (c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.
- (4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:
- (a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.
 - (b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.
 - 1. The request for modification of a necessary contract clause shall contain justification that addresses the following:
 - (i) The text of the new clause sought to be used;
 - (ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;
 - (iii) The conditions in the market place that justify modification of the necessary contract clause; and
 - (iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.
 - (c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

0690-03-01-.18 Approval Process of Contracts and Amendments.

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

- (2) The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.
- (a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:
1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and
 2. Manage the review process to secure approval by other officials required by these Rules.
- (3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:
- (a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.
- (b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.
- (c) The Comptroller of the Treasury shall approve a contract that includes:
1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;
 2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;
 3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or
 4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.
- (d) The Commissioner of the Department of Human Resources shall approve a contract that includes:
1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
 2. Provisions permitting the procurement of services from an individual.
- (e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-.19 General Requirements of Contract Amendments.

- (1) A contract amendment is a written contract document that modifies or supplements one or more terms or conditions of a contract and meets the following:
- (a) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

- (1) The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:
 - (a) The goods or services are in fact needed;
 - (b) The goods or services cannot be satisfactorily or efficiently provided by the State;
 - (c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and
 - (d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.,.C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

- (1) Each solicitation and each contract shall clearly state instructions for authorizing services or delivery of goods.
- (2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.
- (3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.
- (4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the

Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.

- (5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

- (1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.
- (2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.
- (3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.
- (4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

- (1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.
- (2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:
 - (a) Allocating adequate staff and resources to contract management;
 - (b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;
 - (c) Communicating with Contracting Parties to ensure maximum performance and intended results;
 - (d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;
 - (e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
 - (f) Evaluating contract results in terms of the achievement of organizational objectives.
- (3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.
 - (a) A contract management plan should include:
 1. Information about the specific staff positions and resources that will be assigned to contract management;
 2. A description of the organization of identified staff and resources for the contract management responsibility; and
 3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.
 - (b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.
- (4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:
 - (a) Definition of needs;
 - (b) Procurement law, Rules, and Central Procurement Office Policy;
 - (c) Basic record keeping;
 - (d) Program specific goals, objectives, purpose, and responsibilities;
 - (e) Interpersonal communication;

- (f) Project management skills and tools; and
 - (g) Evaluation techniques, skills, and tools.
- (5) Each State Agency shall implement such management practices as necessary to ensure:
- (a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).
 - (b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.
- (6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:
- (a) The procuring State Agency's program area having responsibility for each contract;
 - (b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;
 - (c) The procuring State Agency's executives; and
 - (d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).
- (7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.
- (a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.
 - (b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.28 Contract with Current or Former State Employee.

- (1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.
- (a) For the purposes of applying this Rule,
 1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State

employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.

- (2) A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

Authority: T.C.A. § 4-56-102, T.C.A. § 12-4-103.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Procurement Commission on 10/31/2012 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/01/12

Rulemaking Hearing(s) Conducted on: (add more dates). 12/21/12



Date: 09/30/13

Signature: Michael F. Perry

Name of Officer: Michael F. Perry

Title of Officer: Chief Procurement Officer

Subscribed and sworn to before me on: 9/30/13

Notary Public Signature: Charlotte L. McKinney

My commission expires on: May 5, 2015

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
10-16-13
 Date

Department of State Use Only

Filed with the Department of State on: 10/22/13

Effective on: 1/20/14

Tre Hargett
 Tre Hargett
 Secretary of State

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 SECRETARY OF STATE

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This proposed rule will not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether

the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This proposed rule will not impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This Rule governs the procurement process for most Executive Branch purchases. It makes the following changes:

- Amends terminology to conform to the new statutory scheme (Board of Standards to Procurement Commission; Department of General Services/Department of Finance and Administration to Central Procurement Office; Commissioner to Chief Procurement Officer, etc.).
- Adds information regarding contract negotiations and competitive negotiations.
- Clarifies contract approval processes as they relate to the CPO, Comptroller, and Fiscal Review Committee.
- Adds a section on mandatory, permissive, and prohibited contract language.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

§ 4-56-102: creates Procurement Commission.

§ 4-56-104: creates Central Procurement Office (CPO).

§ 4-56-105: requires CPO to develop proposed rules and regulations.

§ 4-56-108: requires all goods and services, with specified exceptions, to be purchased and contracted for in accordance with CPO rules, regulations, and policies and procedures.

§ 12-3-101: authorizes the State to accept gifts.

§ 12-3-102: exempts procurements and contracts by and for the legislative and judicial branches; University of Tennessee and the Tennessee Board of Regents system; State Building Commission; Department of Transportation construction and engineering; debt obligations; appraisal, relocation or land acquisitions for the Department of Transportation; and service signs from the purchasing requirements of Title 12, Chapters 3 and 4.

§ 12-3-103: exempts contracts for legal services, fiscal agents, financial advisors or advisory services, educational consultant services, and similar professional services from the competitive procurement requirements.

§ 12-3-107: authorizes and requires the CPO to adopt and submit to the procurement commission rules and regulations regarding procurements.

§ 12-3-201: defines Title 12, Chapter 3 terminology.

§ 12-3-305: requires CPO to develop proposed rules and regulations to define service contracting principles.

§ 12-3-309: authorizes the Procurement Commission to promulgate rules relative to the prohibition against contracting with persons utilizing the services of illegal immigrants.

§ 12-3-401: authorizes the CPO, with Comptroller approval, to delegate purchase authority to State agencies.

§ 12-3-501: requires State contracts to be awarded by competitive sealed solicitation by the CPO unless otherwise authorized by law.

§ 12-3-502: establishes requirements for procurement public notices; rejection of all responses for a solicitation; correction and withdrawal of responses; evaluation of responses; and award of contracts.

§ 12-3-503: authorizes the Procurement Commission to grant the CPO authority to establish informal solicitation

rules, regulations, policies and procedures for procurements.

§ 12-3-504: authorizes the CPO, with Procurement Commission approval, to promulgate rules, policies, and procedures for sole source procurements.

§ 12-3-505: authorizes the CPO to make emergency purchases.

§ 12-3-506: authorizes the CPO to negotiate with vendors who maintain a general services administration pricing agreement with any United States agency.

§ 12-3-507: authorizes the CPO to enter into contracts by competitive negotiation.

§ 12-3-508: requires the CPO to purchase or contract for all utilities.

§ 12-3-511: requires the CPO to ensure that funds are available to cover a proposed expenditure.

§ 12-3-514: establishes procedures for protesting the award of a solicitation.

§ 12-3-602: authorizes the State to inspect the part of the plant or place of business of a contract or subcontractor. Authorizes the State to audit the books and records of a contractor or subcontractor under any State contract or subcontract.

§ 12-3-701: authorizes the CPO to approve a limitation of liability in certain procurements.

§ 12-3-905: authorizes the Procurement Commission to adopt rules relative to energy efficiency standards for major energy-consuming products to be procured by the state.

§ 12-3-906: requires the Procurement Commission to adopt rules requiring life cycle costs to be used by the CPO in contracting for major energy-consuming products.

§ 12-3-1201: authorizes the CPO to purchase goods on behalf of Tennessee local governments, school districts, and quasi-governmental entities.

§ 12-4-103: prohibits State employees from bidding on State solicitations.

§ 12-4-110: requires local governments to award contracts for energy-related services on the same basis as contracts for professional services.

§ 71-4-506: establishes a preference for Blind Services Enterprises when creating a vending facility on State or public property.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All entities wishing to contract with the State of Tennessee and most executive branch agencies. The CPO urges adoption of these rules. During the public hearing and written comments period, no persons or entities opposed the rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No change

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Paul Krivacka

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Paul Krivacka

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

312 Rosa L. Parks Ave., Nashville, TN; 615-741-6916; paul.krivacka@tn.gov;

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

PROPOSED RULES OF THE 0690-03-01 Comprehensive Rules and Regulations of
the Central Procurement Office
DEPARTMENT OF FINANCE AND ADMINISTRATION

0690-03-01.01 Applicability.

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

(a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.

(b) The University of Tennessee and the Tennessee Board of Regents college and university systems.

(c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.

(d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.

(e) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.

(f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.

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

(h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.

(i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.

(j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).

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

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

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

(a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.

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

(c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

(d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.

(e) "Approval Process" means the process by which necessary State approvals are obtained.

(f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.

(g) "Base Contract" means the original written contract prior to any amendments.

(h) "Bid" means a response by a vendor to an invitation to bid.

(i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.

(j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

(k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.

(l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.

(m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.

(n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.

(o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

(p) "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.

(q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.

(r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.

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

(t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.

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

(v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.

(w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

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

(v) "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.

(z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

(aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

(bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.

(cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:

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

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

(dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term

"Goods" does not include leases, acquisitions, or disposals of an interest in real property.

(ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

(ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.

(gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.

(hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.

(ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.

(ij) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

(kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.

(ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.

(mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

(nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.

(oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.

(pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.

(qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.

(rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

(ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.

(tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.

(uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.

(vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.

(ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.

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

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

(zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

(aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing

a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

(ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.

(ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.

(eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.

(fff) "Response" means a written response to a solicitation for goods or services.

(ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.

(hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.

(iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

(jjj) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

(kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.

(lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

(mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.

(nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.

(ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is

identified as the only qualified source available to the requisitioning authority.

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

(qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

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

(sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.

(ttt) "State Architect" means the person, who oversees the Office of the State Architect.

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

(vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-03-01-.03 Central Procurement Office.

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

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

(a) Implementing these Rules:

(b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;

(c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;

(d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;

(e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;

(f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;

(g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;

(h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;

(i) Resolving protests of Aggrieved Respondents;

(j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

(i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.

(ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

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

3. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method

if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

(i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.

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

(iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:

(I) Application of the requirements of these Rules and Central Procurement Office Policy;

(II) Adequacy of the scope description; and

(III) Adequacy of the RFP's assurance of:

I. Fairness to respondents;

II. Clear, fair and open competition;

III. Achievement of procurement objectives; and

IV. Protection of the State's interests.

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

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

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

(I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.

(II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.

(III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.

(IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.

(V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) Invitation to Bid.

(a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

(a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

(c) Procurement-related actions taken in response to the emergency, including procurement methods used; and

(d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

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

1. Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;

2. Whether the product or service is unique and available from only one source;

3. Whether the program requirements can be modified so that competitively procured goods or services may be used;

4. Whether items must be interchangeable or compatible with in-place items;

5. Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or

6. Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

(7) Proprietary Procurement. Proprietary Procurement.

(8)

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

(a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

(a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

(a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority.

All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

(a) The description of the technical requirements for the goods or scope of services to be procured;

(b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;

(c) Clear and definitive technical requirements and scope that allow for open competition where practicable;

(d) The solicitation shall contain directions regarding the submittal of proposals;

(e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;

(f) Any requirements for proposal, performance or payment bonds;

(g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;

(h) A declaration of whether the contract award is subject to successful contract negotiation;

(i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and

(j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

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

(3) Cancellation of Solicitation or Rejection of Responses.

(a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

(b) The Chief Procurement Officer shall have the discretion to reject any and all responses.

1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.

2. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.

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

(i) Unreasonably high prices or failure of all responses to meet technical specifications;

(ii) Error or defect in the solicitation;

(iii) Cessation of need;

(iv) Unavailability of funds;

(v) Lack of adequate competition; or

(vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305,
T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

(a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

(a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

(1) To ensure a transparent, consistent and equitable process in accordance with Central Procurement Office Policy, the Chief Procurement Officer may conduct communications as he or she determines to be in the best interests of the State, provided that any communication,

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process-Determining Non-Responsiveness.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the

Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

(a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.

2. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

3. The Chief Procurement Officer may consider the following grounds for protest and no others:

(i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.

4. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.

5. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

6. A written protest that is filed with the Protest Committee shall:

(i) Meet the requirements of T.C.A. § 4-56-103;

(ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,

(iii) Raise only grounds that were raised before the Chief Procurement Officer.

7. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

8. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

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

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

(2) Term Contract-General

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

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

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

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

(3) No Cost Contracts

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

(b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

(a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.

(b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;

2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or

3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant - A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

3. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

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

(a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.

(b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.

(c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.

(d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a

performance bond or surety deposit prior to entering a contract subject to these Rules.

(f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.

(g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."

(h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

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

(2) Necessary Contract Clauses for All Contract Types.

(a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.

(b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed.

All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.

3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.

(d) Non-Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

(e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.

(f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.

(g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.

(h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.

(i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.

(j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:

1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

(k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.

(l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.

(m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

(n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.

(o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a

Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

(g) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.

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

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

(t) Debarment and Suspension.

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

(i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

(ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

2. The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any

time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

CHAPTER 0620-3-9

~~APPEALS PROCESS FOR PERSONS BARRED FROM STATE CONTRACTING FOR USE OF
ILLEGAL IMMIGRANTS~~

~~NEW RULES TABLE OF CONTENTS~~

(i) The text of the new clause sought to be used;

(ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;

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0620-3-9-01 PURPOSE AND SCOPE.~~

(iii) The conditions in the market place that justify modification of the necessary contract clause; and

~~Tennessee Code Annotated Section 12-4-124 provides that a person who is discovered to have knowingly utilized the services of illegal immigrants in the performance of a contract to supply goods or services to the state or other state entities shall be prohibited from contracting for or submitting a bid for any contract to supply goods or services to the state or other state entities for a period of one year from the date of discovery of the usage of illegal immigrant services. A person subject to such prohibition may appeal under a process to be established by the commissioner of finance and administration.~~

(iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

~~The purpose of this rule is to set forth the appeals process.~~

(c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

~~Authority: T.C.A. §§ 4-5-201 et seq; 12-4-124. Administrative History: New rules filed January 26, 2007; T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124, effective May 31, 2007.~~

0690-03-01-.18 Approval Process of Contracts and Amendments.

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

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

(a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and

2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;

2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;

3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or

4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.

(d) The Commissioner of the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or

2. Provisions permitting the procurement of services from an individual.

(e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-.19 General Requirements of Contract Amendments.

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

(a) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.

(b) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.

(c) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing. The amendment and justification is subject to the approval of the Chief Procurement Officer.

(d) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

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

(a) The goods or services are in fact needed;

(b) The goods or services cannot be satisfactorily or efficiently provided by the State;

(c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and

(d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105., C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

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

(2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.

(3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

(4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.

(5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

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

services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

(2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.

(3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

(4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0620-3-9-.02 _____ NOTICE

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

~~(1) Each notice sent by the Commissioner of Finance and Administration declaring the prohibition required by Tennessee Code Annotated Section 12-4-124(b) shall be~~ The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

~~(a) Delivered to the contractor at the address listed in the contract for "contacts and communications." If there is no such address, notice should be delivered to an address provided in the contract or related correspondence, or to an address at which the contractor may be found.~~ 2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:

~~(b) Delivery may be by certified mail, regular mail, fax, express mail, or hand delivery. Proof that a contractor received notice may be established by a signed return receipt card, express mail delivery receipt, a fax confirmation sheet or an affidavit from a State employee establishing that the item was hand delivered to the contractor, or placed in first class mail to the contractor's address.~~ a) Allocating adequate staff and resources to contract management;

~~(c) The notice shall contain the date or dates that the violation occurred, the date that the violation was discovered, and other information sufficient to provide notice to the contractor of the violation. The State should, if reasonably practicable, provide the name or names used by the illegal immigrant, the place where the illegal immigrant was providing services, and the type of services provided.~~ b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

(c) Communicating with Contracting Parties to ensure maximum performance and intended results;

~~(d) The notice should include the following information about the appeals process required under Tennessee Code Annotated Section 12-4-124(c):~~ Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;

(e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and

(f) Evaluating contract results in terms of the achievement of organizational objectives.

(3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.

(a) A contract management plan should include:

1. Information about the specific staff positions and resources that will be assigned to contract management;

2. A description of the organization of identified staff and resources for the contract management responsibility; and

3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.

(b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.

(4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:

(a) Definition of needs;

(b) Procurement law, Rules, and Central Procurement Office Policy;

(c) Basic record keeping;

(d) Program specific goals, objectives, purpose, and responsibilities;

(e) Interpersonal communication;

(f) Project management skills and tools; and

(g) Evaluation techniques, skills, and tools.

(5) Each State Agency shall implement such management practices as necessary to ensure:

(a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).

1. The name, mailing, address, and telephone number of the person to whom the appeal must be delivered.

(b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

~~2. That the appeal must be in writing and must either include the contract number and the date of the notice of prohibition, or may attach a complete copy of the notice of prohibition being appealed.~~

(6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

(a) The procuring State Agency's program area having responsibility for each contract;

(b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;

(c) The procuring State Agency's executives; and

~~3. That the contractor may request a copy of the written record on which the notice of prohibition was based.~~

(d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).

(7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

(a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.

~~4. That the request should be received by the State's designated representative within thirty (30) days of receipt of the notice of prohibition.~~

(b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

~~Authority: T.C.A. §§ 4-5-201 et seq., 12-4-124. ; Administrative History: New rules filed January 26, 2007; § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, effective May 31, 2007.~~

0620-3-9-.03 REVIEW PROCEDURE.

0690-03-01-.28 Contract with Current or Former State Employee.

~~(1) The review of the one-year prohibition required by T.C.A. 12-4-124 may be conducted by the review committee established by Tennessee Code~~

~~Annotated Section 12-4-109. The members of the review committee shall take appropriate measures to avoid conflicts of interest, including the use of designees. A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.~~

~~(a) For the purposes of applying this Rule,~~

~~1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;~~

~~2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and~~

~~3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.~~

~~(2) All reviews shall be conducted according to the following standards: A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.~~

~~(a) The appellant shall be allowed an opportunity to review and copy the record that led to the prohibition, including all documents in the agency's file regarding the prohibition except those protected from disclosure under federal or state law. The meeting will be scheduled to allow the appellant a reasonable opportunity to review this record and prepare the case.~~

~~(b) The appellant will have the opportunity to present information at the meeting. The review committee may limit or bar information that it considers irrelevant or duplicative.~~

~~(c) The State may present information in support of its decision.~~

~~(d) The meeting is not required to be a contested case hearing under the Tennessee Uniform Administrative Procedures Act, compiled in title 4 chapter 5 of the Tennessee Code Annotated.~~

~~(e) No formal discovery under the Tennessee Rules of Civil Procedure or the Tennessee Uniform Administrative Procedures Act shall apply to these review procedures.~~

~~(f) If the prohibition decision was based on a finding by a federal court or federal administrative agency that the appellant violated federal immigration law, the findings of fact and of law of such decision will be binding and conclusive in the appeal procedure.~~

~~(g) The results of the meeting with the review committee shall be reported in writing to the appealing party.~~

~~Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124. Administrative History: New rules filed January 26, 2007; § 4-56-102, T.C.A. § 12-4-103, effective May 31, 2007.~~

~~0620-3-9-.04 APPOINTMENT OF DESIGNEE.~~

~~The Commissioner of Finance and Administration has the discretion to assign appeals under these rules to a designee instead of the review committee if he determines that the review committee may not be available to determine the appeal in a timely manner, because of scheduling issues, potential conflicts of interests, or other good cause. The designee may or may not be a Department employee but shall not have been involved previously in the decision to prohibit the contractor from state contracting. The designee shall follow the procedures set forth in regulation 0620-3-9.03 in conducting this appeal.~~

~~Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124. Administrative History: New rules filed January 26, 2007; effective May 31, 2007.~~

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SS-7037 (October 2011)

RDA 1693

Document comparison by Workshare Compare on Monday, August 26, 2013
9:53:46 AM

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Document 1 ID	file://C:\Users\ba10368\Desktop\0620-03-09.pdf
Description	0620-03-09
Document 2 ID	file://C:\Users\ba10368\Desktop\Rules Comparison 2.docx
Description	Rules Comparison 2
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	475
Deletions	42
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	519

~~RULES OF THE DEPARTMENT OF GENERAL SERVICES - 0690 PURCHASING DIVISION~~

~~CHAPTER~~

~~0690-3-1~~

~~PURCHASE OF MATERIALS, SUPPLIES, EQUIPMENT AND
SERVICES~~

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~~0690-3-1-.01 AUTHORITY AND SCOPE.~~

- (1) ~~Authority.~~ Tennessee Code Annotated established the Department of General Services and empowered it to coordinate and administer the State's purchases. This statute further created the Purchasing Division within the Department. These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:
- (2) ~~Governing Body.~~ Statutes created a Board of Standards to consist of the Commissioner of General Services, the Commissioner of Finance and Administration and the Comptroller of the Treasury. The Board of Standards is charged with the responsibility to develop policy and criteria under which specifications will be established and to examine and approve the rules and regulations governing the purchasing operation of the Department and the Department's purchasing procedures for vendors and for agencies.
- (3) ~~Scope.~~ The Department is charged with the centralized procurement responsibility and the exercise of procurement controls over the operating departments and agencies. The Department is empowered to contract for the purchase and/or lease of all materials, supplies, equipment, services, and utilities for the State of Tennessee except those set forth in rule 0690-3-1-.01(7).
- (4) ~~Procedures.~~ It shall be the responsibility of the Commissioner to review the Purchasing Law (Title 12, Chapter 3) and the rules, develop procedures and publish such in order to provide guidance to State departments and vendors to assist them in complying with both the law and the rules regarding the purchase of materials, supplies, equipment and services. All procedures shall be approved by the Board of Standards.
 - (a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.
 - (b) The University of Tennessee and the Tennessee Board of Regents college and university systems.
 - (c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.
 - (d) ~~(5) Exempt State Agencies.~~ The following State agencies are exempt by law from purchasing through the Purchasing Division. All exempt agencies must adhere to the policies and procedures of the Board of Standards insofar as practicable and may purchase through the Purchasing Division. Where the Purchasing Division has established term contracts, exempt agencies are required to use such contracts unless they can obtain the product at a lesser cost. Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with

these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.

- (a) The General Assembly of the State of Tennessee
- (b) The University of Tennessee
- (c) The State University and Community College System
- (d) The State Technical Institutes

(Rule 0690-3-1-.01, continued)

(e) ~~(6) Local Government Purchases.~~ Local government agencies are authorized by law to purchase through the Department. Requests may be made for one-time purchases or the establishment of term contracts. In addition, all items available on statewide term contracts may be purchased by local government agencies within the geographic limits of the State of Tennessee. Any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3) as amended and which contracts within the Department of Mental Health and Mental Retardation to provide services to the public, unless specifically limited by the vendor as a part of the bid, may make purchases from statewide term contracts. An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.

(7) Exempt Commodities and Services.

(f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.

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

(h) ~~(a)~~ The purchase, lease, construction, management and disposal of interests in highways, bridges, public buildings, and real estate, as well as insurance policies and professional services, are exempt from purchase through the Purchasing Division, but are governed by other laws and regulations. Contracts or services which by their nature are amenable to bidding and which are subject to sufficiently uniform and impersonal criteria so that the Department may properly evaluate bids shall be procured through the Purchasing Division of the Department. These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.

(i) ~~(b)~~ The operation of vending machines and vending stands in State facilities is exempt from purchasing procurement through the Purchasing Division. Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.

(j) ~~(c)~~ The procurement of surplus property by the State through State Agencies or otherwise, is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the ~~rules~~ Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-2-1-.02-01-.01, et seq.).

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

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

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

- (a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.
- (b) "Agency" means each State board, commission, committee, department, officer, or any other unit of State government.
- (c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.
- (d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.
- (e) "Approval Process" means the process by which necessary State approvals are obtained.
- (f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.
- (g) "Base Contract" means the original written contract prior to any amendments.
- (h) "Bid" means a response by a vendor to an invitation to bid.
- (i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.
- (j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.
- (k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.
- (l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.
- (m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.
- (n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.

- (o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.
- (p) "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.
- (q) ~~(d) All agencies are required to purchase items and services from other State agencies, e.g., Department of Correction, Blind Services, whenever such items or services are available therefrom and meet the desired conditions and standards.~~ "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.
- (r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.
- (s) "Contracting Party" means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.
- (t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.
- (u) "Delegated Authority" means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.
- (v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.
- (w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.
- (8) ~~Delegated Authority. The Department is authorized to consider the purchasing activity of individual agencies and to delegate limited purchasing authority. Delegated purchasing authority may be limited by type of commodity or service or by dollar amount for formal or informal purchases.~~
- (x) "Delegated State Agency" means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.
- (y) Authority: T.C.A. §§ 4-3-1101, 4-3-1104, 4-3-1105, 12-3-102, 12-3-103, 12-3-107, 12-3-210, 12-3-401, 12-3-402, 12-3-806, 12-3-1001, 14-14-501 and 33-2-401. Administrative History: "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.

Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988

- (z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- (aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.
- (bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.
- (cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:

0690-3-1-.02 DEFINITIONS.

1. Capacity of the donor to make the gift.

- (a) "Commissioner" means the Commissioner of the Department of General Services. (b)

"Data" means recorded information, regardless of form or characteristic.

- (e) "Department" means the Department of General Services.

2. Intention of the donor to make the gift.

- (d) "Departmental Computer System" is a computer system, including hardware and software, operated by, controlled by, and located in one department of the State to handle that department's unique data processing applications. A departmental computer system is an individualized, specialized system dedicated to one department.

3. Completed delivery of the gift to or for the State, and

4. Acceptance of the gift by the State.

(Rule 0690-3-1-.02, continued) Nothing in this Rule shall be construed to mean that the State must accept any gift.

- (dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.

- (ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

- (ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.

- (gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.
- (hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.
- (ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.
- (jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.
- (kk) (e) "Invitation to Bid" means all documents, whether attached or incorporated by reference, utilized for soliciting bids" means a procurement method where a contract is awarded to one or more bidders.
- (ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.
- (mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.
- (nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.
- (oo) (f) "Multi-Step Sealed Bidding" is a two phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers. Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.
- (pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.
- (qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.
- (rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

- (ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.
- (tt) (g) "Requisitioning Procuring Agency" means any department, institution, or agency of the State or political entity in the departments, agencies, and entities of the State of Tennessee that which make requisitions the purchase of materials, supplies, equipment and services through the Department for or procure goods or services.
- (uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.
- (vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.
- (ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.
- (xx) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.
- (yy) "Proprietary Procurement" means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.
- (zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.
- (aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.
- (bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.
- (ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.
- (ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.
- (eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.
- (fff) "Response" means a written response to a solicitation for goods or services.
- (ggg) (h) "Responsible Bidder" "Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability which that will assure good faith performance.

- (hhh) ~~(i)~~ "Responsive Bidder" "Proposer" means a person who has submitted a bid proposal, which conforms in all material respects, to the invitation to bid terms of a solicitation.
- (iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.
- (jii) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.
- (kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.
- (lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.
- (mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.
- (nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.
- (ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.
- (ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.
- (qqq) ~~(j)~~ "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. A specification "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (rrr) ~~(k)~~ "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.
- (sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.
- (ttt) "State Architect" means the person, who oversees the Office of the State Architect.
- (uuu) "Statewide Contract" means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.
- (vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.
- (www) "Term Contract" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon unit price(s) or prices.

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

Authority: T.C.A. §12-3-201. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988. 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-3-1-.03 METHODS OF PURCHASING-.03-01-.03 Central Procurement Office.

- (1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.
- (2) The duties and responsibilities of the Central Procurement Office shall include:
 - (a) Implementing these Rules;
 - (b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;
 - (c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;
 - (d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;
 - (e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;
 - (f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;
 - (g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;
 - (h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;
 - (i) Resolving protests of Aggrieved Respondents;
 - (l) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and
 - (k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

- (i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.
- (ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

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

2. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP")

(a) An RFP shall comply with the following requirements:

1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

(i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.

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

(iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP

or its revisions shall be approved by the Central Procurement Office based on the following:

- (I) Application of the requirements of these Rules and Central Procurement Office Policy;
- (II) Adequacy of the scope description; and
- (III) Adequacy of the RFP's assurance of:
 - I. Fairness to respondents;
 - II. Clear, fair and open competition;
 - III. Achievement of procurement objectives; and
 - IV. Protection of the State's interests.
- (iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.
- (v) After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.
- (vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.
 - (I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.
 - (II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.
 - (III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.

(IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.

(V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) ~~(1)~~ Competitive Sealed Bid. With the following exceptions, the Purchasing Division shall mail invitations to bid requesting sealed bids for purchases exceeding \$5,000.00 Invitation to Bid.

(a) Emergency Purchases. The requirements for a sealed bid may be waived in an emergency purchase situation by the Commissioner.

(a) ~~(b)~~ Board of Standards' Approval. Sealed bids are not required for amounts not exceeding \$10,000.00 if approved by the Board of Standards. The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) ~~(2)~~ Informal Written, Verbal or Telephone Quotations. ~~When sealed bids are not required, unsealed bids~~

(a) Informal procurement methods through use of written, verbal or telephone quotations may be requested. The bids or afor one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the bid procurement file.

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

(c) ~~(3)~~ Single-Procurement-related actions taken in response to the emergency, including procurement methods used; and

(d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Purchase Contract. Single source purchases shall be made only Procurement.

- (a) Whenever practicable, procurements should be competitive. Sole source procurements may be made when an item is unique and/or service possesses specific characteristics that can only be filled by only one source and must have prior approval

(Rule 0690-3-1-.03, continued) by the Commissioner. The Purchasing Division in making this determination shall consider factors such as the following: a single source or where exclusive rights exist. Sole source procurements shall require the State Agency to provide advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. Whenever practicable, competitive procurement methods, including competitive negotiation, should be used. All sole source procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of sole source procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy. The Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

1. ~~whether~~ Whether the vendor possesses exclusive and/or predominant capabilities or the item or service contains a ~~patented feature~~ features providing a superior utility not obtainable from similar ~~products~~ vendors;
2. ~~whether~~ Whether the product or service is unique and easily established as one of a ~~kind~~ available from only one source;
3. ~~whether~~ Whether the program requirements can be modified so that competitive ~~products~~ competitively procured goods or services may be used;
4. ~~whether the product is available from only one source and not merchandised through wholesalers, jobbers or retailers;~~
4. ~~5.~~ ~~whether~~ Whether items must be interchangeable or compatible with in-place items;

~~After review of the written justification from the requisitioning agency and ascertaining that the item to be purchased meets one or several of the above criteria, the single source purchase may be made without following competitive bid procedures. A written quote is obtained from the single source supplier, and a purchase order is issued without resorting to competitive bidding.~~

(4) Multi-Step Sealed Bidding.

- (a) Utilization. The use of a multi-step sealed bidding process is required in the acquisition of departmental computer systems involving the purchase of hardware and the development of application software. The multi-step sealed bidding process may also be used, subject to approval by the Board of Standards, for the procurement of other products or services, when it is not practical to prepare initially definitive specifications which will be suitable to permit an award based on price.

- (b) Process.

1. ~~In the invitation to bid, the Purchasing Division shall provide the bidder with information describing the functional requirements of the system, purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired.~~
2. ~~The bidder shall submit a technical offer sufficient in detail so as to constitute the technical specifications of the purchase.~~
3. ~~As specified in the invitation to bid, all technical offers must be received by the State at the designated time and will be opened in the same manner as a competitive sealed bid. Technical offers shall not be made public until the inspection period following evaluation of the bids submitted with prices. Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or~~
4. ~~The technical offers shall be evaluated and deemed acceptable, potentially acceptable, or unacceptable by a technical Evaluation Team consisting of representatives of the user agency and the Department, along with others as determined by the procedures of the Department.~~

(Rule ~~0690-3-1-.03,~~
continued)

5. ~~Bid Price. At the time of the submission of the technical offer or at the conclusion of the evaluation phase of the multi-step sealed bidding process, bidders will be required to submit a bid price clearly defining the cost of their technical offer in accordance with the invitation to bid. The price bids shall not be opened until after evaluation of the technical bids.~~
6. ~~Award. Each contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.~~

Proprietary Procurement.

- (a) ~~(5) Proprietary Purchase Contract. A proprietary product is one procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is found that bids may be obtained from different franchises, a formal bid invitation is issued. Requests for all proprietary purchases require written justification from the requisitioning agency and prior approval by the Commissioner or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy.~~

Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

- (6) ~~Term Contract.~~ The Purchasing Division may establish a term contract for an individual agency for specific goods or services or a statewide term contract which all State agencies must utilize and which may be used by local governments. Every invitation to bid for a term contract must state the total estimated purchase requirements for the current contract period, if applicable, and for the new contract period. A term contract for more than a period of 12 months (maximum of 60 months) must provide that the State may cancel at any time with no more than one (1) year's notice and at the end of any fiscal year in the event funds are not available. The requirement of a multi year contract shall be stated in the invitation to bid, and any multi-year contract shall be awarded pursuant to these rules and shall not be for a period longer than 60 months. There shall be no pricing agreement other than in a contract between a vendor(s) and the State.
- (7) ~~Utility Contracts.~~ The Department shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority in such manner as the Commissioner deems to be in the best interest of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, whenever possible, in accordance with these rules and regulations, unless it has been determined that such purchase is single source. If such purchase had been determined to be single source, the purchase shall then be made pursuant to rule 0690-3-1-.03(3) which governs sole source procurements.

~~Authority: T.C.A. §§12-3-107(1), 12-3-202, 12-3-203, 12-3-204, 12-3-205, 12-3-206 and 12-3-502. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988. Amendment filed July 29, 1998; effective November 28, 1998.~~

~~0690-3-1-.04 QUALIFICATION OF BIDDERS.~~

~~In order to be awarded a contract for goods or services, a vendor must be registered with the Purchasing Division of the Department by submitting a vendor's application form for approval pursuant to the Purchasing procedures. A vendor may be removed from a list of eligible vendors for failure to follow the published procedures and requirements. The Purchasing Division shall utilize a Commodity Classification Code to classify and list all vendors.~~

~~Authority: T.C.A. §§12-3-107, 12-3-701, 12-3-702 and 12-3-703. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.~~

~~0690-3-1-.05 COMPETITIVE NEGOTIATION.~~

(8) (1) Competitive Negotiation.

- (a) A contract may be entered into procured by competitive negotiation only in cases when the State is unable to obtain when the needed goods and/or services cannot be procured by competitive sealed bid. The Commissioner shall prescribe the procedures under which negotiation is to be conducted. These procedures shall provide for the safeguarding of the information and provide fairness to the vendors in the negotiation process. In the event it appears that the All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation process is to be implemented, such an action must be approved by the Commissioner as a method of

procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the ~~Commissioner~~, and he shall approve the results ~~Chief Procurement Officer and the Comptroller of the Treasury~~ prior to entering into a contract. All such negotiated contracts shall be reported by the ~~Commissioner~~ to the Board of Standards.

(9) ~~(2)~~ Direct Negotiation - ~~GSA~~, General Services Administration.

- (a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the ~~Commissioner may~~ Chief Procurement Officer may directly negotiate with that vendor, but there, The price shall not be no contract price that is higher than that contained in the contract price between the General Services Administration and the vendor affected. Any purchase made pursuant to this provision must have the prior approval of the Board of Standards.

(10) Utility Contracts.

- (a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Authority: T.C.A. §§12-3-107, 12-3-207 and 12-3-208. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988. Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-3-1-.06 PREPARATION OF INVITATIONS TO BID, SPECIFICATIONS, REQUISITIONS AND REPORTS.

- (1) Invitation to Bid-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written invitation to bid solicitation shall contain the following elements at a minimum:

- (a) The description of the technical requirements for the goods or scope of services to be procured;
- (b) (a) terms Terms and conditions that clearly state the requirements for the bid response and language to bind the parties in the event of award;
- (c) (b) clear and definitive specifications which shall, whenever possible, permit open and competitive bidding Clear and definitive technical requirements and scope that allow for open competition where practicable;
- (d) The solicitation shall contain directions regarding the submittal of proposals;

- (e) ~~(e) instructions~~Instructions for packaging, shipping, and delivering the commodity~~commodities~~ purchased, and, where appropriate, instructions for storage by the vendor, ~~where applicable or appropriate;~~ and
- (f) ~~(d) any~~Any requirements for bid and/or proposal, performance or payment bonds;
- (g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;
- (h) A declaration of whether the contract award is subject to successful contract negotiation;
- (i) ~~(2) Specifications.~~ The State shall use open specifications and procedures which promote competitive bidding. Vendors are required to notify the Purchasing Division whenever specifications are not open and/or procedures are not desirable. All suggestions or objections shall be made in writing and received by the Purchasing Division at least three (3) working days prior to the bid opening. A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and
- (3) ~~Requisitions.~~ The Purchasing Division shall process all requisitions submitted to it by other agencies or departments pursuant to the purchasing guidelines and procedures as published. Each requisition should be submitted to the Purchasing Division at least sixty (60) days prior to the requested delivery date for the goods.
- (j) ~~(4) Reports.~~ When requested by the Department, an agency or department shall provide information and statistics to support or clarify estimates for purchases and to verify use of goods or materials within that agency or department. Such reports may be established on a periodic basis when deemed necessary by the Department. An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(Rule ~~0690-3-1-.06,~~
continued)

~~Authority: T.C.A. §§12-3-107, 12-3-211 and 12-3-502. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.~~

~~0690-3-1-.07 BIDS AND PURCHASING RECORDS.~~

- (1) ~~Inspection of Purchasing Records.~~ All records of the Purchasing Division and the Board of Standards shall be available to the public during the regular State office hours. Any inspection of records shall not interfere with the operation of the Department. Where protected by the Public Records statutes, a vendor's financial information disclosed in his bidder's qualification form shall not be disclosed to the public.
- (2) Inspection of Solicitation File.
 - (a) ~~(2) Inspection of Bids.~~ Each invitation to bid Each solicitation shall contain a schedule indicating the dates and times for bid solicitation opening and evaluation. Interested bidders must contact the Purchasing Agent listed on the invitation to bid by the date and time stated to schedule an appointment to inspect the bid file prior to award. Upon request, the timeline for evaluation and the anticipated Award date. Once the state issues the Notice of Intent to

Award, the Open File Period begins. The solicitation file shall be open for public inspection for seven (7) calendar days upon request. The Central Procurement Office or a Delegated State Agency shall give the requestor a reasonable opportunity to inspect the bid file, as set forth in the invitation to bid, will be provided to the bidder. If there is no request to inspect the bid file by the date and time indicated, the Purchasing Agent solicitation file. If there is no protest of the Notice of Intent to Award, the State will proceed with the contract award.

(3) Cancellation of Solicitation or Rejection of Responses.

(a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

(b) The Chief Procurement Officer shall have the discretion to reject any and all responses.

1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.

1. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.

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

(i) Unreasonably high prices or failure of all responses to meet technical specifications;

(ii) Error or defect in the solicitation;

(iii) Cessation of need;

(iv) Unavailability of funds;

(v) Lack of adequate competition; or

(vi) ~~(3) Amendment or Withdrawal of Bids.~~ A vendor may withdraw or amend a bid in writing prior to its opening. After bid opening, a vendor may withdraw a bid or a portion thereof only upon a written determination by the Commissioner that there is an obvious error in the bid supported by appropriate vendor cost information and where the enforcement of the bid would impose an unconscionable hardship on the vendor. If no error is made in a bid, but the enforcement of the bid would impose an unconscionable hardship on the vendor, the Commissioner, with the approval of the Board of Standards, may allow the vendor to withdraw its bid. A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.

Authority: T.C.A. §§10-7-504, 10-7-506, 12-3-107, 12-3-203 and 12-3-213. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.

0690-3-1-08-
AWARD.

- (1) ~~Criteria for Award.~~ Each contract shall be awarded by the Commissioner by prompt written notice to the lowest responsible and responsive bidder pursuant to either an invitation to bid or an informal quotation request as set forth in rule 0690-3-1-.03(2). Each bid must be signed in ink by the vendor's authorized agent.

Where more than one item is specified in the invitation to bid, the State shall provide in the invitation to bid that it has the right to determine the low vendor(s) either on the basis of each individual item, a group of items or total of all items.

(2) ~~Contractual Agreement.~~

- (a) ~~The delivery of a State of Tennessee purchase order or a notice of contract award (for term contracts) with the valid signature of a contracting officer of the Purchasing Division constitutes acceptance of the offer to sell and consummates the binding contractual agreement.~~
- (b) ~~Only the Commissioner is authorized to bind the State in contractual agreements. Contracts signed by other State personnel are null and void and do not obligate the State to payment for goods and/or services unless contracted for under authorization of Delegated Purchase Authority or Emergency Purchases.~~

(Rule ~~0690-3-1-.08,~~
continued)

- (3) ~~Evaluation of Technical Offers and Bids.~~ Technical offers and bids shall be evaluated in accordance with the invitation to bid. Evaluation criteria that will affect the bid price shall be objectively measurable (quantifiable).
- (4) ~~Time Frame for Award.~~ Each invitation to bid shall establish a time schedule for the public bid opening, evaluation, and inspection of the bid files.
- (5) ~~Tie Bids.~~ A tie bid exists where two or more vendors offer products that meet all specifications, terms and conditions at identical prices, including cash discount offered for prompt payment. In such case, a tie bid will be broken by the following methods, in descending order:

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

- (a) ~~in-state business;~~ (b)

~~small business;~~

- (c) ~~award item(s) to vendor who was low vendor on other item(s) being bid per the same requisition;~~ (d)

~~best delivery;~~

- (e) ~~by lot or coin toss.~~

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

Authority: T.C.A. §§12-3-105, 12-3-107, 12-3-203, and 12-3-206. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986.

Repeal and new rule filed November 25, 1987; effective February 28, 1988. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-3-1-09 BONDS-03-01-07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

- (a) (1) Bid Bond. A bid The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business by in the State of Tennessee may be required at the discretion of the Commissioner. When required, the amount of the bid bond. All proposal bond amounts shall be stated as a set amount or as a percentage of the Department's estimated value of the contract in response to the invitation to bid. value. In no event may shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Bid Proposal bonds submitted by unsuccessful vendors- will respondents shall be returned upon award of contract award. Personal checks are shall not acceptable in the place of bid bonds. However, bank cashier's checks will be accepted be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.-A

- (a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee may be required, at the discretion of the Commissioner, in the invitation to bid. When required, the amount of the, All performance bond amounts shall be stated as a set amount or as a percentage of the contract price (but may not exceed 100 percent of the total contract price) value, and the amount may be reduced proportionately as performance under the contract successfully moves forward successfully. Performance bonds must be filed with the State of Tennessee within tenfourteen (+014) workingcalendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks are shall not acceptable be accepted in the place of performance bonds. However, bank cashier's checks will be accepted. An Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit, which shall be held by the Purchasing Division, or cashier's check from a Statestate or national bank or a Statestate or federal savings and loan association having its principal office in Tennessee may be accepted by the Purchasing Division in lieu of a performance bond, subject to approval of the or other financial institution having a physical presence in Tennessee. The terms and conditions of said all irrevocable letter of credit or certificate of deposit letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 12-3-203. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-08 Procurement Process-Communication and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process-Determining Non-Responsiveness.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

effective February 28,
1988.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation.

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

(2) Protest After Notice of Intent to Award.

(a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.

1. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

2. The Chief Procurement Officer may consider the following grounds for protest and no others:

(i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.

3. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.

4. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

5. A written protest that is filed with the Protest Committee shall:

- (i) Meet the requirements of T.C.A. § 4-56-103;
- (ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,
- (iii) Raise only grounds that were raised before the Chief Procurement Officer.

6. 0690-3-1-10 AUTHORIZATION FOR SHIPMENT, DELIVERY, RECEIPT, INSPECTION AND STORAGE. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

7. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

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

(2) Term Contract-General.

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

(3) No Cost Contracts

- (a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.
- (b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-15 Grants.

(1) Grant Contract

- (a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
- (b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or
3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.
2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.
2. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

- (1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:
- (a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.
 - (b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.
 - (c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.
 - (d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.
 - (e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.
 - (f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.
 - (g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."
 - (h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

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

- (2) Necessary Contract Clauses for All Contract Types.
 - (a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.

 - (b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.

 - (c) Payment for Goods or Services.
 1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

 2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.

 3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.

 4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.

 - (d) Non-Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other

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

- (e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.
- (f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.
- (g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.
- (h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.
- (i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.
- (j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:
 - 1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.
 - 2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.
- (k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.

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

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

(i) The text of the new clause sought to be used;

- (ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;
- (iii) The conditions in the market place that justify modification of the necessary contract clause; and
- (iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

(c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

0690-03-01-.18 Approval Process of Contracts and Amendments.

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

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

(a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and

2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;

2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;

- 3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or
 - 4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.
- (d) The Commissioner of the Department of Human Resources shall approve a contract that includes:
- 1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
 - 2. Provisions permitting the procurement of services from an individual.
- (e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-19 General Requirements of Contract Amendments.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-20 State Agency Certification.

- (1) The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:
- (a) The goods or services are in fact needed;

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

- (1) Each invitation to bid solicitation and each contract shall clearly state instructions for packaging, shipping, delivery, and, where appropriate, instructions for storage by the vendor authorizing services or delivery of goods.
- (2) (1) Purchase Orders Required. Except where exempted in the procedures for vendors, any vendor Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order or written notice of award or and who delivers a product or service not specifically authorized by the contract or purchase order does so at its/ his or her own risk.
- (2) New Equipment. All material, supplies and equipment offered and furnished must be new unless the invitation to bid specifically permits offers of used or reconditioned items.
- (3) Substitutions. A vendor may manufacture or ship an item that materially conforms to or exceeds the specifications, but which may be technically different from the item bid. Substitutions shall require the approval of the Purchasing Division prior to shipment.
- (4) Shipping.
 - (a) All packaging shall conform to the current standards acceptable to the trade and required by Interstate Commerce Commission Regulations.
 - (b) F.O.B. points shall be established for each individual purchase. When the F.O.B. is the shipping point, the contractor may prepay the freight charges and add the amount to the invoice when allowed in the invitation to bid. A copy of the freight bill must be attached to each invoice that includes freight charges. Delivery by a contractor to a common carrier does not constitute delivery to State agencies or its political subdivisions.
 - (c) The number of calendar days required for delivery after receipt of order shall be stated in the invitation or the bid, and when no time is stated in either document, the time shall be two weeks. A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or

Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

- (4) ~~(5)~~ Inspection and Testing. All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications will may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the merchandise has goods have been consumed.
- (5) ~~(6)~~ Cancellation of Purchase Orders. No cancellation of State of Tennessee purchase orders and departmental purchase orders may be made except in writing by the Purchasing Division. Orders may be cancelled without the consent of the contractor in case of any State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default by the contractor. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of ~~nature of God,~~ other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-23 General Requirements of Payments.

- (1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.
- (2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.
- (3) Except as provided in this Rule, no payment shall be made for performance under a contract, unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.
- (4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

- (1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.
- (2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:
 - (a) Allocating adequate staff and resources to contract management;
 - (b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;
 - (c) Communicating with Contracting Parties to ensure maximum performance and intended results;
 - (d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;
 - (e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
 - (f) Evaluating contract results in terms of the achievement of organizational objectives.
- (3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.
 - (a) A contract management plan should include:
 1. Information about the specific staff positions and resources that will be assigned to contract management;

2. A description of the organization of identified staff and resources for the contract management responsibility; and
 3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.
 - (b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.
- (4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:
- (a) Definition of needs;
 - (b) Procurement law, Rules, and Central Procurement Office Policy;
 - (c) Basic record keeping;
 - (d) Program specific goals, objectives, purpose, and responsibilities;
 - (e) Interpersonal communication;
 - (f) Project management skills and tools; and
 - (g) Evaluation techniques, skills, and tools.
- (5) Each State Agency shall implement such management practices as necessary to ensure:
- (a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).
 - (b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.
- (6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:
- (a) The procuring State Agency's program area having responsibility for each contract;
 - (b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;
 - (c) The procuring State Agency's executives; and
 - (d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).
- (7) Agency Storage and Distribution. It shall be the responsibility of each agency head to have an efficient and effective storage and distribution system for supplies, materials and equipment. The system should include controls to safeguard the supplies, materials and equipment from physical deterioration, loss and theft, and to maintain the optimum quantity on hand to prevent over- and understocking. Subrecipient monitoring is

required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

- (a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.
- (b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Authority: T.C.A. §§4-3-1105, 12-3-107 and 12-3-212. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Repeal and new rule filed November 25, 1987; effective February 28, 1988.

T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-3-1-11 PURCHASES FROM SMALL BUSINESSES; 03-01-28 Contract with Current or Former State Employee.

- (1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.
 - (a) For the purposes of applying this Rule,
 - 1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - 2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 - 3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.
- (2) In conjunction with the Department of Finance and Administration, the Commissioner shall design and implement procedures to identify small businesses and to monitor purchases from those businesses. The Commissioner shall also develop criteria to be used to determine a business's eligibility to be considered in the State's active solicitation of bids from small business, such criteria to include, but not be limited to, number of employees and annual gross sales. A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college).

Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

- (a) ~~Number of Employees. Utilizing the Bureau of Census Publication, County Business Patterns, the Department shall determine the total number of employees in each commodity code industry and select the employee size category comprising a set percentage (as determined annually by the Board of Standards) of total business enterprises in a particular industry.~~
- (b) ~~Annual Gross Sales. Utilizing the Bureau of Census Publication and related business patterns, the Department shall determine the volume of sales for each commodity code type classification and select the volume of gross sales which will qualify as the maximum limit for a small business (as determined annually by the Board of Standards) of the total business enterprises in a particular industry.~~

~~Authority: T.C.A. §§12-3-803, 12-3-804 and 12-3-807. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeat and new rule filed November 25, 1987; effective February 28, 1988.~~

~~0690-3-1-12 RESOLUTION OF PROTESTS BY THE COMMISSIONER.~~

- (1) ~~Upon submission of a protest by a vendor involving a bid, the bid process, a pending award or any other matter involving a vendor, the Commissioner shall, within 15 days of receipt do one of the following:~~
 - (a) ~~Reject the protest, or~~
 - (b) ~~Accept the protest and meet the terms of the vendor, or~~
 - (c) ~~Request additional information or request the vendor to present data to the Commissioner in person at the Commissioner's offices.~~
 1. ~~All requests for information shall be in writing.~~
 2. ~~The vendor shall respond to requests within 15 days of receipt.~~
 3. ~~If an in-person presentation is required, a mutually agreed upon time and date shall be set by the Commissioner. Such a meeting shall be within 10 days after notification to the vendor of such a meeting unless the Commissioner determines that it is in the best interests of the State to extend the time frame.~~
 4. ~~After the Commissioner has received the requested information and/or held an in-person presentation, the Commissioner may extend the time frame and/or request additional information or hold additional in person presentations.~~
- (2) ~~The Commissioner shall have no longer than 60 days from receipt of a protest to resolve a protest. The final determination of the Commissioner shall be given in writing and submitted to the protestor and to the Board of Standards.~~
- (3) ~~In the event that the Commissioner fails to respond to a protest within 15 days of receipt of a protest or fails to resolve the protest within 60 days, the vendor shall have the right to request that the Board of Standards consider the protest.~~

(Rule ~~0690-3-1-12,~~
continued)

(4) Failure of a vendor to meet the time requirements as stipulated shall result in the rejection of the protest. (5)

All protests, supporting documentation and the resolution or decisions thereof, shall be filed and maintained by the Purchasing Division in accordance with the Public Records statutes regarding retention.

Authority: T.C.A. §§12-3-107 and 12-3-214. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.

~~0690-3-1-13 AMENDING OR REPEALING RULES AND REGULATIONS.~~

All rules of the Purchasing Division of the Department may be amended or repealed subject to the approval of the Board of Standards and to the publication rules and procedures of the Secretary of State. All purchasing procedures may be amended or repealed subject to the approval of the Board of Standards.

Authority: T.C.A. §12-3-107. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988. T.C.A. § 4-56-102. T.C.A. § 12-4-103.

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~~RULES OF DEPARTMENT OF FINANCE AND ADMINISTRATION CHAPTER 0620-3-7
LIMITATIONS OF LIABILITY IN STATE~~

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~~Limitation of Liability~~ 0690-03-01 Comprehensive Rules

and Regulations of the Central Procurement Office

0690-03-01.01 Applicability.

- (1) These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:
- (a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.
 - (b) The University of Tennessee and the Tennessee Board of Regents college and university systems.
 - (c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.
 - (d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.
 - (e) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.
 - (f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.
 - (g) These Rules shall not apply to contracts requiring State Building Commission approval.
 - (h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.

- (i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.
- (j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).
- (k) Notwithstanding anything in these Rules to the contrary, local government agencies are authorized to purchase through the Central Procurement Office pursuant to Central Procurement Office Policy. Requests may be made for one-time purchases or the establishment of agency term contracts. In addition, all items available on statewide contracts may be purchased by local government agencies and nonprofits.

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

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

- (a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.
- (b) "Agency" means each State board, commission, committee, department, officer, or any other unit of State government.
- (c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.
- (d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.
- (e) "Approval Process" means the process by which necessary State approvals are obtained.
- (f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.
- (g) "Base Contract" means the original written contract prior to any amendments.
- (h) "Bid" means a response by a vendor to an invitation to bid.
- (i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.
- (j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.
- (k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.

- (l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.
- (m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.
- (n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.
- (o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.
- (p) "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.
- (q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.
- (r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.
- (s) "Contracting Party" means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.
- (t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.
- (u) "Delegated Authority" means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.
- (v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.
- (w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.
- (x) "Delegated State Agency" means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.
- (y) "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.

- (z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- (aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.
- (bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.
- (cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:
1. Capacity of the donor to make the gift;
 2. Intention of the donor to make the gift;
 3. Completed delivery of the gift to or for the State, and
 4. Acceptance of the gift by the State.
- Nothing in this Rule shall be construed to mean that the State must accept any gift.
- (dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.
- (ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.
- (ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.
- (gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.
- (hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.
- (ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.
- (jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

- (kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.
- (ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.
- (mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.
- (nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.
- (oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.
- (pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.
- (qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.
- (rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.
- (ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.
- (tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.
- (uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.
- (vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.
- (ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.
- (xx) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.
- (yy) "Proprietary Procurement" means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.
- (zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

- (aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.
- (bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.
- (ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.
- (ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.
- (eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.
- (fff) "Response" means a written response to a solicitation for goods or services.
- (ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.
- (hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms, in all material respects, to the terms of a solicitation.
- (iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.
- (jjj) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.
- (kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.
- (lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.
- (mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.
- (nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.
- (ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.
- (ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not

limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

- (qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (rrr) "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.
- (sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.
- (ttt) "State Architect" means the person, who oversees the Office of the State Architect.
- (uuu) "Statewide Contract" means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.
- (vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.
- (www) "Term Contract" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.
- (xxx) "Vendor" means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-03-01-.03 Central Procurement Office.

- (1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.
- (2) The duties and responsibilities of the Central Procurement Office shall include:
- (a) Implementing these Rules;
 - (b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;
 - (c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;
 - (d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;
 - (e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;
 - (f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;

- (g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;
- (h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;
- (i) Resolving protests of Aggrieved Respondents;
- (j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and
- (k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

- (i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.
- (ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

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

2. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.
 - (i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.
 - (ii) The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.
 - (iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:
 - (I) Application of the requirements of these Rules and Central Procurement Office Policy;
 - (II) Adequacy of the scope description; and
 - (III) Adequacy of the RFP's assurance of:
 - I. Fairness to respondents;
 - II. Clear, fair and open competition;
 - III. Achievement of procurement objectives; and
 - IV. Protection of the State's interests.
 - (iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.
 - (v) After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the

instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.

- (vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.
 - (I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.
 - (II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.
 - (III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.
 - (IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.
 - (V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) Invitation to Bid.

- (a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

- (a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

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

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

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

(6) Sole Source Procurement.

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

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

Proprietary Procurement.

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office

Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

- (a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

- (a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

- (a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506; T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

- (a) The description of the technical requirements for the goods or scope of services to be procured;
- (b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;
- (c) Clear and definitive technical requirements and scope that allow for open competition, where practicable;

- (d) The solicitation shall contain directions regarding the submittal of proposals;
- (e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;
- (f) Any requirements for proposal, performance or payment bonds;
- (g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;
- (h) A declaration of whether the contract award is subject to successful contract negotiation;
- (i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and
- (j) An estimate of the purchase requirements for the current contract period, if applicable, and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

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

(3) Cancellation of Solicitation or Rejection of Responses.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

- (a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

- (a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process--Determining Non-Responsiveness.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than

seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

(a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.
1. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.
2. The Chief Procurement Officer may consider the following grounds for protest and no others:
 - (i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.
 - (ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.
 - (iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.
 - (iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
 - (v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.
3. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.
4. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.
5. A written protest that is filed with the Protest Committee shall:

- (i) Meet the requirements of T.C.A. § 4-56-103;
- (ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,
- (iii) Raise only grounds that were raised before the Chief Procurement Officer.

6. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

7. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-13 Contract Finalization and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-14 Contract Type.

(1) Term Contracts

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

(2) Term Contract-General

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

(3) No Cost Contracts

- (a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.
- (b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-15 Grants.

(1) Grant Contract

- (a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
- (b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or
3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.
2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.
2. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a

particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-16 General Requirements of Contracts.

- (1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:
- (a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.
- (b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.
- (c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.
- (d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.
- (e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.
- (f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.
- (g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations, as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."
- (h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

- (1) The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.
- (2) Necessary Contract Clauses for All Contract Types.
- (a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.
- (b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.
- (c) Payment for Goods or Services.
1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.
 2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.
 3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.
 4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.
- (d) Non-Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

- (e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.
- (f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.
- (g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.
- (h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.
- (i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.
- (j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:
1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.
 2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.
- (k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.
- (l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.

- (m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.
- (n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.
- (o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.
- (p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.
- (q) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.
- (r) Annual Report and Audit. All grant contracts subject to these Rules shall contain a provision pertaining to an annual report and audit of the grantee. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.
- (s) Monitoring. All contracts subject to these Rules shall contain a provision that states that the contractor's activities conducted and records maintained pursuant to the subject contract shall be subject to monitoring and evaluation by the Comptroller of the Treasury. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.
- (t) Debarment and Suspension.
 1. All contracts subject to these Rules shall contain a provision concerning the circumstances under which a contracting party may be considered debarred or suspended from doing business with the State. This contract provision shall act as a certification that the contracting party:
 - (i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - (ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

0620-3-7-.01 POLICY STATEMENT AND SCOPE OF RULES.

(1) The General Assembly of Tennessee, in Public Chapter 722 of 2000, authorized this Department to promulgate rules setting forth the circumstances when, and the procedures under which, the State would purchase services while accepting limitations of the liability of contractors for damage claims. Public Chapter 169 of 2007 provides that special permission under these rules is not required for agencies to grant limitations of liability unless the limitation is less than two times the value of the contract. Public Chapter 169 also provides that limitations of warranty can be accepted under the same standards as limitations of liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. (2) Public Chapter 722 of 2000 and Public Chapter 169 of 2007 forbid the State from accepting any limitation of the contractor's liability for intentional torts, criminal acts, or fraudulent conduct. Public Chapter 169 also forbids the State from accepting any limitation of liability for Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract without permission of the Commissioner of Finance and Administration under procedures provided in these rules. Furthermore, neither the Public Chapter nor these regulations authorize the State to indemnify contractors for the acts or negligence of the contractors or third parties. All limitations of liability in State personal, professional, and consulting services contracts must be subject to these limitations.

(3) These rules shall apply to contracts for the purchase of services that are procured pursuant to the Rules of the Department of Finance and Administration, Chapter 0620-3-3, Personal Service, Professional Service, and Consultant Service Contracts. Approval under the procedure set forth in these rules is required only for requests for a limitation of liability for below twice the value of the contract, so that the term "limitation of liability" or "limitation of a contractor's liability" in section 0620-3-7-.02 of these rules means limitations below twice the value of the contract.

- (4) ~~The value of the contract shall be established by the maximum liability of the State as set forth in the contract. If there is no maximum liability or substantially similar provision in the contract, the Commissioner in his sole discretion will determine the value of the contract based on an assessment of the value of the goods and services received by the State under the contract.~~

Authority: T.C.A. §§ 4-5-202 and 12-4-119. Administrative History: Original rule filed May 18, 2001; effective August 1, 2001. Amendment filed December 18, 2006; effective April 30, 2007. Repeal and new rule filed August 24, 2007; effective December 28, 2007.

0620-3-7-.02 APPROVAL FOR LIMITATION OF LIABILITY.

(1) Approval Timeliness:

- (a) ~~Any request to permit the limitation of contractor liability in a state contract for services must be made and a decision made thereon at the appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the state in competitive procurements.~~ are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

- (b) ~~Generally, this shall require that such a request be made and a decision rendered prior to the procuring agency request for Department of Finance and Administration approval of the subject procurement method (and a copy of any such approval shall be presented with this request).~~

- (c) ~~In a formal Request for Proposals process, however, a procuring agency may determine to request approval for a limitation of liability after receiving written comments from potential proposers pursuant to the process. In which case, the request to limit liability shall be made and a decision rendered prior to the procuring agency request for Department of Finance and Administration approval to amend the Request for Proposals (and a copy of any such approval shall be presented with this request).~~ Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

- (a) ~~(d) The agency Procuring Agency may request, and the Department of Finance and Administration may authorize, initiation of a new procurement process including a contractor's limitation of liability.~~ Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the applicable procurement process has failed to provide a qualified proposer.

- (e) ~~The State may accept a limitation of liability, subject to the conditions set forth in regulation 0620-3-7-.01 supra, in the course of competitive or non-competitive negotiations authorized by the Commissioner of Finance and Administration pursuant to regulation 0620-2-2-.08 (or any other grant of statutory or regulatory authority authorizing such negotiations).~~

(2) Approval Process Chief Procurement Officer determines that doing so is in the best interests of the State.

- (a) ~~If any agency seeking to purchase services~~ the Procuring Agency considers it necessary to accept a limitation of liability ~~modify a necessary contract clause,~~ it shall submit a request to use a limitation of liability clause to the Commissioner of Finance and Administration ~~the Chief Procurement Officer to modify a necessary contract clause.~~

1. ~~(b)~~ The request to use a limitation of liability shall be submitted under the signature of the procuring agency commissioner or chief executive. The request for approval for modification of a necessary contract clause shall contain justification that addresses the following:
- (i) ~~1. the~~ The text of the limitation of liability new clause sought to be used;
 - (ii) ~~2. If applicable, the risks of liability to the State created by the services purchased under the contract~~ new clause, and the impact on the State by allowing a limitation;
- ~~3.~~ the new clause:
- (iii) The conditions in the market which place that justify a limitation modification of liability;
- ~~4.~~ the necessary contract clause; and
- (iv) The anticipated impact on the State's procurement if limitation of liability modification to the necessary contract clause is not allowed; and,
- (c) ~~5. the identification of one or more persons in the procuring agency familiar with the information set forth in the request to permit a limitation of liability.~~
- ~~(e)~~ The request will be approved or disapproved by the Commissioner of Finance and Administration or authorized designee. The Commissioner may The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of limitation of liability the modification under alternative language. Any approval ~~will~~ shall be in writing and detail the specific limitation of liability alternative language approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

(3) 0690-03-01-.18 Approval Documentation Process of Contracts and Amendments.

- (1) All contracts and amendments shall be in writing and approved in accordance with these Rules and Central Procurement Office Policy.
- (2) The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.
 - (a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:
 - 1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and
 - 2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

- (a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.
- (b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.
- (c) The Comptroller of the Treasury shall approve a contract that includes:
 - 1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;
 - 2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;
 - 3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or
 - 4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.
- (d) The Commissioner of the Department of Human Resources shall approve a contract that includes:
 - 1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
 - 2. Provisions permitting the procurement of services from an individual.
- (e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-19 General Requirements of Contract Amendments.

- (1) A contract amendment is a written contract document that modifies or supplements one or more terms or conditions of a contract and meets the following:
 - (a) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.
 - (b) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.
 - (c) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in

a contract amendment and shall justify the contract amendment in writing. The amendment and justification is subject to the approval of the Chief Procurement Officer.

- (d) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

- (1) The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:
- (a) The goods or services are in fact needed;
- (b) The goods or services cannot be satisfactorily or efficiently provided by the State;
- (c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and
- (d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

- (1) Each solicitation and each contract shall clearly state instructions for authorizing services or delivery of goods.
- (2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.
- (3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work.

before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

- (4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages, regardless of whether services have been performed or a part or all of the goods have been consumed.
- (5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

- (1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.
- (2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.
- (3) (a) Said written approval permitting a limitation of liability shall be filed with the Comptroller of the Treasury. The written approval shall be presented along with the subject contracting documents submitted to the Department of Finance and Administration for approval processing. Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.
- (4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. §§ 4-5-202; and 12-4-119, Administrative History: Original rule filed May 18, 2001; effective August 1, 2001. Amendment filed December 18, 2006; effective April 30, 2007. T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

- (1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.
- (2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:
 - (a) Allocating adequate staff and resources to contract management;
 - (b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;
 - (c) Communicating with Contracting Parties to ensure maximum performance and intended results;
 - (d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;
 - (e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
 - (f) Evaluating contract results in terms of the achievement of organizational objectives.
- (3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.
 - (a) A contract management plan should include:
 1. Information about the specific staff positions and resources that will be assigned to contract management;

- 2. A description of the organization of identified staff and resources for the contract management responsibility; and
 - 3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.
- (b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.
- (4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:
- (a) Definition of needs;
 - (b) Procurement law, Rules, and Central Procurement Office Policy;
 - (c) Basic record keeping;
 - (d) Program specific goals, objectives, purpose, and responsibilities;
 - (e) Interpersonal communication;
 - (f) Project management skills and tools; and
 - (g) Evaluation techniques, skills, and tools.
- (5) Each State Agency shall implement such management practices as necessary to ensure:
- (a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).
 - (b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.
- (6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:
- (a) The procuring State Agency's program area having responsibility for each contract;
 - (b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;
 - (c) The procuring State Agency's executives; and
 - (d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).
- (7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations.

and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

- (a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.
- (b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-28 Contract with Current or Former State Employee.

- (1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.
 - (a) For the purposes of applying this Rule.
 - 1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - 2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 - 3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.
- (2) A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

Authority: T.C.A. § 4-56-102, T.C.A. § 12-4-103.

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RULES OF 0690-03-01 Comprehensive Rules and Regulations of the Central Procurement Office

~~DEPARTMENT OF FINANCE AND ADMINISTRATION~~

~~CHAPTER 0620-3-8~~

~~CONTRACT MANAGEMENT AND SUBRECIPIENT MONITORING~~

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~~0620-3-8-.06 Exceptions to Rules~~

~~0620-3-8-.01 SCOPE. These rules are promulgated pursuant to Tennessee Code Annotated, §12-4-109(d) which directs: (1) that each state department or agency shall be responsible for the effective management of all service contracts that it procures and enters; and (2) the Commissioner of Finance and Administration to develop regulations that define service contracting fundamentals.~~

~~These rules shall not, in any way, be construed to relieve a procuring state department or agency of the responsibility for the effective management of all its service contracts.~~

~~These rules shall not be construed to address the procurement of services by the state. Department of Finance and Administration Rules, Chapter 0620-3-3, Personal Service, Professional Service, and Consultant Service Contracts, govern the procurement of services by executive branch departments and agencies of the state of Tennessee.~~

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002.~~

~~0620-3-8-.02 APPLICABILITY.
0690-03-01.01 Applicability.~~

~~(1) These rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the state of Tennessee executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:~~

~~(2) The legislative and judicial branches of state government and the University of Tennessee and State~~

~~Board of Regents college and university systems shall have the option of: (a) following these rules, the policy and procedures specified herein; or~~

~~(b) developing their own service contracting procedures, provided that such are in compliance with the policy expressed in these rules.~~

~~(3) These rules shall not apply to:~~

~~(a) contracts~~ Contracts of the Department of Transportation for construction and engineering, which are made in accordance with the provisions of Tennessee Code Annotated, T.C.A. §§ 54-5-101, et seq.

~~(b) contracts of the State Building Commission made in accordance with the provisions of The University of Tennessee and the Tennessee Board of Regents college and university systems, Tennessee Code Annotated, §4-15-102.~~

(c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.

(d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.

(e) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.

(f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.

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

(h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.

(i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement

Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.

(j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).

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

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

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

(a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.

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

(c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

(d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.

(e) "Approval Process" means the process by which necessary State approvals are obtained.

(f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.

(g) "Base Contract" means the original written contract prior to any amendments.

(h) "Bid" means a response by a vendor to an invitation to bid.

(i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.

(j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

(k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.

(l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.

(m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.

(n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.

(o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

(p) "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.

(q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.

(r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.

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

(t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.

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

(v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.

(w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

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

(y) "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.

(z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

(aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

(bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.

(cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:

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

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

(dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term

"Goods" does not include leases, acquisitions, or disposals of an interest in real property.

(ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

(ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.

(gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.

(hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.

(ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.

(jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

(kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.

(ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.

(mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

(nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.

(oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.

(pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.

(qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.

(rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

(ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.

~~(e) contracts for procurement of services in connection with the issue, sale, purchase, and delivery of bonds, notes and other debt obligations or the administration, safekeeping, and payment after delivery of such debt obligations by the state or any of its agencies.~~
(tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.

(uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.

(vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.

(ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.

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

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

(zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

(aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

(ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.

(ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.

(eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.

(fff) "Response" means a written response to a solicitation for goods or services.

(ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.

(hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.

(iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

(jjj) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

(kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.

(lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

(mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.

(nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.

(ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet

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

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

(qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

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

(sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.

(ttt) "State Architect" means the person, who oversees the Office of the State Architect.

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

(vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-03-01-.03 Central Procurement Office.

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

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

(a) Implementing these Rules;

(b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;

(c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;

(d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;

(e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;

(f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;

(g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;

(h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;

(i) Resolving protests of Aggrieved Respondents;

(j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

(i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.

(ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

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

3. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or

services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

(i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.

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

(iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:

(I) Application of the requirements of these Rules and Central Procurement Office Policy;

(II) Adequacy of the scope description; and

(III) Adequacy of the RFP's assurance of:

I. Fairness to respondents;

II. Clear, fair and open competition;

III. Achievement of procurement objectives; and

IV. Protection of the State's interests.

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

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

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

(I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.

(II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.

(III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.

(IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.

(V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) Invitation to Bid.

(a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

(a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

(c) Procurement-related actions taken in response to the emergency, including procurement methods used; and

(d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

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

1. Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;

2. Whether the product or service is unique and available from only one source;

3. Whether the program requirements can be modified so that competitively procured goods or services may be used;

4. Whether items must be interchangeable or compatible with in-place items;

5. Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or

6. Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

(7) Proprietary Procurement. Proprietary Procurement.

(8)

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

(a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

(a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

(a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

(a) The description of the technical requirements for the goods or scope of services to be procured;

(b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;

(c) Clear and definitive technical requirements and scope that allow for open competition where practicable;

(d) The solicitation shall contain directions regarding the submittal of proposals;

(e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;

(f) Any requirements for proposal, performance or payment bonds;

(g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;

(h) A declaration of whether the contract award is subject to successful contract negotiation;

(i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and

(j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

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

(3) Cancellation of Solicitation or Rejection of Responses.

(a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

(b) The Chief Procurement Officer shall have the discretion to reject any and all responses.

1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.

2. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.

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

(i) Unreasonably high prices or failure of all responses to meet technical specifications;

(ii) Error or defect in the solicitation;

(iii) Cessation of need;

(iv) Unavailability of funds;

(v) Lack of adequate competition; or

(vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

(a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

(a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process-Determining Non-Responsiveness.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

(a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.

2. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

3. The Chief Procurement Officer may consider the following grounds for protest and no others:

(i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.

4. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.

5. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the

right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

6. A written protest that is filed with the Protest Committee shall:

(i) Meet the requirements of T.C.A. § 4-56-103;

(ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,

(iii) Raise only grounds that were raised before the Chief Procurement Officer.

7. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

8. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

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

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

(2) Term Contract-General

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

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

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

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

(3) No Cost Contracts

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

(b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

(a) A "Revenue Contract" is a written contract where a State Agency provides specific deliverable services for monetary compensation. Prior to proceeding with any Revenue Contract negotiation, the State Agency must obtain the prior approval of the Chief Procurement Officer. If the request to enter into a Revenue Contract is approved, the State Agency shall proceed to procure the Revenue Contract in accordance with these

Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

(a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.

(b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;

2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or

3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant - A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

3. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

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

(a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.

(b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.

(c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.

(d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on

behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.

(f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.

(g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."

(h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

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

(2) Necessary Contract Clauses for All Contract Types.

(a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.

(b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods

and services under the contract, including the Contracting Party's direct or indirect costs.

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.

3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.

(d) Non-Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

(e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.

(f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.

(g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.

(h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.

(i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.

(j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:

1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

(k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.

(l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.

(m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

(n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.

(o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

(q) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.

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

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

(t) Debarment and Suspension.

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

(i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

(ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

(i) The text of the new clause sought to be used;

(ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;

(iii) The conditions in the market place that justify modification of the necessary contract clause; and

(iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

(c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

0690-03-01-.18 Approval Process of Contracts and Amendments.

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

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

(a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and

2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;

2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;

3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or

4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.

(d) The Commissioner of the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or

2. Provisions permitting the procurement of services from an individual.

(e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-.19 General Requirements of Contract Amendments.

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

(a) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.

(b) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.

(c) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing. The

amendment and justification is subject to the approval of the Chief Procurement Officer.

(d) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

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

(a) The goods or services are in fact needed;

(b) The goods or services cannot be satisfactorily or efficiently provided by the State;

(c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and

(d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

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

(2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.

(3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

(4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.

(5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

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

(2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.

(3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

(4) All procuring State Agencies shall maintain adequate documentation to support all payments.

~~(d) contracts to hire additional counsel for the state of Tennessee or any of its departments, institutions or agencies made in accordance with the provisions of Tennessee Code Annotated, §8-6-106.~~

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

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

~~(e) instances where the state procures the services of an expert witness for any judicial or administrative proceeding.~~

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

~~(4) Any part of these rules which may conflict with applicable federal regulations or provisions governing the use of federal grant funds may be waived by the Commissioner of Finance and Administration~~
0690-03-01-.25 Contract Termination.

~~(5) Any part of these rules which may conflict with applicable law shall be null and void.~~

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

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002, T.C.A. § 4-56-102, T.C.A. § 4-56-105.~~

~~0620-3-8-.03 CONTRACT MANAGEMENT AND SUBRECIPIENT-MONITORING-DISTINGUISHED.~~

0690-03-01-.26 Exceptions to Rules.

~~(1) A service contract creates either a vendor relationship or a subrecipient relationship with the contractor. The nature of the business relationship with the contractor (i.e., vendor or~~

~~subrecipient), and not the type of contract (i.e., fee-for-service contract or a grant), controls whether a contractor is a vendor or a subrecipient. Direction for determining whether a contractual relationship is a vendor or subrecipient relationship is found in both Department of Finance and Administration Policy 22 and the federal Office of Management and Budget Circular A-133.~~

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

~~(2) A procuring state agency is responsible for contract management of all vendor and subrecipient contracts under its purview. Additionally, contracts characterized by a subrecipient relationship are subject to subrecipient monitoring.~~

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002.~~

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

0620-3-8-.04 CONTRACT MANAGEMENT

(1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

~~(1) Each state department or agency shall be responsible for the effective management of all contracts under its purview. Contract Management is a state department or agency's on-going~~2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each service contract for efficiency, cost-effectiveness, and service provider accountability and results. ~~Contract Management~~management may include, but is not limited to:

~~(a) allocating~~Allocating adequate staff and resources to contract management;

~~(b) reviewing contractor~~Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

~~(c) communicating~~Communicating with ~~contractors~~Contracting Parties to ensure maximum performance and intended results;

~~(d) approving~~Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law ~~for acceptable work~~;

~~(e) maintaining~~Maintaining records of each contract that ~~document~~documents activities such as procurement, management, and subrecipient monitoring, if applicable; and

~~(f) evaluating~~Evaluating contract results in terms of the achievement of organizational objectives.

~~(2) Annual Contract Management Plan.~~ Each state agency ~~3) Each State Agency~~ shall establish ~~an Annual Contract Management Plan~~ an annual contract management plan addressing the general management of ~~service contracts~~ for which it is responsible.

(a) ~~Content.~~ A contract management plan should include:

1. ~~information~~ Information about the specific staff positions and resources that will be assigned to contract management;
2. a ~~A~~ description of the organization of identified staff and resources for the contract management responsibility; and
3. an An explanation of how the contract management staff will review and supervise ~~contractor~~ Contracting Party performance, progress, ~~and contract compliance,~~ and pricing.

(b) ~~Approval.~~ Before each calendar year for which the plan is applicable, the ~~commissioner~~ Chief Procurement Officer or chief executive of the ~~subject state agency~~ Delegated State Agency must approve the ~~Annual Contract Management Plan~~ annual contract management plan and, before submitting any ~~service contract~~ for approval in that year, submit a copy to the ~~Department of Finance and Administration, Office of Contracts Review~~ Central Procurement Office.

~~(3) Responsible Staff.~~ 4) Each state agency State Agency should identify the specific staff responsible for the management of each ~~service contract~~ under its purview and ensure that such staff ~~have~~ has adequate training. Such training may include:

(a) ~~definition~~ Definition of ~~service needs~~;

(b) ~~service procurement~~ Procurement law, ~~rules~~ Rules, and ~~regulations~~ Central Procurement Office Policy;

(c) ~~basic~~ Basic record keeping;

(d) ~~program~~ Program specific goals, objectives, purpose, and responsibilities;

(e) ~~interpersonal~~ Interpersonal communication;

(f) ~~project~~ Project management skills and tools; and

(g) ~~evaluation~~ Evaluation techniques, skills, and tools.

~~(4) Contract Management Processes.~~ Each state agency 5) Each State Agency shall implement such management practices as necessary to ensure:

(a) ~~accountability~~ Accountability, results, and positive programmatic impact from ~~service contracts~~ (as opposed to mere contract compliance).

(b) ~~the~~ The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

(5) ~~Contract Management Evaluation.~~ 6 The efficacy of each state-agency State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

(a) ~~the~~ The procuring state-agency State Agency's program area(s) having responsibility for each ~~service contracted;~~ contract;

(b) ~~the~~ The procuring ~~state-agency's~~ State Agency's functional area(s) ~~having~~ responsibility for internal controls, financial integrity, and internal audit;

(c) ~~the~~ The procuring state-agency State Agency's executives; and

(d) ~~the~~ The Comptroller of the Treasury (pursuant to his or her power to review and audit State government-entities under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code Annotated).

Authority: ~~T.C.A. §§ 4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002.~~

0620-3-8 .05 ~~SUBRECIPIENT MONITORING.~~

(17) ~~Subrecipient Monitoring~~ monitoring is required, in addition to contract management, for the specific subset of ~~service contracts and grants~~ grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient-contractor's compliance with the requirements of applicable state and State or federal programs, laws and regulations, and stated results ~~as well as.~~ Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with state and State or federal requirements. ~~Policies governing state government-subrecipient contract monitoring are found in Department of Finance and Administration Policy 22, signed by the Commissioner of Finance and Administration and the Comptroller of the Treasury.~~

(2) ~~Independence Required.~~

(a) Staff with subrecipient monitoring responsibilities must have a ~~separation of duties~~ separate from program staff to ensure independence and objectivity.

(3) ~~Plan Required.~~ b Each state-agency State Agency subject to these ~~rules~~ Rules shall develop and obtain Department of Finance and Administration Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan ~~is~~

~~detailed in Department of Finance and Administration Policy 22, will be established by Central Procurement Office Policy.~~

~~Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.~~

~~0690-03-01-.28 Contract with Current or Former State Employee.~~

~~(1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.~~

~~(a) For the purposes of applying this Rule,~~

~~1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;~~

~~2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and~~

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002. Amendments filed April 29, 2005; effective August 26, 2005.~~

~~3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.~~

~~0620-3-8-.06 EXCEPTIONS TO RULES. The Commissioner of Finance and Administration shall have the authority to make exceptions to the rules of this chapter. The Department of Finance and Administration shall file approved exceptions to these rules and the reasons therefore with the Comptroller of the Treasury.~~

~~(2) A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.~~

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective § 4-56-102, T.C.A. § 12-4-103. July 29, 2002.~~

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Document comparison by Workshare Compare on Monday, August 26, 2013
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Document 1 ID	file://C:\Users\ba10368\Desktop\0620-03-08.pdf
Description	0620-03-08
Document 2 ID	file://C:\Users\ba10368\Desktop\Rules Comparison 2.docx
Description	Rules Comparison 2
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Style change	
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Insertions	510
Deletions	128
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Moved to	2
Style change	0
Format changed	0
Total changes	642

~~RULES OF 0690-03-01 Comprehensive Rules and Regulations of the Central
Procurement Office
DEPARTMENT OF FINANCE AND ADMINISTRATION~~

~~CHAPTER 0620-3-3
PERSONAL, PROFESSIONAL
AND CONSULTING SERVICE CONTRACTS~~

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~~0620-3-3-.01 APPLICABILITY. (1) These rules Rules shall apply to all
procurements and resulting contracts for personal services, professional
services and consultant commodities and services entered into by the
various departments, institutions, boards, commissions, and agencies of
the executive branch of government of the state State of Tennessee
(referenced herein as "agency"), with the following exceptions:~~

~~(1a) Contracts of the Department of Transportation for construction
and engineering which are made in accordance with the provisions of
Tennessee Code Annotated, T.C.A. §§ 54-5-113, 101, et. seq. shall be
exempt from these rules.~~

~~(2) Contracts for services which, by their nature, have sufficiently
uniform and impersonal criteria so that the Department of General
Services may properly let the contract by bid based upon conformance
with required specifications and lowest overall price, may be procured
through the Department of General Services, Purchasing Division. (b) The
University of Tennessee and the Tennessee Board of Regents college and
university systems.~~

~~Examples of such services include but are not limited to: pest control,
moving and hauling, refuse collection, charter service (e.g., vehicle,
plane), slaughtering services and meat processing, answering services,
printing services, ambulance service, bulldozer service,
maintenance (e.g., elevator, machinery, building, grounds, plumbing,
electrical), window washing, laundry, and film processing.~~

~~(3) The Commissioner of Finance and Administration may waive any part of these rules that may detrimentally impact federal funding.~~

~~(4) Any part of these rules which may conflict with applicable law shall be null and void.~~

~~(5) The University of Tennessee and the Tennessee Board of Regents college and university systems shall have the option of:~~

~~(a) following these rules, the policy and procedures specified herein; or~~

~~(b) developing their own service contracting procedures, provided that such are in compliance with the policy expressed in these rules.~~

~~(6) In lieu of approvals required in accordance with Rule 0620-3-3-.06(3), the head of a procuring agency may approve the procurement methodology and associated procurement documents should the total cost of services fall below \$500.00 (or another amount up to \$15,000.00 which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury).~~

~~(a) Service procurements under this threshold shall be made in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines but shall require no approval beyond that of the procuring agency head; provided that:~~

~~1. such procurements are still subject to applicable provisions of these rules;~~

~~2. such procurements do not require expenditures from more than one fiscal year;~~

~~3. such procurements do not involve the purchase of financial management, auditing, accounting, management services of all types, management studies, planning services, public relations, evaluations, systems designs, data processing, engineering, or architectural services;~~

~~4. procurement requirements shall not be artificially divided so as to constitute a purchase subject to this rule, 0620-3-3-.01(6); and~~

~~5. annual needs for the subject service could not otherwise be more advantageously met with a fee for service contract.~~

~~(b) Notwithstanding the foregoing, all procurement documents under this rule, 0620-3-3-.01(6), shall be submitted to the Department of Finance and Administration Office of Contracts Review for data collection and funding certification.~~

~~(c) Rule 0620-3-3-.01(6) shall not be construed to apply to an Endowment Grant, a Delegated Grant Authority, a Delegated Loan Authority, a Delegated Purchase Authority, a no cost contract, or a revenue contract as defined by Rule 0620-3-3-.08 and .09 and shall not be construed to apply to Department of Transportation construction and engineering procurements made in accordance with the provisions of Tennessee Code Annotated, §§ 54-5-113, et. seq.(7) Contracts to employ additional legal counsel for the stateState of Tennessee, that are subject to the provisions of Tennessee Code Annotated, T.C.A. § 8-6-106. Said contracts106 shall not be subject to these rules. Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the stateState of Tennessee and not directly provided to the stateState of Tennessee shall be made in accordance with these rulesRules.~~

~~(8) d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.~~

~~(e) An agreement with the federal government providing for a grant award from the federal government to the stateState (e.g., to finance general purposes, operations, or program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these rules. Rules. Notwithstanding the foregoing, the stateState's contracts with subrecipients and/or vendors paid with State or federal funding shall be subject to these rulesRules.~~

~~(9) Gifts(f) Contracts conveying gifts to the state doState are not require a contract subject to these rulesRules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient state agencyState Agency regarding the gift.~~

~~(a) For purposes of this rule, a gift to the state shall be defined as a voluntary transfer of service to the state made gratuitously and without consideration. Essential requisites of a gift are:g) These Rules shall not apply to contracts requiring State Building Commission approval.~~

~~(h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.~~

~~(i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.~~

~~(j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring~~

to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).

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

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

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

(a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.

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

(c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

(d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.

(e) "Approval Process" means the process by which necessary State approvals are obtained.

(f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.

(g) "Base Contract" means the original written contract prior to any amendments.

(h) "Bid" means a response by a vendor to an invitation to bid.

(i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.

(j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

(k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.

(l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.

(m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.

(n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.

(o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

(p) "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.

(q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.

(r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.

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

(t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.

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

(v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.

(w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a

State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

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

(y) "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.

(z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

(aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

(bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.

(cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:

1. ~~capacity~~ Capacity of the donor ~~to make~~ the gift;
2. ~~intention~~ Intention of the donor to make ~~a~~the gift;
3. ~~completed~~ Completed delivery of the gift to or for the ~~state~~State, and
4. ~~acceptance~~ Acceptance of the gift by the ~~state~~State.

(b) Nothing in this ~~rule~~Rule shall be construed to mean that the ~~state~~State must accept any gift.

(10) ~~These rules shall not apply to utilities.~~dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.

(ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not

include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

(ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.

(gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.

(hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.

(ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.

(jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

(kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.

(ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.

(mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

(nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.

(oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.

(pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.

(qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.

(rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

(ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.

(tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.

(uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.

(vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.

(ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.

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

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

(zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

(aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

(ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.

(ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.

(eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.

(fff) "Response" means a written response to a solicitation for goods or services.

(ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.

(hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.

(iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

(jjj) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

(kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.

(lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

(mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.

(nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.

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

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

(qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

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

(sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.

(ttt) "State Architect" means the person, who oversees the Office of the State Architect.

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

(vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.

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

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

~~(11) These rules shall not apply to contracts required to be approved by the State Building Commission.~~

~~Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.~~

~~Authority: §§4-5-202, 4-325, Subsection 2, 12-4-109, 12-4-110, and Chapter 601 of the Public Acts of 1976.~~

~~Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0690-03-01-.03 Central Procurement Office.~~

~~0620-3-3-.02 OFFICE OF CONTRACTS REVIEW. There shall be created within the Department of Finance and Administration an Office of Contracts Review, which~~

~~(1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority, subject to the approval of the Commissioner of Finance and Administration, regarding all matters subject to these rules.~~

~~The~~

~~(2) The duties and responsibilities of the Central Procurement Office of Contracts Review shall include:~~

- ~~(1) execute the rules of this chapter;~~ a) Implementing these Rules;
- ~~(2) act on behalf of the Commissioner of Finance and Administration in making;~~ b) Providing necessary guidance, determinations and interpretations as required by these rules; Rules or applicable law;
- ~~(3) provide;~~ c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;
- ~~(d) Providing procedural direction governing personal, professional, or consultant service procurements and contracts for goods and services in accordance with these rules;~~ Rules or applicable law;
- ~~(4) provide;~~ e) Providing guidelines for drafting service procurement and contract documents in accordance with these rules; Rules or applicable law;
- ~~(5) provide;~~ f) Providing technical assistance to state agencies; State Agencies regarding service procurements and writing contracts governed by these rules; Rules or applicable law;
- ~~(6) provide coordination services for the;~~ g) Providing review and approval of service procurements and contracts in accordance with these rules; Rules or applicable law;
- ~~(7) administer a system;~~ h) Administering a procedure as defined in Central Procurement Office Policy for registering service providers who may contract with the state; State pursuant to these rules; and, Rules or applicable law;
- (i) Resolving protests of Aggrieved Respondents;
- (j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and
- ~~(8) provide analysis and support to the Commissioner of Finance and Administration regarding state procurement processes;~~ k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: ~~SS 4-5-202, 4-325, Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002. T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.~~

~~0620-3-3-.03 PROCUREMENT METHODS.~~
0690-03-01-.04 Authority Delegated to State Agencies.

- ~~(1) A procurement method is the process by which the state selects one or more contractors with which to contract for a given service.~~ A

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

(i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.

(ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

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

3. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

~~(a) Personal, professional, and consultant services shall be procured by a method that is determined in the state's discretion to be efficient and reasonable. Except as otherwise provided in these rules, contracts representing the procurement of services shall be made on a competitive basis.~~

0690-03-01-.05 Procurement Methods.

~~(b) To be competitive, a procurement method must include a consideration and comparison of potential contractors, based upon both cost and quality (i.e., service provider qualifications, experience, and technical approach). The terms "proposal," "bid," "quote," and "offer" shall all~~ Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

~~denote that which a service provider provides for competitive consideration and comparison under any competitive procurement methodology~~

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

~~(e) Accordingly, the Request for Proposal process, Competitive Negotiation, or an Alternative Competitive Procurement Method may be used as prescribed by these rules. Notwithstanding the foregoing, Non-Competitive Negotiation may also be used, as prescribed by these rules, in order for a state agency to meet procurement objectives efficiently and effectively and in the best interests of the state.~~ i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

~~(d) Regardless of the procurement methodology used, the procuring agency shall~~ ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process and, including any negotiations upon which each contract is based and documentation that each contract is awarded to a responsible and responsive proposer, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

~~(2) Request For Proposals (RFPs) -- the formal solicitation of written proposals "RFP").~~

(a) An RFP shall comply with the following requirements:

(a) The procuring agency. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with this rule and Department of Finance and Administration Office of Contracts Review these Rules and Central Procurement Office Policy Guidelines. Failure by the state to comply with said rule and policy alone shall not be deemed a defect requiring rejection of all bids, said decision remaining in the discretion of the state. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

(b) An RFP shall set forth specific provisions in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines including:
i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.

1. a clear and accurate description of the technical requirements for the service to be procured the service technical requirements and scope shall not contain features which unduly restrict competition and shall be in sufficient detail to minimize the likelihood of requests by potential proposers for clarification;

2. directions regarding the submittal of proposals;

3. a timeline of the RFP process that specifies deadlines service providers shall be given a reasonable time, as determined by the state, to consider the required scope of services and the proposal evaluation factors before proposals must be submitted;

4. state requirements and restrictions regarding the RFP;

5. a description of the factors to be considered in evaluating the proposals factors may include but are not limited to service provider qualifications, experience, technical approach, and cost; and

6. a declaration of the contract terms and conditions which shall be required by the state.

(c) The procuring agency head shall ii) The Central Procurement Office or Delegated State Agency shall carefully consider all individuals persons involved with the development, formulation, drafting, or review of an RFP or its scope of services and safeguard against a conflict any perceived or actual conflicts of interest.

(d) The Department of Finance and Administration shall iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall

approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. All RFPs that would result in contracts requiring the Comptroller's approval shall also require the approval of the Office of the Comptroller of the Treasury before their public release. Further, any addenda, amendments, and clarifications to RFPs that would result in contracts requiring the Comptroller's approval shall be filed by the procuring agency with the Comptroller of the Treasury contemporaneously with their public release. Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:

1. ~~application~~ (I) Application of the requirements of this rule and Department of Finance and Administration of these Rules and Central Procurement Office of Contracts Review Policy Guidelines;
2. ~~adequacy~~ (II) Adequacy of the scope of service description; and
3. ~~adequacy~~ (III) Adequacy of the RFP's assurance of:

I. Fairness to respondents:

~~(i) fairness to potential service providers;~~ (ii) clear, fair and open competition;

~~(iii) achievement~~ III. Achievement of procurement objectives; and

~~(iv) protection~~ IV. Protection of the state's interests.

~~(e) Upon approval, the procuring agency shall send an actual RFP document or a formal notice that the specific RFP has been released to a documented list of potential service providers. The procuring agency shall compile the list of potential service providers from those known to the agency staff. The procuring agency shall determine the number of service providers to include on the list by considering the nature of the service sought, the anticipated amount of the resulting contract, and the number of known service providers.~~ (iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.

~~(f) A procuring agency is not required to send an RFP or RFP Notice to more than a total of fifteen (15) service providers provided, however, that the procuring agency shall disseminate the RFP or RFP Notice as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines and to all that request the specific RFP. A general or standing request for notice of all RFPs or all RFPs of a given type of service shall not suffice as a request for a specific RFP and shall create no obligation on the state.~~

~~(g) To foster the integrity of the RFP evaluation process, each proposer shall be required to submit the Cost Proposal component of the~~

~~proposal in a sealed and labeled envelope separate from the Technical Proposal component. The purpose is to allow the cost component to be evaluated separately from the technical component.~~

~~1. The cost proposals shall not be opened until after the evaluation of the technical component is completed. (v) After the technical proposal evaluation is completed, the cost proposals shall proposal may be opened and evaluated, and the scores of both components shall proposals may be combined to arrive at a total evaluation score provided, however, that the cost proposal shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the state. 2. Any proposal which fails to adequately separate the cost proposal components from, The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal shall be considered non-responsive and rejected by the state.~~

~~(hyi) Proposal evaluations shall be conducted by state employees in such a manner as to reasonably impartial and ensure that all proposals are impartially considered and state material requirements are adequately of the RFP have been met.~~

~~1. (I) Proposals shall be evaluated by a team of at least three (3) state employees. For purposes of this rule, a state employee shall be defined as set forth by Tennessee Code Annotated, consistent with these Rules and Central Procurement Office Policy. § 8-42-101(3).~~

~~2. (II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of service providers persons making proposals, and determine if the member has a conflict of interest exists with a potential contractor, and with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Department Central Procurement Office Policy. The conflict of interest statement shall be retained as in the procurement file documentation.~~

~~3. (III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the service sought and detailed in the RFP document goods or services being procured.~~

~~(IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.~~

~~(V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.~~

~~(3) Invitation to Bid.~~

(a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

(a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

(c) Procurement-related actions taken in response to the emergency, including procurement methods used; and

(d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

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

1. Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;

2. Whether the product or service is unique and available from only one source;

3. Whether the program requirements can be modified so that competitively procured goods or services may be used;

4. Neither the technical proposal nor the cost shall be the only criterion for a contract award recommendation. However, specific factors may be set forth as a criterion for determining which proposals shall be considered responsive to the RFP. Whether items must be interchangeable or compatible with in-place items;

5. Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or

6. Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

(7) Proprietary Procurement. Proprietary Procurement.

(8)

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

(a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

(a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

(a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

(a) The description of the technical requirements for the goods or scope of services to be procured;

(b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;

(c) Clear and definitive technical requirements and scope that allow for open competition where practicable;

(d) The solicitation shall contain directions regarding the submittal of proposals;

(e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;

(f) Any requirements for proposal, performance or payment bonds;

(g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;

(h) A declaration of whether the contract award is subject to successful contract negotiation;

(i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and

(j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

~~5. In the event that a proposal evaluation process results in two or more proposals receiving evaluation scores that tie for the rank of highest score, the State shall request best and final cost proposals from only those proposers with scores that tie for the rank of highest score. The State shall calculate new evaluation scores for the tying proposals by adding the original technical proposal scores to the recalculated cost proposal scores based on the best and final cost proposals. Should another tie result, the contract award shall be decided by coin toss.~~

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

~~6. To effect a contract award to a service provider other than the proposer receiving the highest evaluation score, the head of the procuring agency shall provide written justification for such an award and obtain the written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury~~

(3) Cancellation of Solicitation or Rejection of Responses.

~~(i) The procuring agency shall communicate, clarify, and negotiate in the best interests of the state, provided that all communication is in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal.~~
a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

~~(j) The state Chief Procurement Officer shall have the right, at its sole discretion, to amend an RFP in writing at any time. (k) The state shall have the right, at its sole discretion, discretion to reject any and all proposals responses.~~

1. Any ~~proposal response~~ that does not meet the requirements of an ~~RFPa solicitation~~ may be considered ~~to be nonresponsive~~, and the ~~proposal response~~ may be rejected.

2. Any ~~proposal response~~ that restricts the rights of the ~~state~~ State or otherwise qualifies the proposal may be considered ~~to be nonresponsive~~, and the ~~proposal response~~ may be rejected.

3. ~~Whenever the state proposes to reject all proposals for a certain purchase, such action shall be taken only. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:~~

~~(i) unreasonably~~ Unreasonably high prices or failure of all ~~proposals~~ responses to meet technical specifications;

~~(ii) error~~ Error or defect in the ~~request for proposals~~; solicitation;

~~(iii) cessation~~ Cessation of need;

~~(iv) unavailability~~ Unavailability of funds;

~~(v) a determination by the affected agency that proceeding with the procurement would be detrimental to the best interests of the State, the reason for which must be documented and approved by the Commissioner of Finance and Administration and filed with the Comptroller of the Treasury.~~ Lack of adequate competition; or

~~(1) The state shall have the right, at its sole discretion, to cancel an RFP in its entirety and, at its sole discretion, to reissue or not reissue an RFP. The approval of the Commissioner of Finance and Administration shall be required prior to the cancellation of an RFP, and the Department of Finance and Administration shall file any such approved request with the Comptroller of the Treasury.~~

~~(m) All proposals and other material submitted in response to an RFP become subject to public record requirements of the state of Tennessee. Selection or rejection of a proposal does not affect its public records status. Upon the completion of the review and evaluation of proposals submitted in response to an RFP, evaluated proposals and associated materials shall be open for review by the public in accordance with Tennessee Code Annotated, § 10-7-504(a)(7).~~

~~(3) Competitive Negotiation -- the informal process of verbal or written solicitation of proposals shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(a) The Competitive Negotiation process may be used when it is determined by the Commissioner of Finance and Administration that one of the following is true:~~

~~1. public need will not permit the delay incident to the RFP process;~~

~~2. no acceptable proposals have been received after an RFP process;~~

~~3. rates payable for the services are regulated by law;~~

~~4. the services to be procured are legal or expert witness services; or~~

~~5. the total cost of the services does not exceed \$10,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.~~

~~(b) Prior to proceeding with a Competitive Negotiation process, the head of the procuring agency shall justify such a procurement method in writing, based on the criteria set forth in Rule 0620-3-3-.03(2)(a), and request and obtain the written approval of the Commissioner of Finance and Administration. Said request shall document the criteria and methodology to be used in evaluating offers in response to the solicitation.~~

~~(c) Upon approval to proceed with the Competitive Negotiation process, the procuring agency shall:~~

~~1. identify and contact at least three (3) potential service providers for Competitive Negotiation, provided, however, that the procuring agency shall contact minority, disadvantaged, and small business service providers as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines;~~

~~2. communicate the requirements of the state, solicit proposals, and clarify and negotiate as necessary in the best interests of the state, ensuring that all communication is conducted in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal;~~

~~3. document all proposals in response to the solicitation; and~~

~~4. select for contract award, in accordance with the approved evaluation criteria and methodology, the service provider meeting required qualifications, terms, and conditions and offering the best proposal in terms of qualifications, delivery, and cost.~~

~~(d) The procuring agency shall document the Competitive Negotiation process. The state agency shall provide a summary of said documentation upon submitting the contract for Department of Finance and Administration approval.~~

~~(c) Subsequent to selection and negotiation the agency shall write a contract and initiate contract approval in accordance with these rules.~~

~~(4) Alternative Competitive Procurement Method -- an alternative process of procuring service shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(a) A procuring agency may devise and document procedures for an Alternative Competitive Procurement Method and use the methodology in a specific contractor selection process provided that:~~

~~1. prior, written approval of the Commissioner of Finance and Administration is obtained, and~~

~~2. prior, written approval of the Comptroller of the Treasury is obtained for procurement processes that will result in a contract requiring the approval of the Comptroller.~~

~~(b) The Department of Finance and Administration shall file approved requests to use an Alternative Competitive Procurement Method, and the reasons therefore with the Comptroller of the Treasury.~~

~~(5) Non-Competitive Negotiation -- the negotiation of the terms of a service contract with only one service provider shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(a) Non-Competitive Negotiation may be used when it is determined by the Commissioner of Finance and Administration that one of the following is true:~~

~~1. there is only one uniquely qualified service provider capable of performing the needed service;~~

~~2. the selected service provider is a state agency or any political subdivision of the state of Tennessee created and existing pursuant to the constitution and laws of Tennessee or any instrumentality of government created by one or more political subdivisions of Tennessee or by an act of the General Assembly;~~

~~3. the selected service provider is an entity of the federal government;~~

~~4. the use of Non-Competitive Negotiation is in the best interests of the state; or~~

~~5. the total cost of the services for which the contract shall be written does not exceed~~

~~\$5,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.~~

~~(b) Before beginning Non-Competitive Negotiation, the head of the procuring agency shall justify such a procurement in writing and request and obtain the approval of the Commissioner of Finance and Administration.~~

~~1. A Non-Competitive Negotiation request shall specify:~~

~~(i) the petition to procure the subject service by means of negotiation with only the one, identified service provider;~~

~~(ii) the service provider with whom the state would negotiate for the service; (iii) the service to be procured;~~

~~(iv) the specific Rule 0620-3-3-.03(5)(a) requirement(s) for Non-Competitive Negotiation believed to be satisfied by the subject procurement;~~

~~(v) the justification for Non-Competitive Negotiation detailing sound, business reasoning why a competitive procurement of the given services is not appropriate and why Non-Competitive Negotiation is in the best interests of the state;~~

~~(vi) the maximum cost of the non-competitive procurement; and~~

~~(vii) the contract duration.~~

~~2. The request and approval for Non-Competitive Negotiation required by Rule 0620-3-3-.03(5)(b) shall not be required when:~~

~~(i) the selected service provider is a state agency or any political subdivision of the state of Tennessee created and existing pursuant to the constitution and laws of Tennessee or any instrumentality of government created by one or more political subdivisions of Tennessee or by an act of the General Assembly except, (said request, justification, and approval of Non-competitive negotiation shall be required) when the selected service provider is a state institution of higher education (e.g., a component of the University of Tennessee or the Tennessee Board of regents college and university systems);~~

~~(ii) the selected service provider is an entity of the federal government; or~~

~~(iii) the total cost of the services for which the contract shall be written does not exceed \$5,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.~~

~~(e) Upon approval to proceed with Non-Competitive Negotiation, the procuring agency shall negotiate the best possible terms and price with the service provider, write a contract, and initiate contract approval in accordance with rules of this chapter.~~

~~(d) By signing the contract, the procuring agency head indicates and confirms his or her determination that the contract price resulting from non-competitive negotiations is fair, reasonable, and, in the case of contracts with governmental entities, competitive.~~

~~(e) The procuring agency shall document the Non-Competitive Negotiation process.~~

~~(f) The Department of Finance and Administration shall file approved requests to use Non-Competitive Negotiation to procure services and the reasons therefore with the Comptroller of the Treasury. vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.~~

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

~~(6) Grant Award -- A grant in accordance with Rule 0620-3-3-.08(a) of this chapter shall not require justification or approval for any Competitive or Non-Competitive Negotiation but shall require a summary of the grantee selection process specifying whether it was a competitive or non-competitive process. 5. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.~~

~~Authority: --§§4-5-202, 4-325, Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002. T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.~~

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

(a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief

Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

(a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process-Determining Non-Responsiveness.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

~~0620-3-3-.04 PROTEST PROCEDURES. Tennessee Code Annotated, § 12-4-109(a)(1)(E) sets forth protest procedures regarding Requests for Proposals (RFPs) issued by the state~~

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

~~(1) Any service provider who has submitted a proposal in response to a specific RFP subject to these rules and who claims to be aggrieved in connection with that specific RFP process may protest to the procuring agency head~~2) Protest After Notice of Intent to Award.

(a) A protest shall be submitted Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days after such claimant knows or should have known of the facts giving rise to the protest from the beginning of the Open File Period.

1. All proposers to an RFP should know and shall be deemed responsible for knowing the On the first day of the Open File Period, all respondents are deemed to know all facts documented in the state's procurement files on the day the procuring agency opens the RFP files for public inspection pursuant to Tennessee Code Annotated, § 10-7-504 (a) (7).

2. All protests shall be submitted in writing to the head of the procuring agency within the required seven (7) calendar day period. Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

3. At the time of filing a notice of protest, the protesting party shall submit, to the procuring agency head, a bond payable to the State of Tennessee in the amount of five percent (5%) of the lowest cost proposal evaluated. Any protest submitted without the protest bond as required shall not proceed. A party may request an exemption from the protest bond requirement if it meets the qualifications of Tennessee Code Annotated Section 12-4-

109(a)(1)(E)(v). The Chief Procurement Officer may consider the following grounds for protest and no others:

(b) The protest bond shall be in form and substance acceptable to the State (see Rule 0620-3-3-.13 for protest bond sample form) and shall be immediately payable to the State of Tennessee conditioned upon a decision by the review committee that:
i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

1. a request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the review committee, in violation of Tennessee Code Annotated, § 12-

4-109 (a) (1) (E) (ii);

(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

2. the protest has been brought or pursued in bad faith; or

(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

3. the protest does not state on its face a valid basis for protest.

(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

~~(c) The State shall hold a protest bond for at least eleven (11) calendar days after the date of the final determination by the procuring agency head. If the protesting party appeals the procuring agency determination to the Review Committee, the head of the procuring agency shall hold) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.~~

~~said protest bond until instructed by the review committee to either keep the bond or return it to the protesting party.~~

~~(d) A written protest to the procuring agency head shall enumerate and detail all issues and associated reasoning that the protester wishes to be considered and requests judgments to be rendered upon by the state.~~

~~(e) Upon knowledge of any protest subject to these rules, the procuring agency shall notify and provide a copy of the written protest to the Department of Finance and Administration Office of Contracts Review.~~

4. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.

~~(f) The procuring agency shall have no more than~~

5. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days from receipt of a protest to resolve the protest unless the protester and the procuring agency agree upon an extension of this time. The final determination of the procuring agency shall be given in writing. Said determination shall be submitted to the protester and the Department of Finance and Administration Office of Contracts Review, or consents in writing to a direct appeal to the Protest Committee.

~~(2) The protester may appeal the procuring agency head's decision to the Review Committee within seven (7) calendar days from the date of the decision. The protester's written request for consideration of the~~
6. A written protest by that is filed with the Review Protest Committee shall:

~~(a) meet~~

~~(i) Meet the requirements of Tennessee Code Annotated, § 12-4-109(a)(1)(E), et seq. T.C.A. § 4-56-103;~~

~~(b) be~~ ii) Be delivered to both the procuring agency head and the Commissioner of Finance and Administration the Chief Procurement Officer and the Comptroller of the Treasury; and,

~~(e) enumerate and detail all issues raised in the initial protest that the protester wishes to be considered and requests judgments to be rendered upon by the Review Committee.~~ iii) Raise only grounds that were raised before the Chief Procurement Officer.

7. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

8. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

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

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

(2) Term Contract-General

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

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

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

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

(3) No Cost Contracts

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

(b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

(a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the

general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.

(b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;

2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or

3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant - A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

3. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central

Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

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

~~(3) The protester shall provide no less than fifteen (15) copies of each exhibit or document upon introduction of such at the meeting of the Review Committee.~~

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

~~Authority: T.C.A. §§ 4-5-202 and 12-4-109(a)(1)(A)(ii), (iii) and (iv).
Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed April 18, 1994; effective August 28, 1994. Amendment filed November 8, 2001; effective March 30, 2002.
0690-03-01-.16 General Requirements of Contracts.~~

~~0620-3-3-.05 CONTRACT FORM. (1) The purpose of a written contract is to embody, in writing, reduce the complete parties' agreement between parties. No terms shall be left to an unwritten understanding. A contract to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions for of a contract subject to these rules Rules shall be written, in form and content, in accordance with Department of Finance and Administration Central Procurement Office of Contracts Review Policy Guidelines. Except as otherwise provided by the rules of this chapter, a contract subject to these rules these Rules, all contracts shall meet the following requirements:~~

~~(1a) The contractor Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The contractor Contracting Party's duties may include, but are not limited to, the type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.~~

~~(2b) The state State's duties shall be clearly defined and detailed in accordance with Department of Finance and Administration Central Procurement Office of Contracts Review Policy Guidelines. Contract terms shall clearly indicate the maximum liability of, as applicable, to the state State under the contract. The state State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the period term of the contract.~~

~~(3g) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the state, State shall be written as special terms and conditions, in accordance with Department of Finance and Administration Office of Contracts Review, with Central Procurement Office Policy Guidelines.~~

(d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.

(f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.

(g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."

(h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

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

(2) Necessary Contract Clauses for All Contract Types.

(a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.

(b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.

3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.

(d) Non-Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

(e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.

(f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.

(g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.

(h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.

(i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.

(j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:

1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

(k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.

(l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.

(m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

(n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.

(o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

(q) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.

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

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

(t) Debarment and Suspension.

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

(i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

(ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or

destruction of records, making false statements, or receiving stolen property;

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief

Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

(i) The text of the new clause sought to be used;

(ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;

(4) A Contract Summary Sheet, as required by Department of Finance and Administration Office of Contracts Review, shall be attached to the face of each original copy of a contract. Said Contract Summary Sheet shall remain attached to each copy of the contract whether held by the Division of Accounts, the procuring agency, or the contractor.iii) The conditions in the market place that justify modification of the necessary contract clause; and

(5) All contracts subject to these rules shall specifically state:— "The Contractor [Grantee] hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract [Grant] or in the employment practices of the Contractor [Grantee] on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor [Grantee] shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination."iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

(6) All contracts subject to these rules shall specifically state:— "The Contractor [Grantee] shall maintain documentation for all charges against the State under this Contract [Grant]. The books, records, and documents of the Contractor [Grantee], insofar as they relate to work performed or money received under this Contract [Grant], shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles."c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: ~~§§ 4-5-202, 12-4-109, 4-325; Subsection 2, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002. T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.~~

0690-03-01-.18 Approval Process of Contracts and Amendments.

~~0620-3-3-.06 CONTRACT APPROVAL. A contract subject to these rules (1) All contracts and amendments shall be written in writing and approved in accordance with this rule and Department of Finance and Administration Office of Contracts Review these Rules and Central Procurement Office Policy Guidelines.~~

~~(12) The procuring agency Procuring Agency shall initiate approval of a contract or a contract an amendment by delivering the contract or amendment, signed by the contract parties, to the Department of Finance and Administration Office of Contracts Review the Central Procurement Office as prescribed in Central Procurement Office Policy.~~

~~(2) A contract or contract amendment subject to these rules shall be subject to the final approval of the Commissioner of Finance and Administration. Administration Office of Contracts Review shall: Accordingly, the Department of Finance and (a) A base contract (the original contract prior to any amendments) shall be submitted with:~~

~~1. documentation of the procurement method and other procurement documentation which may be required by these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines; and~~

~~2. an approved copy of any request which may have been made for an exception to these rules or a deviation from Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(b) A contract amendment shall be submitted with:~~

~~1. a copy of the base contract and all previous amendments to the base contract; and,~~

~~2. if applicable, a new, written request to the Commissioner of Finance and Administration justifying the change in terms by means of Non-Competitive Negotiation (in accordance with Rule 0620-3-3-.07(1)); the Department of Finance and Administration shall file approved requests for non-competitive negotiation with the Comptroller of the Treasury.~~

~~(Rule 0620-3-3-.06, continued)~~ A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

~~(a) provide~~ 1. Provide technical assistance toward the achievement of procurement goals and protection of the ~~state~~ State's interests; and

~~(b) assign a unique contract number to each contract;~~

~~(c) coordinate a process whereby funding availability is certified for each contract;~~

~~(d) review contract documents for Commissioner of Finance and Administration approval; and~~

~~(e)~~

coordinate 2. Manage the review ~~for~~ process to secure approval by other officials required by these ~~rules~~ Rules.

(3)

Upon Certain contracts require the approval by the Commissioner of Finance and Administration, a contract shall be fully approved, withof the following exceptions officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between ~~state agencies~~ State Agencies that includes provisions ~~for cooperative~~ for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering ~~or architectural~~ or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. ~~term~~ Term provisions requiring or making possible expenditures from appropriations of ~~more than~~ more than one fiscal year;

2. ~~provisions~~ Provisions for financial management (including electronic data processing ~~systems impacting~~ systems impacting financial management), auditing, or accounting services;

3. ~~provisions~~ Provisions concerning management services of all types, including management studies, ~~planning services~~ planning services, public relations, evaluations, systems designs, data processing; or

4. ~~provisions~~ Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.

(d) The Commissioner of ~~Personnel~~ the Department of Human Resources shall approve a contract that includes:

~~1. provisions~~ Provisions for training state employees (except as provided by Rule 0620-3-3-.07(21)) State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or

~~2. provisions~~ Provisions permitting the procurement of services from an individual.

~~(4) Upon final approval of a contract document requiring expenditures by the state, the Department of Finance and Administration Division of Accounts shall file the contract document with original signatures and record it in the State of Tennessee Accounting and Reporting System.~~

~~(5) Upon final approval of a no cost contract or a revenue contract, the Department of Finance and Administration Office of Contracts Review shall return the original contract to the subject state agency.e) Other officials may be required by law or as detailed in Central Procurement Office Policy.~~

Authority: ~~SS4-5-202, 4-325, Subsection 2, 12-4-109, 12-4-110, and Chapter 601 of the Public Acts of 1976.~~ T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

Administrative History: ~~Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.07 GENERAL REQUIREMENTS. All service contracting subject to these rules shall follow the policy set forth in the following general requirements.~~

~~(1) 0690-03-01-.19 General Requirements of Contract Amendments.~~

~~(1) A contract amendment is a written contract document that changes, adds, or deletes~~ modifies or supplements one or more terms or conditions of an existing contract. ~~It shall be the practice of the state to enter only into contracts that are complete and thorough. However, during the course of a contract, it may become necessary to change, add to, or delete from the terms and conditions of the contract.~~ a contract and meets the following:

~~(a) A contract amendment shall meet the requirements of these rules and Department of Finance and Administration Office of Contracts Review~~ Rules and Central Procurement Office Policy Guidelines and shall clearly detail the additions, deletions, and modifications to the subject contract.

~~(b) A contract amendment should be determined by the Commissioner of Finance and Administration~~ the Chief Procurement Officer to be either within the original scope of work and within the intent and purpose of the original contract, or a logical extension ~~to of~~ the original scope of work Base Contract.

~~(c) If a contract amendment adds, If any change to the Base Contract results in a change to the original base contract scope of work, or extends the contract term (of a contract that did not provide for a term extension), or if a contract amendment increases the maximum liability of a contract entered on the basis of Non-Competitive Negotiation, the head of the procuring agency, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing and request and obtain the approval of the Commissioner of Finance and Administration. The Department of Finance and Administration shall file such approved requests and the reasons therefore with the Comptroller of the Treasury. The amendment and justification is subject to the approval of the Chief Procurement Officer.~~

(d) A contract amendment shall require the approval of the same officials required for approval of the ~~base contract.~~ Base Contract. If the amendment changes the scope or the terms of the ~~base contract~~ Base Contract in such a manner as to require additional review by ~~one or more officials in accordance with Rule 0620-3-3-.06(e) as defined in these Rules or by applicable law,~~ said amendment and all subsequent amendments of the contract shall require ~~that an~~ an additional approval. approval.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

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

(a) The goods or services are in fact needed;

(b) The goods or services cannot be satisfactorily or efficiently provided by the State;

(c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and

(d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, .C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

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

(2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.

(3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

(4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.

(5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

(1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to

proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

(2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.

(3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

(4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

(1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

(2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:

(a) Allocating adequate staff and resources to contract management;

(b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

(c) Communicating with Contracting Parties to ensure maximum performance and intended results;

(d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;

(e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and

(f) Evaluating contract results in terms of the achievement of organizational objectives.

(3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.

(a) A contract management plan should include:

1. Information about the specific staff positions and resources that will be assigned to contract management;

2. A description of the organization of identified staff and resources for the contract management responsibility; and

3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.

(b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.

(4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:

(a) Definition of needs;

(b) Procurement law, Rules, and Central Procurement Office Policy;

(c) Basic record keeping;

(d) Program specific goals, objectives, purpose, and responsibilities;

(e) Interpersonal communication;

(f) Project management skills and tools; and

~~(2) Authorization to Begin Work — A signed contract affixed with the signature of all officials required for approval of the contract shall authorize a contractor or grantee to commence work on the subject scope of services. No official or employee of the state of Tennessee, except the Commissioner of Finance and Administration, only in cases of emergency, in writing, shall have the authority to authorize a contractor or grantee to commence work before a signed contract has been completely approved according to these rules. The Department of Finance and Administration shall document any such authorization and the reasons therefore and file the documentation with the Comptroller of the Treasury.~~ g) Evaluation techniques, skills, and tools.

~~(3) Proposal Bond — In circumstances deemed appropriate by the procuring state agency, the state may require each proposer in response to a Request for Proposals (RFP) to provide the state with a bond payable to the state in the event that the proposer, if successful, fails to enter into a contract with the state in accordance with the terms of the RFP.~~ 5) Each State Agency shall implement such management practices as necessary to ensure:

(a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).

~~(4) Communication and Negotiation — The procuring agency shall conduct such communication as it determines to be in the best interests of the state, provided that any communication, clarification, or negotiation which may take place regarding any service procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more service providers unfair advantage or unfairly enable one or more proposers to improve their proposals as a result.~~ b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

~~(5) Contract Term — A contract shall be entered into for a period or contract term sufficient to adequately accomplish the state's procurement objectives, provided that the contract contains appropriate termination provisions for performance failures, funding changes, and state convenience. However, no contract term shall exceed sixty (60) months.~~ (6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

(a) The procuring State Agency's program area having responsibility for each contract;

(b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;

(c) The procuring State Agency's executives; and

(d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).

(7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

(a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.

~~(6) Contract with a Corporation — If the contractor is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The state may require that a copy of the corporate charter be submitted prior to contract approval.~~ b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

~~(7) Contract with Governmental Entities — A contract between a state agency subject to the rules of this chapter and another governmental entity (except another agency of the executive branch of Tennessee state government) shall contain an adequate description of the duties of each party, a statement of the contract term, and a statement of the maximum amount payable, and shall be drafted to comply with Department of~~

~~Finance and Administration Office of Contracts Review Policy Guidelines. An agreement between state agencies may be drafted as a contract complying with Department of Finance and Administration Office of Contracts Review Policy Guidelines or may be executed by means of some other instrument to effect the understanding.~~

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

~~(8) 0690-03-01-.28 Contract with a State Employee Current or a Former State Employee— A state agency.~~

(1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a stateState employee.

(a) For the purposes of applying this ~~rule~~Rule,

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

2. ~~a~~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~~State employee shall be considered to be a contract with or proposal from the employee; and

3. ~~a~~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~~State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these ~~rules~~Rules.

(b2) A ~~state~~State employee may be compensated for performing services for a ~~state~~State agency other than the ~~state~~State agency employing the individual (e.g., a ~~state~~State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-3-203-02, et seq., and not the ~~rules~~Rules of this chapter.

~~(9) Certification of Necessity, Funding, and Contractor Eligibility— The head of any state agency contracting with a service provider outside Tennessee state government shall determine and indicate, by signing the contract or Authorization to Vendor, that:~~

~~(a) the services are in fact needed;~~

~~(b) the services cannot be satisfactorily or efficiently performed by employees of the state of Tennessee;~~

~~(c) funds have been appropriated to meet the resulting financial obligations of the state for the services, and the procuring agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and~~

~~(d) the subject contractor is eligible, subject to these rules and any applicable federal or state requirements, to contract with the state for provision of the subject services.~~

~~(10) Contractor Registration — Proposers need not be registered with the state to make a proposal. However, all service providers with whom the state of Tennessee contracts for services pursuant to these rules~~

~~shall be registered as required by the Department of Finance and Administration Office of Contracts Review prior to approval of a contract.~~

~~(11) Grantee Audit Requirement — Every person or entity receiving funds pursuant to a grant contract shall cause to be performed an audit of all its programs funded by grant contracts as required by said contracts, however, it is not intended that the existence of more than one grant contract or source of funds for a single grantee shall necessitate more than one audit in a single audit period.~~

~~(12) Hiring of Employees — State employees shall be hired through the merit system of the Department of Personnel. All contracts with an individual and all Departmental Purchase Authorities shall be reviewed for approval by the Commissioner of Personnel to determine compliance with this policy.~~

~~(13) Hold Harmless Prohibition — The state shall not agree by contract to indemnify or hold a contractor harmless for any liability arising from a contractual relationship.~~

~~(14) Incorrect Proposal Information — If the state determines that a proposer has provided, for consideration in a contractor selection process or in negotiations, information which the proposer knew or should have known was materially incorrect, the subject proposal may be determined non-responsive, and the proposal may be rejected.~~

~~(15) Payments — Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by state laws and regulations. Under no conditions shall the state be liable for payment of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before the contract start date specified by the contract or before contract approval by state officials as required by applicable statutes and rules of the state of Tennessee — except, in accordance with Rule 0620-3-3-~~

~~.07(2), the Commissioner of Finance and Administration shall have the authority to authorize a contractor or grantee to commence work before a signed contract has been completely approved according to these rules.~~

~~(a) All contracts, in which the state is to make payment(s) to the contractor, shall provide that payments are to be made upon submittal of invoices by the contractor, after performance of the portion of the service which each payment represents, except that, grants may provide~~

~~for advance payments in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(b) Except as provided in this rule, no payment shall be made for performance under a contract unless an appropriate, procuring agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by appropriate procuring agency staff's written approval of each invoice submitted for payment.~~

~~(c) A contract subject to these rules may provide for incentive payments. An incentive shall be defined as a payment, in addition to that which is required by a contract for minimally required performance, that is explicitly based upon contractor performance at a specified level beyond that which is minimally required.~~

~~(d) A contract subject to these rules shall not provide for the payment of a bonus. A bonus shall be defined as a payment, in addition to that which is required by a contract for minimally required performance, that is not based on contractor performance at a definitively specified level beyond that which is minimally required.~~

~~(e) The procuring agency shall maintain adequate documentation to support all payments.~~

~~(16) Performance Bond — In circumstances deemed appropriate by the procuring agency, the state may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these rules.~~

~~(17) Proof of Insurance — As deemed appropriate, the state may require a potential contractor to provide proof of appropriate insurance prior to entering a contract subject to these rules.~~

~~(18) "Responsible Proposer" shall be defined as a proposer that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.~~

~~(19) "Responsive Proposer" shall be defined as a proposer that has submitted a proposal that conforms in all material respects to the Request for Proposals.~~

~~(20) Signature Authority — Each state agency shall file, with and in a form acceptable to the Department of Finance and Administration Office of Contracts Review, documentation detailing the actual signature of the head of the agency and the agency head's signature as written by any other persons authorized to sign service contracting documents on behalf of the agency head.~~

~~(21) Training of State Employees — All contracts with provisions for training of state employees shall require the approval of the~~

~~Commissioner of Personnel. This rule shall not apply to contracts for systems development that provide for state employee training on the resulting system.~~

~~(22) Travel Reimbursements - Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and rules set forth in the State Comprehensive Travel Regulations as amended. The limits and rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the state of Tennessee at "in-state rates" and for the reimbursement of travel expenses incurred outside the state of Tennessee at "out-of-state rates."~~

~~Authority: SS4-5-202, 4-325; Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.08 SPECIAL CASES.~~

~~(1) Grant - A Grant shall be defined as a contract used to effect an award of funding or property to a grant recipient or grantee. A Grant shall benefit the general public or some population of the general public. Deliverables pursuant to a Grant Contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.~~

~~(a) A Grant shall represent one of the following:~~

~~1. a contract effecting an award to a nonprofit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;~~

~~2. a contract passing through a federal award which specifically identifies by name a grantee or subrecipient; or~~

~~3. a contract effecting an award to fund work toward the completion of an activity or program which could not otherwise be more advantageously procured under a fee-for-service type contract - a grant representing this type of award must be determined to be appropriate and in the best interests of the state by the Commissioner of Finance and Administration.~~

~~(b) A Grant as defined in this rule shall be made by use of one of two grant contract types as follows:~~

~~1. Cost Reimbursement Grant - a grant contract in which payment(s) to the grantee shall be limited to reimbursement for actual, reasonable, and necessary cost as determined by the state and in accordance with an approved grant budget.~~

~~(i) A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the grantor and the~~

~~grantee as defined by Department of Finance and Administration Policy 22.~~

~~(ii) A Cost Reimbursement Grant contract shall detail the state approved Grant Budget.~~

~~(I) A Grant Budget shall be defined as a schedule itemizing one or more specific activities or purposes under the Grant along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant and that total shall equal the maximum liability of the Grant.~~

~~(II) A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.~~

~~(iii) The grantor state agency shall conduct analysis and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated.~~

~~(iv) The grantor state agency shall document the grantee selection process specifying whether it was competitive or non competitive and detailing reasons for non competitive selections. The state agency shall provide a summary of said documentation to the Department of Finance and Administration Office of Contracts Review with the grant contract upon request for approval.~~

~~(v) A Cost Reimbursement Grant contract shall be written, signed by the parties, and approved in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~2. Endowment Grant -- a Grant contract effecting an award and conveyance of funds or property to a grantee for a particular purpose such that will benefit the general public or some population of the general public.~~

~~(i) An Endowment Grant's essential requisites are: (I) the state's authority to make the Grant;~~
~~(II) the intention of the state to make an endowment award free of conditions beyond the specified purpose of the grant;~~
~~(III) the state's offer of an endowment award to the grantee; (IV) the grantee's acceptance of the endowment award; and~~
~~(V) the grantee's fulfillment of the Grant's specific purpose.~~

~~the operation of state or federal programs and do not involve the management and implementation of a state or federal program.~~

~~(iii) An Endowment Grant shall not create a subrecipient relationship between the state and the grantee as defined by Department of Finance and Administration Policy~~

~~(iv) An Endowment Grant must be determined to be appropriate and in the best interests of the state by the Commissioner of Finance and Administration.~~

~~(v) The grantor state agency shall document the grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for non-competitive selections. The state agency shall provide a summary of said documentation to the Department of Finance and Administration Office of Contracts Review with the grant contract upon request for approval.~~

~~(vi) An Endowment Grant shall cite the state's authority to make the Grant.~~

~~(vii) An Endowment Grant contract shall be written, signed by the parties, and approved in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(2) No-Cost Contract - A no-cost contract shall be used to formalize the exchange of services which does not result in a pecuniary obligation between the state and the contractor. Prior to proceeding with any procurement of services under a no cost contract, the procuring agency shall obtain approval of the Commissioner of Finance and Administration. If the request to enter into a no cost contract is approved, the agency shall proceed with the procurement in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(3) Revenue Contract - A revenue contract shall be used to formalize an agreement in which a state agency provides specific deliverable services for monetary compensation. Prior to proceeding with any revenue contract negotiation, the state agency must obtain approval of the Commissioner of Finance and Administration. If the request to enter into a revenue contract is approved, the agency shall proceed with the agreement in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~Authority: SS4-5-202, 4-325; Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.09 DELEGATED AUTHORITY. A Delegated Authority to make specific service agreements without further approval shall be effective upon the approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury. No grant, loan, purchase, or agreement shall be initiated and no obligation shall be incurred under a Delegated Authority prior to the delivery of an approved copy of the authority to the subject state agency.~~

~~(1) Delegated Grant Authority — A Delegated Grant Authority shall give approval to a state agency to issue grants for an individual program within specified limits and guidelines.~~

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

~~1. the program needs and category of services are such that adequate guidelines can be developed to direct the agency issuing a number of similar grants; and~~

~~practicality in individual review by the Department of Finance and Administration Office of Contracts Review.~~

~~(b) A Delegated Grant Authority shall set forth all provisions required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(c) No changes shall be made to the approved grant form detailed by the Authority without a formal amendment of the approved Delegated Grant Authority.~~

~~(2) Delegated Loan Authority — A Delegated Loan Authority shall give approval to a state agency to loan funds and to enter into loan agreements with individuals or organizations in accordance with a state or federally legislated program. A Delegated Loan Authority shall set forth all provisions required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(3) Delegated Purchase Authority — A Delegated Purchase Authority shall give approval to a state agency to purchase services for an individual program, within specified limits and guidelines.~~

~~(a) A Delegated Purchase Authority may be approved where all of the following are true:~~

~~1. the subject service needs are sporadic, and it is not possible to determine in advance their volume, delivery, or exact costs;~~

~~2. it is impractical to award one or more fee-for-service contracts for the category of services with compensation based upon unit or milestone rates;~~

~~3. the program needs and general categories of services are such that adequate guidelines can be developed to direct the agency in procuring services;~~

~~4. the procurement terms, conditions, and criteria to be followed by the agency in conducting each purchase shall be of such uniformity that the approval by the Commissioner of Finance and Administration of each individual purchase is not necessary;~~

~~5. the individual purchases involved are such that individual review by the Department of~~

~~Finance and Administration Office of Contracts Review is impractical, and~~

~~6. the procuring agency staff has made appropriate inquiries and assured the fairness of the maximum rates detailed in the authority.~~

~~(b) A Delegated Purchase Authority shall set forth all provisions and limitations required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(c) All purchases made pursuant to a Delegated Purchase Authority shall be made by the use of a written authorization to vendor approved by the Commissioner of Finance and Administration. No changes shall be made to the approved authorization to vendor without a formal amendment of the approved Delegated Purchase Authority.~~

~~(4) Other Delegated Authority - Upon the establishment of specific guidelines, criteria, and procedures, other forms of Delegated Authority may be used to give approval allowing a state agency to enter agreements for an individual program within specified limits and guidelines. Notwithstanding the foregoing, all delegated authorities shall conform with the policy expressed in these rules.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3.10 CONTRACT MANAGEMENT. The procuring state agency shall be responsible for the management of its contracts.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3.11 CONTRACT TERMINATION. If a procuring agency determines it to be in the best interests of the state to terminate a contract for service before the contract end date, either for cause or convenience, the head of the procuring agency shall request and obtain the approval of the Commissioner of Finance and Administration prior to any notice of contract termination. The Department of Finance and Administration shall file approved requests for contract termination with the Comptroller of the Treasury.~~

~~Authority: §§4-5-209, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3.12 EXCEPTIONS TO RULES. The Commissioner of Finance and Administration shall have the authority to make exceptions to the rules~~

~~of this chapter. The Department of Finance and Administration shall file approved exceptions to these rules and the reasons therefore with the Comptroller of the Treasury.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.13 APPENDIX I OF RULE 0620-3-3-.04. A Protest Bond may be presented to the state in form and substance compliant with the following Protest Bond format. Any Protest Bond presented to the state that represents a deviation from the following format shall be considered for acceptability by the state on a case by case basis.~~

~~PROTEST BOND~~

~~The Surety Company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. The bond shall have certified and current Power of Attorney for the Surety's Attorney in Fact attached.~~

~~KNOW ALL BY THESE PRESENTS: That we,~~

~~{Name of Protestor}~~

~~{Address of Protestor}~~

~~as the Party filing a protest of the State of Tennessee's determination(s) regarding a Request for Proposals (RFP) process, hereinafter called the Protestor, and~~

~~{Name of Surety}~~

~~{Address of Surety}~~

~~as Surety, hereinafter call the Surety, do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee as Obligee, hereinafter called the Obligee, and in the penal sum of~~

~~{Dollar Amount of Bond}~~

~~good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.~~

~~BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS: WHEREAS, the Obligee has issued a Request for Proposals bearing the RFP Number:~~

~~{RFP Number}~~

~~AND, the Protestor, as an actual proposer to the RFP, claims to be aggrieved in connection with said RFP process;~~

~~AND, the signature of an attorney or the Protestor on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;~~

~~AND, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protestor posts a protest bond, the Protestor does file this protest bond payable to the Obligee with a notice of protest regarding the subject RFP process;~~

~~AND, the Obligee shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination on the protest by the head of the affected agency;~~

~~AND, if the Protestor appeals the affected agency head's determination on the protest to the Review Committee, in accordance with subsection Tennessee Code Annotated, § 12-4-109(a)(1)(E)(vii), the head of the agency shall hold said protest bond until instructed by the Review Committee as to its disposition.~~

~~NOW, THEREFORE, this obligation or bond shall remain in full force and effect conditioned upon a decision by the Review Committee that:~~

- ~~1. a request for consideration, protest, pleading, motion, or other document is signed by an attorney or the Protestor, before or after appeal to the Review Committee, in violation of Tennessee Code Annotated, § 12-4-109(a)(1)(E)(ii);~~
- ~~2. the Protestor has brought or pursued the protest in bad faith; or~~
- ~~3. the Protestor's notice of protest does not state on its face a valid basis for protest.~~

~~In which case, this obligation or bond shall be immediately payable to the Obligee. Otherwise, this obligation or bond shall be null and void.~~

~~IN WITNESS WHEREOF the Protestor has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers,~~

~~on this day of in the year~~

~~WITNESS:~~

~~{Name of Protestor}~~

~~{Authorized Signature of Protestor}~~

~~{Name and Title of Signatory}~~

~~{Name of Surety}~~

~~{Signature of Attorney in Fact}~~

~~{Name of Attorney in Fact}~~

~~{Tennessee License Number of Surety}~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.14 REPEALED.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Repeal filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.15 REPEALED.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Repeal filed November 8, 2001; effective March 30, 2002.~~

Authority: T.C.A. § 4-56-102, T.C.A. § 12-4-103.

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 Rule ID(s) _____
 File Date _____
 Effective Date _____

PROPOSED RULES OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION

CHAPTER 0620-3-9
APPEALS PROCESS FOR PERSONS BARRED FROM STATE CONTRACTING FOR USE OF
ILLEGAL IMMIGRANTS
NEW RULES TABLE OF

CONTENTS

Rulemaking Hearing Rule(s) Filing Form

0620-3-9-01	Purpose and Scope	0620-3-9-04	Appointment of Designee
0620-3-9-02	Notice		
0620-3-9-03	Review Procedure		

0620-3-9-01 PURPOSE AND SCOPE Tennessee Code Annotated Section 12-4-124 provides that a person who is discovered to have knowingly utilized the services of illegal immigrants in the performance of a contract to supply goods or services to the state or other state entities shall be prohibited from contracting for or submitting a bid for any contract to supply goods or services to the state or other state entities for a period of one year from the date of discovery of the usage of such individuals or services. A person subject to such prohibition may appeal under a process to be established by the Department of Finance and Administration, *Rulemaking Hearing Rules and rules made after and as a result of a rulemaking hearing.* T.C.A. § 7-5-205

Agency/Board/Commission: Department of General Services
Division: Central Procurement Office
Contact Person: Paul Krivacka
Address: 312 Rosa L. Parks Ave., 3rd Floor, Nashville, TN
Zip: 37243
Phone: 615-741-6916
Email: paul.krivacka@tn.gov

Revision Type (check all that apply):

Amendment
 New
 Repeal

Rule(s) Repeated (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0620-03-03	Personal, Professional, and Consulting Service Contracts
Rule Number	Rule Title
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0620-03-03-02	Office of Contracts Review
0620-03-03-03	Procurement Methods
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0620-03-03-05	Contract Form
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0620-03-03-10	Contract Management
0620-03-03-11	Contract Termination
0620-03-03-12	Exceptions To Rules
0620-03-03-13	Appendix I of Rule 0620-03-03-04
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Rule Number	Rule Title
0620-03-07-01	Policy Statement and Scope of Rules
0620-03-07-02	Approval For Limitation of Liability
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0620-03-08	Contract Management and Subrecipient Monitoring
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0620-03-08-01	Scope
0620-03-08-02	Applicability
0620-03-08-03	Contract Management and Subrecipient Monitoring-Distinguished
0620-03-08-04	Contract Management
0620-03-08-05	Subrecipient Monitoring
0620-03-08-06	Exceptions to Rules
Chapter Number	Chapter Title
0620-03-09	Appeals Process for Persons Barred from State Contracting for Use of Illegal Immigrants
Rule Number	Rule Title
0620-03-09-01	Purpose and Scope
0620-03-09-02	Notice
0620-03-09-03	Review Procedure
0620-03-09-04	Appointment of Designee
Chapter Number	Chapter Title
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0690-03-01-07	Bids and Purchasing Records
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0690-03-01-10	Authorization for Shipment, Delivery, Receipt, Inspection and Storage
0690-03-01-11	Purchases from Small Businesses
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0690-03-01-13	Amending or Repealing Rules and Regulations
Chapter Number	Chapter Title
0690-03-02	Purchase of Materials, Supplies, Equipment and Services Limitations of Liability
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0690-03-02-01	Policy Statement and Scope of Rules
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New Rules

Chapter Number	Chapter Title
0690-03-01	Comprehensive Rules and Regulations of the Central Procurement Office
Rule Number	Rule Title
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0690-03-01-02	Definitions
0690-03-01-03	Central Procurement Office
0690-03-01-04	Authority Delegated to State Agencies

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0690-03-01-06	Procurement Process-Elements of Solicitation Document and Process Prior to Award
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0690-03-01-13	Contract Finalization and Negotiation
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0690-03-01-18	Approval Process of Contracts and Amendments
0690-03-01-19	General Requirements of Contract Amendments
0690-03-01-20	State Agency Certification
0690-03-01-21	Contractor Registration
0690-03-01-22	Instructions for Solicitations and Contracts-Delivery and Commencement of Work
0690-03-01-23	General Requirements of Payments
0690-03-01-24	Statewide Contract Management
0690-03-01-25	Contract Termination
0690-03-01-26	Exceptions to Rules
0690-03-01-27	Agency Term Contract Management and Subrecipient Monitoring
0690-03-01-28	Contract with Current or Former State Employee

Chapter 0620-03
Administrative Division
Repeal

Rule 0620-03-03 Personal, Professional and Consulting Service Contracts is repealed in its entirety.

Authority: T.C.A. § 4-56-104

Rule 0620-03-07 Limitations of Liability in State Services is repealed in its entirety.

Authority: T.C.A. § 4-56-104

Rule 0620-03-08 Contract Management and Subrecipient Monitoring is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Rule 0620-03-09 Appeals Process for Persons Barred from State Contracting for Use of Illegal Immigrants is repealed in its entirety.

Authority: T.C.A. § 4-56-104

Chapter 0690-03-02
Purchase of Materials, Supplies, Equipment and Services Limitations of Liability
Repeal

Rule 0690-03-02-.01 Policy Statement and Scope of Rules is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Rule 0690-03-02-.02 Approval for Limitation of Liability Is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Chapter 0690-03
Comprehensive Rules and Regulations of the Central Procurement Office
Repeal /New
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<u>0690-03-01-.02</u> <u>Definitions</u>	<u>0690-03-01-.23</u> <u>General Requirements of Payments</u>
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<u>0690-03-01-.18</u> <u>Approval Process of Contracts and Amendments</u>	
<u>0690-03-01-.19</u> <u>General Requirements of Contract Amendments</u>	
<u>0690-03-01-.20</u> <u>State Agency Certification</u>	
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<u>0690-03-01-.22</u> <u>Instructions for Solicitations and</u>	
<u>SS-7039 (October 2011)</u>	

Rule 0690-03-01-.01 through Rule 0690-03-01-.13 is repealed by deleting the rules in their entirety and by replacing the following language, so that, the New Rule 0690-03-01-.01 through 0690-03-01-.28 shall read as follows:

0690-03-01 Comprehensive Rules and Regulations of the Central Procurement Office

0690-03-01.01 Applicability.

- (1) These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:
- (a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.
 - (b) The University of Tennessee and the Tennessee Board of Regents college and university systems.
 - (c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.
 - (d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.
 - (e) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding, shall be subject to these Rules.
 - (f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.
 - (g) These Rules shall not apply to contracts requiring State Building Commission approval.
 - (h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.
 - (i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.
 - (j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).

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

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

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

- (a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.
- (b) "Agency" means each State board, commission, committee, department, officer, or any other unit of State government.
- (c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.
- (d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.
- (e) "Approval Process" means the process by which necessary State approvals are obtained.
- (f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.
- (g) "Base Contract" means the original written contract prior to any amendments.
- (h) "Bid" means a response by a vendor to an invitation to bid.
- (i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.
- (j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.
- (k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.
- (l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.
- (m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.
- (n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.
- (o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

- (p) "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.
- (q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.
- (r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.
- (s) "Contracting Party" means a person or legal entity with the independent legal capacity to contract, or sue and be sued that has been awarded a contract through proper authority.
- (t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.
- (u) "Delegated Authority" means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan, consistent with a grant, or procure goods or services on behalf of the State.
- (v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.
- (w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties, in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.
- (x) "Delegated State Agency" means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.
- (y) "Department of General Services" means the State department created and empowered by T.C.A., §§ 4-3-1101, et seq.
- (z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- (aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.
- (bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.
- (cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:
1. Capacity of the donor to make the gift;
 2. Intention of the donor to make the gift;
 3. Completed delivery of the gift to or for the State, and

4. Acceptance of the gift by the State.

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

- (dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.
- (ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.
- (ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.
- (gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.
- (hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.
- (ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.
- (jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.
- (kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.
- (ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.
- (mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.
- (nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.
- (oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.
- (pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.
- (qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.
- (rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and

solicitation of sources, preparation and award of a contract, and all phases of contract administration.

- (ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.
- (tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.
- (uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.
- (vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.
- (ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.
- (xx) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.
- (yy) "Proprietary Procurement" means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.
- (zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.
- (aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.
- (bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.
- (ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.
- (ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.
- (eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.
- (fff) "Response" means a written response to a solicitation for goods or services.
- (ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.
- (hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.
- (iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.
- (jii) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

- (kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.
- (lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.
- (mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.
- (nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.
- (ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.
- (ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.
- (qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (rrr) "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.
- (sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.
- (ttt) "State Architect" means the person, who oversees the Office of the State Architect.
- (uuu) "Statewide Contract" means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.
- (vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.
- (www) "Term Contract" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.
- (xxx) "Vendor" means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-03-01-.03 Central Procurement Office.

- (1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.
- (2) The duties and responsibilities of the Central Procurement Office shall include:
 - (a) Implementing these Rules;

- (b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;
- (c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;
- (d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;
- (e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;
- (f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;
- (g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;
- (h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;
- (i) Resolving protests of Aggrieved Respondents;
- (j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and
- (k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

- (i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.
- (ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

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

2. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

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

- (vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.
- (I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.
- (II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.
- (III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.
- (IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.
- (V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) Invitation to Bid.

- (a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

- (a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

- (a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:
- (b) The circumstances leading to the emergency procurement;
- (c) Procurement-related actions taken in response to the emergency, including procurement methods used; and
- (d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

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

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

Proprietary Procurement.

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

(a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

- (a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

- (a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

- (a) The description of the technical requirements for the goods or scope of services to be procured;
- (b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;
- (c) Clear and definitive technical requirements and scope that allow for open competition where practicable;
- (d) The solicitation shall contain directions regarding the submittal of proposals;
- (e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;
- (f) Any requirements for proposal, performance or payment bonds;
- (g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;
- (h) A declaration of whether the contract award is subject to successful contract negotiation;
- (i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and
- (j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

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

(3) Cancellation of Solicitation or Rejection of Responses.

- (a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.
- (b) The Chief Procurement Officer shall have the discretion to reject any and all responses.
1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.
 1. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.
 2. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:
 - (i) Unreasonably high prices or failure of all responses to meet technical specifications;
 - (ii) Error or defect in the solicitation;
 - (iii) Cessation of need;
 - (iv) Unavailability of funds;
 - (v) Lack of adequate competition; or
 - (vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.
 3. Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.
 4. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

- (a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event, shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

- (a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process-Determining Non-Responsiveness.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

- (a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

- (a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.
1. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.
2. The Chief Procurement Officer may consider the following grounds for protest and no others:
 - (i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.
 - (ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.
 - (iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.
 - (iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
 - (v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.
3. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.
4. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest

within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

5. A written protest that is filed with the Protest Committee shall:

(i) Meet the requirements of T.C.A. § 4-56-103;

(ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and

(iii) Raise only grounds that were raised before the Chief Procurement Officer.

6. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

7. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

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

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

(2) Term Contract-General

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

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

(3) No Cost Contracts

- (a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.
- (b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

- (a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
- (b) A Grant shall represent one of the following:
 1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
 2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or
 3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type

contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

2. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

- (v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

- (b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.
- (c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.
- (d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.
- (e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.
- (f) An Endowment Grant Contract shall cite the State's authority to make the grant.
- (g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.
- (h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01- 16. General Requirements of Contracts.

- (1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:
 - (a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.
 - (b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.

- (c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.
- (d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.
- (e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.
- (f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.
- (g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."
- (h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

- (1) The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.
- (2) Necessary Contract Clauses for All Contract Types.
 - (a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.
 - (b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.
 - (c) Payment for Goods or Services.
 - 1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall

- state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.
2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.
 3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.
 4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.
- (d) Non-Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.
 - (e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.
 - (f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.
 - (g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.
 - (h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.
 - (i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.
 - (j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:
 1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under

the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

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

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

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

(i) The text of the new clause sought to be used;

(ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;

(iii) The conditions in the market place that justify modification of the necessary contract clause; and

(iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

(c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

0690-03-01-.18 Approval Process of Contracts and Amendments.

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

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

(a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and

2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;

The purpose of this rule is to set forth the appeals process.

2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;

Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124. Administrative History: New rules filed January 26, 2007; effective May 31, 2007.

3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or

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4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.

(d) ~~(4)~~ Each notice sent by the The Commissioner of Finance and Administration declaring the prohibition required by Tennessee Code Annotated Section 12-4-124(b) shall be the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
2. Provisions permitting the procurement of services from an individual.

(e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-19 General Requirements of Contract Amendments.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-20 State Agency Certification.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, C.A. § 12-3-511.

0630-03-01-21 Contractor Registration.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-23 General Requirements of Payments.

- (1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.
- (2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.

(3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

(4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

- (1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.
- (2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:
 - (a) -Delivered to the contractor at the address listed in the contract for "contacts and communications." If there is no such address, notice should be delivered to an address provided in the contract or related correspondence, or to an address at which the contractor may be found. Allocating adequate staff and resources to contract management;
 - (b) -Delivery may be by certified mail, regular mail, fax, express mail, or hand delivery. Reviewing Contracting Party performance in terms of progress and compliance with contract provisions: Proof that a contractor received notice may be established by a signed return receipt card, express mail delivery receipt, a fax confirmation sheet or an affidavit from a State employee establishing that the item was hand delivered to the contractor, or placed in first class mail to the contractor's address.
 - (c) -The notice shall contain the date or dates that the violation occurred, the date that the violation was discovered, and other information sufficient to provide notice to the contractor of the violation. The State should, if reasonably practicable, provide the name or names used by the illegal immigrant, the place where the illegal immigrant was providing services, and the type of services provided. Communicating with Contracting Parties to ensure maximum performance and intended results;

- (d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;
- (e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
- (f) Evaluating contract results in terms of the achievement of organizational objectives.

(3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.

(a) A contract management plan should include:

- 1. ~~(d) The notice should include the following information about the appeals process required under Tennessee Code Annotated Section 12-4-124(e):~~ Information about the specific staff positions and resources that will be assigned to contract management:
 - 1. The name, mailing, address, and telephone number of the person to whom the appeal must be delivered;
 - 2. That the appeal must be in writing and must either include the contract number and the date of the notice of prohibition, or may attach a complete copy of the notice of prohibition being appealed. A description of the organization of identified staff and resources for the contract management responsibility; and
 - 3. That the contractor may request a copy of the written record on which the notice of prohibition was based. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.

(b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.

(4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:

(a) Definition of needs;

(b) Procurement law, Rules, and Central Procurement Office Policy;

- 4. That the request should be received by the State's designated representative within thirty (30) days of receipt of the notice of prohibition;

(c) Basic record keeping;

(d) Program specific goals, objectives, purpose, and responsibilities;

(e) Interpersonal communication;

Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124. + Administrative History: New rules filed January 26, 2007; effective May 31, 2007.

(f) Project management skills and tools; and

0620-3-9-.03 REVIEW PROCEDURE;

(g) Evaluation techniques, skills, and tools.

- (1) The review of the one-year prohibition required by T.C.A. 12-4-124 may be conducted by the review committee established by Tennessee Code Annotated Section 12-4-109. The members of the review committee shall take appropriate measures to avoid conflicts of interest, including the use of designees.

(5) Each State Agency shall implement such management practices as necessary to ensure:

(a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).

(2) All reviews shall be conducted according to the following standards:

(b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

(6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

(a) The appellant shall be allowed an opportunity to review and copy the record that led to the prohibition, including all documents in the agency's file regarding the prohibition except those protected from disclosure under federal or state law. The meeting will be scheduled to allow the appellant a reasonable opportunity to review this record and prepare the case. The procuring State Agency's program area having responsibility for each contract;

(b) The appellant will have the opportunity to present information at the meeting. The review committee may limit or bar information that it considers irrelevant or duplicative. The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;

(c) The State may present information in support of its decision. The procuring State Agency's executives; and

(d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).

(7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

(a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.

(b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.28 Contract with Current or Former State Employee.

(1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.

(a) For the purposes of applying this Rule.

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

2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

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

(2) (d) - The meeting is not required to be a contested case hearing under the Tennessee Uniform Administrative Procedures Act, compiled in title 4 chapter 5 of the Tennessee Code Annotated. A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

Authority: T.C.A. § 4-56-102, T.C.A. § 12-4-103.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Procurement Commission on 10/31/2012 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/01/12
Rulemaking Hearing(s) Conducted on: (add more dates) 12/21/12

Date: 09/30/13
Signature: _____
Name of Officer: Michael E. Perry
Title of Officer: Chief Procurement Officer

Subscribed and sworn to before me on: _____
Notary Public Signature: _____
My commission expires on: _____

(e) No formal discovery under the Tennessee Rules of Civil Procedure or the Tennessee Uniform All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act shall apply to these review procedures, Tennessee Code Annotated, Title 4, Chapter 5.

(f) If the prohibition decision was based on a finding by a federal court or federal administrative agency that the appellant violated federal immigration law, the findings of fact and of law of such decision will be binding and conclusive in the appeal procedure.

(g) The results of the meeting with the review committee shall be reported in writing to the appealing party.

Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124. Administrative History: New rules filed January 26, 2007; effective May 31, 2007.

0620-3-9-.04 APPOINTMENT OF DESIGNEE.

Robert E. Cooper, Jr.
Attorney General and Reporter
Date

The Commissioner of Finance and Administration has the discretion to assign appeals under these rules to a designee instead of the review committee if he determines that the review committee may not be available to determine the appeal in a timely

manner, because of scheduling issues, potential conflicts of interests, or other good cause. The designee may or may not be a Department employee but shall not have been involved previously in the decision to prohibit the contractor from state contracting. The designee shall follow the procedures set forth in regulation 0620-3-9.03 in conducting this appeal. **Department of State Use Only**

Filed with the Department of State on:

Effective on:

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This proposed rule will not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly).

This proposed rule will not impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(l)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule:

This Rule governs the procurement process for most Executive Branch purchases. It makes the following changes:

- Amends terminology to conform to the new statutory scheme (Board of Standards to Procurement Commission, Department of General Services/Department of Finance and Administration to Central Procurement Office, Commissioner to Chief Procurement Officer, etc.)
- Adds information regarding contract negotiations and competitive negotiations.
- Clarifies contract approval processes as they relate to the CPO, Comptroller, and Fiscal Review Committee.
- Adds a section on mandatory, permissive, and prohibited contract language.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto:

§ 4-56-102: creates Procurement Commission.

§ 4-56-104: creates Central Procurement Office (CPO).

§ 4-56-105: requires CPO to develop proposed rules and regulations.

§ 4-56-108: requires all goods and services, with specified exceptions, to be purchased and contracted for in accordance with CPO rules, regulations, and policies and procedures.

§ 12-3-101: authorizes the State to accept gifts.

§ 12-3-102: exempts procurements and contracts by and for the legislative and judicial branches, University of Tennessee and the Tennessee Board of Regents system, State Building Commission, Department of Transportation construction and engineering, debt obligations, appraisal, relocation or land acquisitions for the Department of Transportation, and service signs from the purchasing requirements of Title 12, Chapters 3 and 4.

§ 12-3-103: exempts contracts for legal services, fiscal agents, financial advisors or advisory services, educational consultant services, and similar professional services from the competitive procurement requirements.

§ 12-3-107: authorizes and requires the CPO to adopt and submit to the procurement commission rules and regulations regarding procurements.

§ 12-3-201: defines Title 12, Chapter 3 terminology.

§ 12-3-305: requires CPO to develop proposed rules and regulations to define service contracting principles.

§ 12-3-309: authorizes the Procurement Commission to promulgate rules relative to the prohibition against contracting with persons utilizing the services of illegal immigrants.

§ 12-3-401: authorizes the CPO, with Comptroller approval, to delegate purchase authority to State agencies.

§ 12-3-501: requires State contracts to be awarded by competitive sealed solicitation by the CPO unless otherwise authorized by law.

§ 12-3-502: establishes requirements for procurement public notices, rejection of all responses for a solicitation, correction and withdrawal of responses, evaluation of responses, and award of contracts.

§ 12-3-503: authorizes the Procurement Commission to grant the CPO authority to establish informal solicitation.

rules, regulations, policies and procedures for procurements.

§ 12-3-504: authorizes the CPO, with Procurement Commission approval, to promulgate rules, policies, and procedures for sole source procurements.

§ 12-3-505: authorizes the CPO to make emergency purchases.

§ 12-3-506: authorizes the CPO to negotiate with vendors who maintain a general services administration pricing agreement with any United States agency.

§ 12-3-507: authorizes the CPO to enter into contracts by competitive negotiation.

§ 12-3-508: requires the CPO to purchase or contract for all utilities.

§ 12-3-511: requires the CPO to ensure that funds are available to cover a proposed expenditure.

§ 12-3-514: establishes procedures for protesting the award of a solicitation.

§ 12-3-602: authorizes the State to inspect the part of the plant or place of business of a contractor or subcontractor. Authorizes the State to audit the books and records of a contractor or subcontractor under any State contract or subcontract.

§ 12-3-701: authorizes the CPO to approve a limitation of liability in certain procurements.

§ 12-3-905: authorizes the Procurement Commission to adopt rules relative to energy efficiency standards for major energy-consuming products to be procured by the state.

§ 12-3-906: requires the Procurement Commission to adopt rules requiring life cycle costs to be used by the CPO in contracting for major energy-consuming products.

§ 12-3-1201: authorizes the CPO to purchase goods on behalf of Tennessee local governments, school districts, and quasi-governmental entities.

§ 12-4-103: prohibits State employees from bidding on State solicitations.

§ 12-4-110: requires local governments to award contracts for energy-related services on the same basis as contracts for professional services.

§ 12-4-508: establishes a preference for Blind Services Enterprises when creating a vending facility on State or public property.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All entities wishing to contract with the State of Tennessee and most executive branch agencies. The CPO urges adoption of these rules. During the public hearing and written comments period, no persons or entities opposed the rules.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No change

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Paul Krivacka

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Paul Krivacka

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

312 Rosa L. Parks Ave. Nashville, TN 616-741-6916; paul.krivacka@tn.gov.

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124. Administrative History: New rules filed January 26, 2007; effective May 31, 2007.

Document comparison by Workshare Compare on Thursday, October 10, 2013
10:54:01 AM

Input:	
Document 1 ID	file://C:\Users\BA10368\Desktop\0620-03-09.pdf
Description	0620-03-09
Document 2 ID	file://C:\Users\BA10368\Desktop\CPO Proposed Rules 082613\Rules for AG 093013.docx
Description	Rules for AG 093013
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1272
Deletions	52
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	1326

**D'OSSIE DINGUS v. DEPARTMENT OF SAFETY
U.S.D.C. EASTERN DIVISION CASE NO. 3:07-cv-00452**

PLEADING INDEX #4

NO.	DATE	DESCRIPTION	WHO FILED?
122.	08/02/13	Agreed Order	Court
123.	08/12/13	Motion For Additional Time To Respond To Defendant's Motion For Summary Judgment	¶
124.	08/12/13	Memorandum Of Facts And Law In Support Of Motion For Additional Time To Respond To Defendant's Motion For Summary Judgment	¶
125.	08/16/13	Defendant's Witness	State
126.	08/16/13	Plaintiff's Witness List	¶
127.	08/23/13	Notice Of No Opposition	¶
128.	08/28/13	Plaintiff's First Requests For Production Of Documents Propounded To Defendant Tennessee Department Of Safety	State
129.	08/29/13	Notice Of Appearance	State
130.	09/09/13	Civil Courtroom Minutes-General	Court
131.	09/20/13	Affidavit of De'Ossie Dingus	¶
132.	09/20/13	Plaintiff's Motion To Exceed Page Limits	¶
133.	09/20/13	Memorandum In Support of Plaintiff's Response To Defendant's Motion For Summary Judgment	¶
134.	09/20/13	Response To Defendant's Statement of Undisputed Material Facts	¶
135.	09/20/13	Plaintiff's Statement of Additional Undisputed Material Facts	¶
136.	10/01/13	Defendants' Responses To Plaintiff's Statement of Additional Undisputed Material Facts	State

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For Department of State Use Only

Sequence Number: _____

Rule ID(s): _____

File Date: _____

Effective Date: _____

RULES OF THE DEPARTMENT GENERAL SERVICES-0690 DIVISION OF PURCHASING

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission: Department of General Services
Division: Central Procurement Office
Contact Person: Paul Krivacka
Address: 312 Rosa L. Parks Ave., 3rd Floor, Nashville, TN
Zip: 37243
Phone: 615-741-6916
Email: paul.krivacka@tn.gov

Revision Type (check all that apply):

Amendment

New

Repeal

Rule(s) Repealed (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0620-03-03	Personal, Professional, and Consulting Service Contracts
Rule Number	Rule Title
0620-03-03-01	Applicability
0620-03-03-02	Office of Contracts Review
0620-03-03-03	Procurement Methods
0620-03-03-04	Protest Procedures
0620-03-03-05	Contract Form
0620-03-03-06	Contract Approval
0620-03-03-07	General Requirements
0620-03-03-08	Special Cases
0620-03-03-09	Delegated Authority
0620-03-03-10	Contract Management
0620-03-03-11	Contract Termination
0620-03-03-12	Exceptions To Rules
0620-03-03-13	Appendix I of Rule 0620-03-03-04
Chapter Number	Chapter Title
0620-03-07	Limitations of Liability in State Services
Rule Number	Rule Title
0620-03-07-01	Policy Statement and Scope of Rules
0620-03-07-02	Approval For Limitation of Liability
Chapter Number	Chapter Title
0620-03-08	Contract Management and Subrecipient Monitoring
Rule Number	Rule Title
0620-03-08-01	Scope
0620-03-08-02	Applicability

0620-03-08-03	Contract Management and Subrecipient Monitoring-Distinguished
0620-03-08-04	Contract Management
0620-03-08-05	Subrecipient Monitoring
0620-03-08-06	Exceptions to Rules
Chapter Number	Chapter Title
0620-03-09	Appeals Process for Persons Barred from State Contracting for Use of Illegal Immigrants
Rule Number	Rule Title
0620-03-09-01	Purpose and Scope
0620-03-09-02	Notice
0620-03-09-03	Review Procedure
0620-03-09-04	Appointment of Designee
Chapter Number	Chapter Title
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Rule Number	Rule Title
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0690-03-01-02	Definitions
0690-03-01-03	Methods of Purchasing
0690-03-01-04	Qualification of Bidders
0690-03-01-05	Competitive Negotiation
0690-03-01-06	Preparation of Invitations to Bid, Specifications, Requisitions and Reports
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0690-03-01-09	Bonds
0690-03-01-10	Authorization for Shipment, Delivery, Receipt, Inspection and Storage
0690-03-01-11	Purchases from Small Businesses
0690-03-01-12	Resolution of Protests by the Commissioner
0690-03-01-13	Amending or Repealing Rules and Regulations
Chapter Number	Chapter Title
0690-03-02	Purchase of Materials, Supplies, Equipment and Services Limitations of Liability
Rule Number	Rule Title
0690-03-02-01	Policy Statement and Scope of Rules
0690-03-02-02	Approval for Limitation of Liability

New Rules

Chapter Number	Chapter Title
0690-03-01	Comprehensive Rules and Regulations of the Central Procurement Office
Rule Number	Rule Title
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0690-03-01-02	Definitions
0690-03-01-03	Central Procurement Office
0690-03-01-04	Authority Delegated to State Agencies
0690-03-01-05	Procurement Methods
0690-03-01-06	Procurement Process-Elements of Solicitation Document and Process Prior to Award
0690-03-01-07	Procurement Process-Proposal and Performance Bonds
0690-03-01-08	Procurement Process-Communication and Negotiation
0690-03-01-09	Procurement Process-Determining Non-Responsiveness
0690-03-01-10	Procurement Process-Amendment or Withdrawal of Responses
0690-03-01-11	Award
0690-03-01-12	Protest Procedures
0690-03-01-13	Contract Finalization and Negotiation
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0690-03-01-19	General Requirements of Contract Amendments
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0690-03-01-26	Exceptions to Rules
0690-03-01-27	Agency Term Contract Management and Subrecipient Monitoring
0690-03-01-28	Contract with Current or Former State Employee

Chapter 0620-03
Administrative Division
Repeal

Rule 0620-03-03 Personal, Professional and Consulting Service Contracts is repealed in its entirety.

Authority: T.C.A. § 4-56-104

Rule 0620-03-07 Limitations of Liability in State Services is repealed in its entirety.

Authority: T.C.A. § 4-56-104

Rule 0620-03-08 Contract Management and Subrecipient Monitoring is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Rule 0620-03-09 Appeals Process for Persons Barred from State Contracting for Use of Illegal Immigrants is repealed in its entirety.

Authority: T.C.A. § 4-56-104

CHAPTER 0690-3-2
PURCHASE OF MATERIALS, SUPPLIES, EQUIPMENT AND SERVICES-
LIMITATIONS OF LIABILITY

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Chapter 0690-03-02
Purchase of Materials, Supplies, Equipment and Services Limitations of Liability
Repeal

Rule 0690-03-02-.01 Policy Statement and Scope of Rules ~~0690-3~~ is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Rule 0690-03-02-.02 Approval for Limitation of Liability is repealed in its entirety.

0690-3-2-.01 POLICY STATEMENT AND SCOPE OF RULES.

~~(1) The General Assembly of Tennessee, in T.C.A. § 12-3-315, authorized the Department of General Services to promulgate rules setting forth the circumstances when, and the procedures under which, the State would purchase materials, supplies, equipment and services while accepting limitations of the liability of contractors for damage claims.~~
Authority: T.C.A. § 4-56-104

Chapter 0690-03
Comprehensive Rules and Regulations of the Central Procurement Office
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<u>SS-7039 (October 2011)</u>			

Rule 0690-03-01-.01 through Rule 0690-03-01-.13 is repealed by deleting the rules in their entirety and by replacing the following language, so that, the New Rule 0690-03-01-.01 through 0690-03-01-.28 shall read as follows:

0690-03-01 Comprehensive Rules and Regulations of the Central Procurement Office

0690-03-01.01 Applicability.

- (1) These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:
- (a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.
 - (b) The University of Tennessee and the Tennessee Board of Regents college and university systems.
 - (c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.
 - (d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.
 - (e) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.
 - (f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.
 - (g) These Rules shall not apply to contracts requiring State Building Commission approval.
 - (h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.
 - (i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.
 - (j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).

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

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

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

- (a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.
- (b) "Agency" means each State board, commission, committee, department, officer, or any other unit of State government.
- (c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.
- (d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.
- (e) "Approval Process" means the process by which necessary State approvals are obtained.
- (f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.
- (g) "Base Contract" means the original written contract prior to any amendments.
- (h) "Bid" means a response by a vendor to an invitation to bid.
- (i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.
- (j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.
- (k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.
- (l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.
- (m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.
- (n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.
- (o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

- (p) "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.
- (q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.
- (r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.
- (s) "Contracting Party" means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.
- (t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.
- (u) "Delegated Authority" means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.
- (v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.
- (w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.
- (x) "Delegated State Agency" means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.
- (y) "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.
- (z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- (aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.
- (bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.
- (cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:
1. Capacity of the donor to make the gift;
 2. Intention of the donor to make the gift;
 3. Completed delivery of the gift to or for the State, and

4. Acceptance of the gift by the State.

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

- (dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.
- (ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.
- (ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.
- (gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.
- (hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.
- (ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.
- (jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State, that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.
- (kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.
- (ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.
- (mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.
- (nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.
- (oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.
- (pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.
- (qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.
- (rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and

- solicitation of sources, preparation and award of a contract, and all phases of contract administration.
- (ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.
- (tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.
- (uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.
- (vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.
- (ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.
- (xx) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.
- (yy) "Proprietary Procurement" means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.
- (zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.
- (aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.
- (bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.
- (ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.
- (ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.
- (eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.
- (fff) "Response" means a written response to a solicitation for goods or services.
- (ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.
- (hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.
- (iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.
- (jii) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

- (kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.
- (lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.
- (mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.
- (nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.
- (ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.
- (ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.
- (qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (rrr) "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.
- (sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.
- (ttt) "State Architect" means the person, who oversees the Office of the State Architect.
- (uuu) "Statewide Contract" means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.
- (vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.
- (www) "Term Contract" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.
- (xxx) "Vendor" means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-03-01-.03 Central Procurement Office.

- (1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.
- (2) The duties and responsibilities of the Central Procurement Office shall include:
 - (a) Implementing these Rules:

- (b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;
- (c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;
- (d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;
- (e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;
- (f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;
- (g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;
- (h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;
- (i) Resolving protests of Aggrieved Respondents;
- (j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and
- (k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

- (i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.
- (ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

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

2. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

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

- (vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.
- (I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.
- (II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.
- (III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.
- (IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.
- (V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) Invitation to Bid.

- (a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

- (a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

- (a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:
- (b) The circumstances leading to the emergency procurement;
- (c) Procurement-related actions taken in response to the emergency, including procurement methods used; and
- (d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

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

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

Proprietary Procurement.

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

(a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

- (a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

- (a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric, light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

- (a) The description of the technical requirements for the goods or scope of services to be procured;
- (b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;
- (c) Clear and definitive technical requirements and scope that allow for open competition where practicable;
- (d) The solicitation shall contain directions regarding the submittal of proposals;
- (e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;
- (f) Any requirements for proposal, performance or payment bonds;
- (g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;
- (h) A declaration of whether the contract award is subject to successful contract negotiation;
- (i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and
- (j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

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

(3) Cancellation of Solicitation or Rejection of Responses.

- (a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.
- (b) The Chief Procurement Officer shall have the discretion to reject any and all responses.
1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.
 1. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.
 2. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:
 - (i) Unreasonably high prices or failure of all responses to meet technical specifications;
 - (ii) Error or defect in the solicitation;
 - (iii) Cessation of need;
 - (iv) Unavailability of funds;
 - (v) Lack of adequate competition; or
 - (vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.
 3. Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.
 4. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

- (a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

(a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process-Determining Non-Responsiveness.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01- 12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

- (a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

- (a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.
1. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.
2. The Chief Procurement Officer may consider the following grounds for protest and no others:
 - (i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.
 - (ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.
 - (iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.
 - (iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
 - (v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.
3. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.
4. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest

within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

5. A written protest that is filed with the Protest Committee shall:

- (i) Meet the requirements of T.C.A. § 4-56-103;
- (ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,
- (iii) Raise only grounds that were raised before the Chief Procurement Officer.

6. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

7. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-13 Contract Finalization and Negotiation.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-14 Contract Type.

(1) Term Contracts

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

(2) Term Contract-General.

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

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

(3) No Cost Contracts

- (a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.
- (b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-15 Grants.

(1) Grant Contract

- (a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
- (b) A Grant shall represent one of the following:
 - 1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
 - 2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or
 - 3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type.

contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

2. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

- (v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.
 - (b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.
 - (c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.
 - (d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.
 - (e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.
 - (f) An Endowment Grant Contract shall cite the State's authority to make the grant.
 - (g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.
 - (h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.
- (6) All programs funded by a Grant Contract are subject to audit. It is not intended, however, that the existence of more than one Grant Contract or source of funds for a single Grantee require more than one audit in a single audit period.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

- (1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:
- (a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.
 - (b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.

- (c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.
- (d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.
- (e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.
- (f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.
- (g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."
- (h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

- (1) The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.
- (2) Necessary Contract Clauses for All Contract Types.
 - (a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.
 - (b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.
 - (c) Payment for Goods or Services.
 - 1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall

- state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.
2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.
 3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.
 4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.
- (d) Non-Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.
 - (e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.
 - (f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.
 - (g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.
 - (h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.
 - (i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.
 - (j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:
 1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under

the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

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

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

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. ~~(2)~~ T.C.A. § 12-3-315 forbids the State from accepting any limitation of the contractor's Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct. The statute also forbids the State from accepting any limitation of liability for an amount less than two times the value of the contract. Furthermore, neither the statute nor these regulations authorize the State to indemnify contractors for the acts or negligence of the contractors or third parties. All limitations of liability authorized under these rules must be subject to these limitations, are prohibited.

3. ~~(3)~~ These rules shall apply to contracts for the purchase of materials, supplies, equipment and services that are procured pursuant to the Rules of the Department of General Services, Chapter 0690-3-1, when the Department has demonstrated that such materials, supplies, equipment and services cannot be secured without limiting the liability of contractors.

Authority: T.C.A. §§ 4-5-202, 12-3-101 et seq., and 12-3-315. Administrative History: Original rule filed January 24, 2003; effective May 30, 2003.

0690-3-2-.02 APPROVAL FOR LIMITATION OF LIABILITY.

(1) Approval Timeliness:

(a) Any request to permit the limitation of contractor liability in a state contract for materials, supplies, equipment and services must be made, and a decision made thereon, at the appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the State in competitive procurements. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

- (b) ~~In the formal Invitation to Bid process, the Purchasing Division may determine to request approval for a limitation of liability after receiving written comments from potential bidders pursuant to the process. In which case, the request to limit liability shall be made reviewed, a decision shall be rendered, and an amended Invitation to Bid shall be issued. (and a copy of any such approval shall be presented with this request).~~
- (c) ~~The Purchasing Division may request, and the Commissioner of General Services may authorize, initiation of a new Invitation to Bid including a contractor's limitation of liability at PURCHASE OF MATERIALS, SUPPLIES, EQUIPMENT AND SERVICES CHAPTER 0690-3-2 LIMITATIONS OF LIABILITY~~ Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.
- (4) ~~(Rule 0690-3-2-.02, continued)~~ Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:
- (a) ~~The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the applicable procurement process has failed to provide qualified proposer a responsive bid.~~
- (2) ~~Approval Process~~ Chief Procurement Officer determines that doing so is in the best interests of the State.
- (b) ~~(a) If the Purchasing Division~~ Procuring Agency considers it necessary to accept a limitation of liability ~~modify a necessary contract clause, it shall submit a request to use a limitation of liability clause to the Commissioner of General Services~~ the Chief Procurement Officer to modify a necessary contract clause.
1. ~~(b) The request to use a limitation of liability shall be submitted under the signature of the Director of Purchasing. The request for approval for modification of a necessary contract clause shall contain justification that addresses the following:~~
- (i) ~~1. the~~ The text of the limitation of liability ~~new clause~~ sought to be used;
- (ii) ~~2. If applicable, the risks of liability to the State created by the information-technology services product purchased under the contract~~ new clause, and the impact on the State by allowing a limitation;
3. the new clause;
- (iii) ~~The conditions in the market which place that justify a limitation of liability~~ modification of the necessary contract clause; and
- (iv) ~~4. the~~ The anticipated impact on the State's procurement if limitation of liability ~~modification to the necessary contract clause~~ is not allowed.
- (c) ~~5. the identification of one or more persons in the purchasing division familiar with the information set forth in the request to permit a limitation of liability.~~
- (e) ~~The request will be approved or disapproved by the Commissioner of General Services or authorized designee. The Commissioner may~~ The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of limitation of liability ~~the modification~~ under alternative language. Any approval will ~~shall~~ be in writing and detail the specific limitation of liability ~~alternative language~~ approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

(3) 0690-03-01-.18 Approval Documentation Process of Contracts and Amendments.

- (1) All contracts and amendments shall be in writing and approved in accordance with these Rules and Central Procurement Office Policy.
- (2) The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.
- (a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:
1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and
 2. Manage the review process to secure approval by other officials required by these Rules.
- (3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:
- (a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.
- (b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.
- (c) The Comptroller of the Treasury shall approve a contract that includes:
1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;
 2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;
 3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or
 4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.
- (d) ~~(a) Said written approval permitting a limitation of liability shall be filed with the Board of Standards. The written approval shall be presented along with the subject purchasing documents submitted to the Commissioner of General Services. The Commissioner of the Department of Human Resources shall~~ approve a contract that includes:
1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
 2. Provisions permitting the procurement of services from an individual.
- (e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01- 19 General Requirements of Contract Amendments.

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

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

- (1) The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:
 - (a) The goods or services are in fact needed;
 - (b) The goods or services cannot be satisfactorily or efficiently provided by the State;
 - (c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and
 - (d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

- (1) Each solicitation and each contract shall clearly state instructions for authorizing services or delivery of goods.
- (2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.
- (3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be

sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

- (4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.
- (5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

- (1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.
- (2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.
- (3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.
- (4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

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

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

- (1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.
- (2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:
 - (a) Allocating adequate staff and resources to contract management;
 - (b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;
 - (c) Communicating with Contracting Parties to ensure maximum performance and intended results;
 - (d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;
 - (e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and
 - (f) Evaluating contract results in terms of the achievement of organizational objectives.
- (3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.
 - (a) A contract management plan should include:
 1. Information about the specific staff positions and resources that will be assigned to contract management;
 2. A description of the organization of identified staff and resources for the contract management responsibility; and
 3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.
 - (b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan, and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.
- (4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:
 - (a) Definition of needs;

- (b) Procurement law, Rules, and Central Procurement Office Policy;
 - (c) Basic record keeping;
 - (d) Program specific goals, objectives, purpose, and responsibilities;
 - (e) Interpersonal communication;
 - (f) Project management skills and tools; and
 - (g) Evaluation techniques, skills, and tools.
- (5) Each State Agency shall implement such management practices as necessary to ensure:
- (a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).
 - (b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.
- (6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:
- (a) The procuring State Agency's program area having responsibility for each contract;
 - (b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;
 - (c) The procuring State Agency's executives; and
 - (d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).
- (7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.
- (a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.
 - (b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Authority: *T.C.A. §§4-5-202, 12-3-101 et seq., and 12-3-315. Administrative History: Original rule filed January 24, 2003; effective May 30, 2003. T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.*

0690-03-01-.28 Contract with Current or Former State Employee.

- (1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.
 - (a) For the purposes of applying this Rule.

1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.

(2) A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

Authority: T.C.A. § 4-56-102, T.C.A. § 12-4-103.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Procurement Commission on 10/31/2012 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on 11/01/12

Rulemaking Hearing(s) Conducted on: (add more dates) 12/21/12

Date: 09/30/13

Signature: _____

Name of Officer: Michael F. Perry

Title of Officer: Chief Procurement Officer

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert F. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This proposed rule will not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This proposed rule will not impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule:**

This Rule governs the procurement process for most Executive Branch purchases. It makes the following changes:

- Amends terminology to conform to the new statutory scheme (Board of Standards to Procurement Commission, Department of General Services/Department of Finance and Administration to Central Procurement Office, Commissioner to Chief Procurement Officer, etc.).
- Adds information regarding contract negotiations and competitive negotiations.
- Clarifies contract approval processes as they relate to the CPO, Comptroller, and Fiscal Review Committee.
- Adds a section on mandatory, permissive, and prohibited contract language.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto:**

§ 4-56-102: creates Procurement Commission.

§ 4-56-104: creates Central Procurement Office (CPO).

§ 4-56-105: requires CPO to develop proposed rules and regulations.

§ 4-56-108: requires all goods and services, with specified exceptions, to be purchased and contracted for in accordance with CPO rules, regulations, and policies and procedures.

§ 12-3-101: authorizes the State to accept gifts.

§ 12-3-102: exempts procurements and contracts by and for the legislative and judicial branches, University of Tennessee and the Tennessee Board of Regents system, State Building Commission, Department of Transportation construction and engineering, debt obligations, appraisal, relocation or land acquisitions for the Department of Transportation, and service signs from the purchasing requirements of Title 12, Chapters 3 and 4.

§ 12-3-103: exempts contracts for legal services, fiscal agents, financial advisors or advisory services, educational consultant services, and similar professional services from the competitive procurement requirements.

§ 12-3-107: authorizes and requires the CPO to adopt and submit to the procurement commission rules and regulations regarding procurements.

§ 12-3-201: defines Title 12, Chapter 3 terminology.

§ 12-3-305: requires CPO to develop proposed rules and regulations to define service contracting principles.

§ 12-3-309: authorizes the Procurement Commission to promulgate rules relative to the prohibition against contracting with persons utilizing the services of illegal immigrants.

§ 12-3-401: authorizes the CPO, with Comptroller approval, to delegate purchase authority to State agencies.

§ 12-3-501: requires State contracts to be awarded by competitive sealed solicitation by the CPO unless otherwise authorized by law.

§ 12-3-502: establishes requirements for procurement public notices, rejection of all responses for a solicitation, correction and withdrawal of responses, evaluation of responses, and award of contracts.

§ 12-3-503: authorizes the Procurement Commission to grant the CPO authority to establish informal solicitation.

rules, regulations, policies and procedures for procurements.

§ 12-3-504: authorizes the CPO, with Procurement Commission approval, to promulgate rules, policies and procedures for sole source procurements.

§ 12-3-505: authorizes the CPO to make emergency purchases.

§ 12-3-506: authorizes the CPO to negotiate with vendors who maintain a general services administration pricing agreement with any United States agency.

§ 12-3-507: authorizes the CPO to enter into contracts by competitive negotiation.

§ 12-3-508: requires the CPO to purchase or contract for all utilities.

§ 12-3-511: requires the CPO to ensure that funds are available to cover a proposed expenditure.

§ 12-3-514: establishes procedures for protesting the award of a solicitation.

§ 12-3-602: authorizes the State to inspect the part of the plant or place of business of a contractor or subcontractor. Authorizes the State to audit the books and records of a contractor or subcontractor under any State contract or subcontract.

§ 12-3-701: authorizes the CPO to approve a limitation of liability in certain procurements.

§ 12-3-905: authorizes the Procurement Commission to adopt rules relative to energy efficiency standards for major energy-consuming products to be procured by the state.

§ 12-3-906: requires the Procurement Commission to adopt rules requiring life cycle costs to be used by the CPO in contracting for major energy-consuming products.

§ 12-3-1201: authorizes the CPO to purchase goods on behalf of Tennessee local governments, school districts and quasi-governmental entities.

§ 12-4-103: prohibits State employees from bidding on State solicitations.

§ 12-4-110: requires local governments to award contracts for energy-related services on the same basis as contracts for professional services.

§ 71-4-506: establishes a preference for Blind Services Enterprises when creating a vending facility on State or public property.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule:

All entities wishing to contract with the State of Tennessee and most executive branch agencies. The CPO urges adoption of these rules. During the public hearing and written comments period, no persons or entities opposed the rules.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule:

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less:

No change

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule:

Paul Krivacka

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees:

Paul Krivacka

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

312 Rosa L. Parks Ave., Nashville, TN, 615-741-6916, paul.krivacka@tn.gov.

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Document comparison by Workshare Compare on Thursday, October 10, 2013
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Document 1 ID	file://C:\Users\BA10368\Desktop\0690-03-02.pdf
Description	0690-03-02
Document 2 ID	file://C:\Users\BA10368\Desktop\CPO Proposed Rules 082613\Rules for AG 093013.docx
Description	Rules for AG 093013
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1290
Deletions	58
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	1350